

P.E.R.C. NO. 2014-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Respondent,

-and-

Docket No. IA-2014-018

IAFF LOCAL 788,

Appellant.

SYNOPSIS

The Public Employment Relations Commission remands, on a limited basis, an interest arbitration award between the City of Camden and IAFF Local 788. The IAFF appealed the award, asserting miscalculations regarding the costing out of longevity and salary increment increases. The Commission finds that the arbitrator's longevity calculations and rationale for 2013 and 2014 are based on substantial credible evidence in the record, and that the arbitrator properly did not offset savings from retirements. As for the IAFF's assertion regarding the calculation of the senior step increment in 2016, the Commission remands the award on the limited basis to explain how she calculated 2016 longevity and to make the projection based on the employees' anniversary dates if she had not done so already, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of the award.

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, Brown & Connery, LLP (Michael J. Dipiero and Michael J. Watson, of counsel)

For the Appellant, Kroll Heineman Carton (Raymond G. Heineman, of counsel)

DECISION

On May 28, 2014, IAFF Local 788 appealed from an interest arbitration award involving a unit of 141 firefighters and fire prevention specialists employed by the City of Camden. 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.

The arbitrator issued a 104-page opinion and award. While the Award addresses both economic and non-economic issues, the IAFF's appeal centers around the economic aspects of the Award. The economic proposals offered by the parties were as follows- - the City proposed 1% salary increases for each year of the

Agreement, to eliminate senior steps from the salary guides and to freeze longevity at 2013 rates for all employees currently receiving payments, and to eliminate longevity for employees not receiving it as of December 31, 2013. The IAFF proposed 2% salary increases for each year of the Agreement.

Both parties proposed a three-year term from January 1, 2014 through December 31, 2016, which the arbitrator awarded. For 2014, the arbitrator awarded a 1% increase, retroactive to January 1, 2014, and for all employees eligible for step movement and longevity on the salary guide to receive their increases effective on the date of their anniversary. She also converted longevity from a percentage to a flat dollar amount, based upon the dollar value of the employee's longevity percentages times their 2013 salary rates. For 2015, the arbitrator awarded a 1.5% increase, and effective January 1, employees at step 5 of the firefighters guide and step 4 of the fire prevention specialists guide will be frozen at their current step on the guide and will not advance to the next step when they reach 18 years of service. Effective 2015, the arbitrator also ordered longevity payments to be made in a separate, lump sum, annual payment to be distributed to employees by December 1, and it will no longer be considered part of base pay. For 2016, the arbitrator awarded a 1.5% increase in salary, effective January 1, and employees at step 5 of the firefighters guide and step 4 of the fire prevention

specialists guide will continue to be frozen at their current step on the guide and will not advance to the next step when they reach 18 years of service. She declined to eliminate the senior step on the salary guide.

The IAFF appeals, asserting that the arbitrator made miscalculations with regard to the costing of longevity and salary increment increases, and that based on these miscalculations, the award is not based on substantial credible evidence in the record. The City refutes that any miscalculations were made, and also asserts that any asserted miscalculation did not have a material impact on the award.

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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings 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; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

© In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(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. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c. 62 (C.40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the

extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or © initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

[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).

P.L. 2010, c. 105 amended the interest arbitration law, and N.J.S.A. 34:13a-16.7 now provides:

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the

parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

In New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), we amended our review standard to include that we must determine whether the arbitrator established that the award will not exceed the statutorily mandated base salary cap of 2% per year or 6% in the aggregate for a three-year award.

Many of the IAFF's arguments in the appeal are inconsistent and convoluted. Nonetheless, we have attempted to identify the specific miscalculations asserted by the IAFF. At the outset, we

note that the parties agreed that the total contractual base salary paid in 2013 was \$11, 201.197. The first issue raised by the IAFF concerns how the arbitrator calculated longevity for 2013. The arbitrator noted that the parties disagreed on the amount of longevity paid in 2013 and whether the longevity was paid on January 1 or on the employee's anniversary date. The arbitrator found that the City offered no evidence to support its position that longevity was paid on January 1. She noted that the expired contract language explicitly states that longevity is paid on the anniversary date and credited the union president's testimony and evidence that he produced in the form of pay stubs to support that longevity was paid on his anniversary date. Therefore, the arbitrator determined that longevity was paid on an employee's anniversary date and made the appropriate pro-rated calculations for 2013 in arriving at a figure for total base pay (total base salary plus total longevity) paid. Award at 62 - 63. The arbitrator's calculations and rationale are precisely laid out in the award and based on substantial credible evidence in the record. We therefore reject IAFF's argument.

Additionally, the IAFF asserts that the arbitrator miscalculated longevity in 2014 because she failed to deduct the "offsetting decreased cost in longevity from employees who left the bargaining unit due to retirements, promotions and

terminations from the base year 2013.” We squarely addressed this issue in New Milford wherein we stated as follows:

The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

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[Id. At 15, emphasis added]

Based on the clear guidance we provided in New Milford, we reject the union’s argument that the arbitrator miscalculated longevity for 2014 because she did not offset costs resulting from retirements.

Finally, the IAFF asserts that the arbitrator erroneously calculated the cost of the senior step increment in 2016 and that absent this miscalculation, the economic aspects of the Award would be more favorable to its members. The arbitrator found that the increment cost in 2016 would be \$146,565.15 based on the current salary guide. However, the union argues that in 2016, 26 of the firefighters would advance to the senior step of the

salary guide on December 19, and therefore they would only receive the Senior step salary increment for half of the month of December 2016. The Award is replete with support for the increases awarded by the arbitrator as well as the measures she used to control costs. The arbitrator comprehensively discussed each statutory factor and arrived at an award which struck a balance between providing the firefighters with a fair and reasonable salary increase, while also employing methods to mitigate escalating costs. While we find the asserted miscalculation to likely be inconsequential, we will remand the Award on the limited basis for the arbitrator to explain how she calculated longevity for 2016, to pro-rate the longevity projection for 2016 based on the employees' anniversary date if she has not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award, either in the increases she awarded or the methods she implemented to curb costs.

ORDER

The award is remanded on the limited basis for the arbitrator to explain how she calculated longevity for 2016, to pro-rate the longevity projection for 2016 based on the employees' anniversary date if she has not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award, either in the

increases she awarded or the methods she implemented to curb costs. The arbitrator shall issue a supplemental award within 45 days of this decision.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision. Commissioner Eskilson recused himself.

ISSUED: June 26, 2014

Trenton, New Jersey