

P.E.R.C. NO. 2014-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2012-016

BURLINGTON COUNTY PROSECUTOR'S
DETECTIVES, PBA LOCAL 320,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms a supplemental interest arbitration award establishing the terms of a successor agreement between the Burlington County Prosecutor's Office and the Burlington County Prosecutor's Detectives, PBA Local 320. The Commission finds that the arbitrator complied with the remand order from the court to perform a thorough analysis regarding financial impact on the County, comparison to private sector wages, and which statutory factors he deemed more or less relevant. The Commission also finds that the arbitrator reasonably explained the relative weight given to the statutory factors, and based his award on substantial credible evidence in the record.

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 Appellant, Capehart & Scatchard, attorneys
(Carmen Saginario, Jr., on the brief)

For the Respondent, Detzky, Hunter & De Fillippo, LLC,
attorneys (David J. De Fillippo, on the brief)

DECISION

This case involves Burlington County Prosecutor's Office appeal of a third interest arbitration award issued to resolve a negotiations impasse over the terms of a successor contract between the Prosecutor and law enforcement officers represented by the Burlington County Prosecutor's Detectives, PBA Local 320.

This case has a long and complex procedural history. The arbitrator issued his initial award on April 21, 2012, which was appealed by the County to the Commission. On May 30, 2012, we affirmed the majority of the award but remanded it to the arbitrator to clarify contract language relating to seniority. Burlington County, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012).

On July 31, 2012, the arbitrator issued a second award in which he clarified the seniority language.^{1/} On August 31, 2012, the County filed an appeal with the Appellate Division of the Superior Court.^{2/}

On June 10, 2013, the court remanded the case to the Commission, finding that the arbitrator did not address the statutory factors of financial impact of the award on the governing unit, its residents, and its taxpayers, and comparison of wages to the private sector and did not indicate which statutory factors he deemed more relevant or less relevant.^{3/} In the Matter of Burlington County Prosecutor's Office, 2013 N.J. Super. Unpub. LEXIS 1387, 40 NJPER 41 (¶17 App. Div. 2013); pet. for certif. pending.

On July 2, 2013, as directed by the Court, we remanded the award to the arbitrator. On September 9, 2013, the arbitrator

^{1/} Neither party appealed the second award to the Commission.

^{2/} On September 10, 2012, the Commission Chair denied the County's request for a stay of implementation of the April 21 award.

^{3/} On September 10, 2013, the County filed a petition for certification with the Supreme Court, asserting, inter alia, as it did before the Appellate Division, that the court should have vacated the award and remanded it to another arbitrator. On September 23, the PBA filed a brief in opposition to the petition for certification and on September 25, the Commission's General Counsel filed a timely response advising the Court that the Commission opposed granting the County's petition. The petition is currently pending.

issued his third award. On September 18, 2013, the County filed an appeal with the Commission from the September 9 award, and on September 24, the PBA filed a responsive brief.

The County argues that the award must be vacated because the arbitrator did not adequately consider the statutory factors of comparison to private sector wages, financial impact on the governing unit, the interests and welfare of the public, costs of living and continuity and stability of employment and his analysis on these factors is not supported by substantial credible evidence in the record as a whole. The PBA responds that the arbitrator adequately analyzed those statutory factors, as well as indicated which factors he deemed more or less relevant.

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:

- (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).

However, 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; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶30103 1999).

We find that the arbitrator followed the directive on remand to perform a thorough analysis regarding the financial impact on the County, make comparisons to private sector wages, and indicate which statutory factors he deemed more or less relevant. At the outset, we note that arbitrators are constrained by the record, or lack thereof, before them. With regard to the financial impact on the County, the arbitrator noted that the County failed to introduce any evidence which addressed the considerations to be made when analyzing this factor such as how the award may impact the County's ability to maintain existing local programs and services, and expand existing local programs or initiate new programs for which public

moneys have been designated by the governing body in a proposed local budget. He also noted that the County did not introduce any evidence which indicated that payment of the award would compromise its ability to stay within its budget cap or property tax levy cap. The sole expert testimony came from a financial expert produced by the PBA, and the arbitrator relied on this expert's testimony in finding that in the two years preceding the interest arbitration hearing the County amassed \$722,000 in reserves relative to prosecutors salaries and wages and other expenses. He found the \$722,000 was sufficient to completely pay for the three annual increases in the Award. He also noted that the County did not challenge the union's argument that in 2010 and 2011, the County underutilized its spending cap by \$9,596,751.29 and \$6,058,349.29, respectively, and also in 2011 did not utilize \$12,251,820 of available tax levy. He also noted that the County sold Buttonwood Hospital a few weeks before the initial arbitration hearing, realizing \$15,000,000 while eliminating taxpayers dollars of more than 3.7 million in Buttonwood's \$24,000,000 operating budget. Finally, he noted that the County's budget is only 17% of the total tax bill of County residents, and the Prosecutor's Office accounts for roughly 0.9% of the total tax bill or an estimated \$54.45 a year based on the average tax bill. Ultimately, the arbitrator supported why he concluded that the wage increases for this

bargaining unit would not have a noticeable financial impact on the County's finances, or any sector of its taxpayers or residents. The County failed to point to any evidence that the arbitrator failed to consider which conflicts with his findings on this statutory factor.

With regard to comparisons to the private sector, the arbitrator found that for prosecutor's detectives, comparison to the private sector is not useful because the large majority of employees in this occupation are public employees, and public sector wage rates tend to set industry and job standards. Nonetheless, the data in the record which he found to be most current, but still outdated, was United States Bureau of Labor Statistics (BLS) produced in October 2010 for the regional area of Philadelphia, Camden, Vineland, Pennsylvania, New Jersey, Delaware and Maryland and the Biennial Report on police and fire interest arbitration produced by this agency in January 2012. The data produced by the BLS contained hourly wage percentiles for civilian workers. The arbitrator disagreed with the County that the appropriate comparison for prosecutor's detectives was with "protective service occupations" because this category included lower skilled security guards. Rather, he found that comparison to "police and sheriff's patrol officers" was the appropriate comparison, although he noted that the comparison was limited since the BLS data does not further categorize "police

and sheriff's patrol officers" into subcategories. He found that while the subject prosecutor's detectives average hourly rate was higher than civilian police and sheriff's patrol officers in the 75th percentile (\$34.83 vs. \$33.66 respectively), it was not "out of line" especially given the generally high cost of living and high wages in the County. The arbitrator noted the union's argument that private sector wage increases in the County rose 3.0% in 2010 over 2009, and that State-wide average private sector increases was 2.2%. He highlighted that in his initial award, the mid-range increase in 2011 was 5.2%, which was inclusive of both the wage increase he awarded and movement on the step guide. He found that within the overall State-wide average of 2.2%, a 5.2% increase was not an "outlier" because there were several industries that had similar or higher increases, such as utilities (4.3%), manufacturing (3.9%), finance/industry (7.2%) and management of company/enterprises at (6.4%). Overall, the arbitrator did not place significant weight on private sector comparisons, but nonetheless found there was not enough evidence to support the County's claims that the awarded increases were substantially higher than those awarded to a similar occupation in the private sector.

With regard to the other statutory factors, the more relevant factors identified by the arbitrator were comparison with the wages, hours and conditions of employment in both the

public and private sector, which was analyzed both in his initial award as well as in his award on remand as discussed above. He also placed more importance on the financial impact on the governing unit as discussed above. Further, the arbitrator found the cost of living to be more relevant, which in his initial award noted has risen approximately one to three percent in recent years. He also found the continuity and stability of employment including seniority rights and such other factors to be more relevant, and awarded language relating to seniority rights in his initial award, and clarified the meaning of such language in July 31, 2012 award. The arbitrator placed less relevance on the interests and welfare of the public, the lawful authority of the employer and the statutory restrictions imposed on the employer because there was no evidence submitted that the County's ability to stay within its budget cap or property tax levy cap would be threatened in any year of the contract. He also placed less importance on the overall compensation presently received including wages and benefits and all other economic benefits because there the parties raised no issues regarding this factor. He noted that the parties made no stipulations. Having found that the arbitrator followed the court's directive on remand to provide expanded analysis on the financial impact on the County and private sector comparisons and provided a reasonable explanation as to why he placed more importance on

certain factors and less importance on others, and ultimately based his award on substantial credible evidence in the record, we affirm the award.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: October 17, 2013

Trenton, New Jersey