

P.E.R.C. NO. 2014-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF WARREN,

Respondent,

-and-

Docket No. IA-2014-001

WARREN COUNTY CORRECTIONS
FOP LODGE 171,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the County of Warren and Warren County Corrections FOP Lodge 171. The FOP appealed the award, asserting that the arbitrator erred by not awarding salary step movement at the expiration of the contract, and not adequately addressing all of the N.J.S.A. 34:13A-16g statutory factors. The FOP also argued that the arbitrator committed an ethical violation when she clarified the award for the County. The Commission finds that the arbitrator adequately explained her rationale for freezing step movement at the expiration of the contract; did not exceed her authority; and adequately addressed the statutory factors. The Commission also finds that the arbitrator's alleged ethical error was harmless and did not result in prejudice against the FOP.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Florio, Perrucci, Steinhardt & Fader, LLC, attorneys (J. Andrew Kinsey and Veronica P. Hallett, on the brief)

For the Appellant, Loccke, Correia, Limsky & Bukosky, attorneys (Leon B. Savetsky, of counsel)

DECISION

On October 2, 2014, Warren County Corrections FOP Lodge 171 appealed from an interest arbitration award involving a unit of correction officers employed by the County of Warren.^{1/} The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.^{2/}

1/ We deny the FOP's request for oral argument. The issues have been fully briefed.

2/ The last contract expired on December 31, 2010 and therefore (continued...)

The arbitrator issued 97-page opinion and award. She awarded a three-year term from January 1, 2011 through December 31, 2013. Regarding salary issues, she awarded no salary increases for officers moving through the step guide but a two percent salary increase for officers at the top step only, effective July 1 of each year. She also added two additional steps on the salary guide effective September 23, 2013, and froze step movement at the expiration of the contract if the interest arbitration salary cap is still in effect on January 1, 2014.^{3/} Additionally, she revised contract language relating to overtime on storm days or during emergencies.

N.J.S.A. 34:13A-16g requires that an arbitrator shall state in the award which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. The statutory factors are as follows:

2/ (...continued)
this contract is not subject to the 2% base salary cap.

3/ Prior to these interest arbitration proceedings, employees moving through steps of the salary guide received increments for step movement for 2011, 2012 and 2013, which cost the County, respectively, \$206,883, \$265,297 and \$251,839.

- (1) The interests and welfare of the public . . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer . . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers . . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights . . . ; and
- (9) Statutory restrictions imposed on the employer. . . .

[N.J.S.A. 34:13A-16g]

The standard for reviewing interest arbitration awards is well established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16g factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), *aff'd o.b.* 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). An arbitrator must provide a reasoned explanation for an award and state what statutory factors he or she considered most important, explain why they were given significant weight, and explain how other evidence or factors were weighed and considered in arriving at the final award. N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi. Within the parameters of our review standard, we will defer to the arbitrator's judgment, discretion and labor relations expertise. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999).

The FOP argues that the arbitrator erred in not awarding salary step movement at the expiration of the contract. It also asserts that the arbitrator did not adequately address the statutory factors of financial impact on the County and the continuity and stability of employment. It also argues that the

arbitrator committed an ethical violation when she clarified the award without its permission or giving it an opportunity to be heard. Finally, it requests that the award be vacated and sent to a new arbitrator.

The County responds that it was within the arbitrator's discretion to freeze step movement in view of the County's proposal to eliminate step movement and that the prior contract specifically provided for step movement at expiration. It also noted that the next contract will fall under the two percent salary cap which would have permitted automatic step increases above the cap if left unchanged. It also asserts that the arbitrator provided a thorough analysis on the financial impact on the County and the continuity and stability of employment. Finally, it contends that the arbitrator's email to both parties clarifying the award did not prejudice the FOP.

With regard to the arbitrators freezing of step movement upon the expiration of the contract, the arbitrator awarded the following contract language:

If an interest arbitration salary cap is still in effect as of January 1, 2014, Officers who are not at the top step in 2013 will not move to the next step in the guide in 2014 until the parties finalize a successor agreement through negotiations or through interest arbitration. Those officers will then move, if applicable, pursuant to the terms of the successor agreement. If the 2014 step movement cost does not exceed any interest arbitration salary cap in effect as of January 1, 2014, upon mutual agreement by

the parties, those officers in the guide shall receive their step increment in 2014 prior to resolving the successor agreement.

Award at 78 - 79.

We do not agree with the FOP that the arbitrator exceeded her authority by freezing step movement upon expiration of the contract. An interest arbitrator retains the conventional authority to make determinations outside the parties' final offers. Hudson Cty. Pros., P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (finding that conventional arbitration allows the arbitrator considerable discretion to fashion an award, although the arbitrator may not reach out and decide issues not presented by the parties). In her analysis of the salary proposals, the arbitrator found that the County's final offer of 0% and the FOP's final offer of 9% (before compounding) were both unrealistic. She noted that Article 7, Section 2 of the parties' prior agreement provided for step movement, and set forth that the cost of such step movement must be considered as part of the overall compensation of these employees and be given due weight regarding the financial impact on the governing unit. The arbitrator then declined to eliminate the step guide altogether as proposed by the County, but did freeze step movement upon the expiration of the contract. She reasoned as follows:

While I will not dismantle the employees' current step guide, I intend to freeze employees on their current step going forward into the next contract unless certain

circumstances dictate otherwise as discussed below. At the expiration of this contract, this bargaining unit will be subject to the 2.0% cap on arbitration awards pursuant to Chapter 105, P.L. 2010. Under the provisions of this statute, an interest arbitrator is limited to awarding a maximum of 2.0% increases in base salary which is inclusive of base pay, increments, and longevity increases. In January, 2014, approximately 46 employees would be eligible to receive step increases. Step increases have in recent years cost the County more than \$250,000 per year for this unit. It is therefore very likely that the increment load will far exceed the available cap should the parties require interest arbitration to settle the contract.

The arbitrator also noted that similar language was contained in the memorandum of agreement between the County and the FOP for the sheriff's officers unit. We are satisfied that the freezing of salary increments upon the expiration of the contract is an issue that stemmed from the arbitrator's consideration of the County's proposal to eliminate the step guide altogether. The arbitrator adequately explained her rationale for freezing step movement upon the expiration of the contract - - mainly to avoid handicapping negotiations for the next contract since it will be subject to the two percent base salary cap. The FOP's reliance on Township of Montclair v. Montclair PBA Local No. 53, 2012 N.J. Super. Unpub. LEXIS 1122 (App. Div. 2012) is misplaced since that case involved a grievance arbitration award and interest arbitrators retain broader authority than grievance arbitrators.

The second issue the FOP appeals from is the arbitrator's alleged clarification of the revised contract language relating to overtime on storm days and during emergencies. The arbitrator awarded the County's proposal which made substantive changes, inter alia, regarding earning double time by "essential employees" who work during a Storm Day or Emergency. According to the FOP, counsel for the County e-mailed a letter to the arbitrator noting that the award did not specify whether or not the change was prospective and noting that if it was not prospective, it could cost the County "tens of thousands of dollars." The attorney for the FOP was copied on the letter. According to the FOP, before it could respond to the FOP's letter, the arbitrator responded via e-mail to both parties stating the change in the contract language of the award was intended to be prospective. The FOP argues that the arbitrator changed the award because in the award summary she uses the language "replace" which means to do it from the beginning of the contract unless specified. The Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, section 6 (D), sets forth that arbitrators may not clarify an award without the consent of both parties and must afford both parties an opportunity to be heard.

A review of the arbitrator's analysis makes reasonably clear that the provision was awarded on a prospective basis. In her analysis of the proposal, she specifically noted that the County was seeking the new language on a prospective basis from the date of the award. Award at 82. Then, after contrasting the proposal with the existing contract language and explaining why the change was warranted, she stated that the County's proposal was awarded. Award at 85. While the arbitrator did inappropriately respond to the County without the FOP's permission and without providing the FOP with an opportunity to be heard, we find that the error was harmless and did not result in any prejudice to the FOP since the arbitrator's analysis supported that the change was to be made on a prospective basis.

The third basis for the FOP's appeal is that the arbitrator did not adequately address the statutory factors of financial impact on the governing unit and the continuity and stability of employment. The FOP's makes no specific assertions with regard to this argument and does not point to any evidence in the record which the arbitrator failed to consider. We find that the arbitrator provided a thorough analysis of the record that was submitted to her by the parties, and that she meticulously reviewed the financial impact on the County and the continuity and stability of employment in her salary guide analysis.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Wall voted against this decision. Commissioner Jones recused himself. Commissioner Bonanni was not present.

ISSUED: October 31, 2013

Trenton, New Jersey