

P.E.R.C. NO. 2015-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Appellant,

-and-

Docket No. IA-2014-018

IAFF LOCAL 788,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and vacates in part an interest arbitration award establishing the terms of a successor agreement between the City of Camden and IAFF Local 788. The City appealed the remand award, objecting to the arbitrator's reinstatement of senior step movement for 2016, conversion of longevity into base pay, and instruction that longevity should not be considered part of base pay for overtime calculation purposes. The Commission affirms the arbitrator's economic adjustments in the remand award, finding that they were supported by substantial credible evidence in the record and were within her authority and the scope of the remand instructions. The Commission vacates the portion of the award directing that longevity not be included in base pay for overtime purposes, finding that the arbitrator did not provide a reasoned explanation for the change.

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

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

DECISION

On June 26, 2014 we remanded an interest arbitration award between the City of Camden and IAFF Local 788, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014). On remand, we asked the arbitrator to explain how she calculated longevity for 2016, to pro-rate longevity for 2016 based on the employees' anniversary date if she had not already done so, and to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award. On August 9, 2014, the arbitrator issued a remand award. On August 26, the City filed an appeal of the remand award, IAFF filed a responsive brief on September 2, the City filed a reply on September 11, and IAFF filed a sur-reply on September 22.

The arbitrator issued a 17-page opinion and remand award. The significant findings and/or changes she made to the original award on remand are as follows:

- She found that 2016 longevity was actually \$369.08 higher than in the original award;
- Longevity costs were included inside the 2% cap;
- Longevity amounts were frozen in 2016;
- She found that advancement to the senior step in 2016 was overstated by \$138,622 in the original award;
- The freeze on advancement to the senior step for 2016 was lifted;
- Awarded increases in 2015 and 2016 were reduced from 1.5% to 1.25%;
- Effective January 1, 2015, for employees hired before the date of the award, longevity was placed back into base salary, but it shall not be considered part of base pay for overtime calculation purposes. Longevity was kept as a lump sum payment for employees hired after the date of the award.

The City's appeal asserts that the remand award should be vacated and the original award reinstated because the reinstatement of senior step movement in 2016 and the conversion of longevity back into base pay were not based on substantial, credible evidence in the record; the conversion of longevity back

into base salary for current employees exceeded the limited scope of the remand award; and the arbitrator's instruction that overtime shall not be considered part of base pay for overtime calculation purposes violates the Fair Labor Standard Act and the New Jersey Wage and Hour Law.

At the outset, we note that the maximum amount that could be awarded under the 2% hard cap is \$688,111.31. The remand award total is below the 2% cap at \$616,102.00, which is \$28,909.00 more than the original award's total of \$587,193.00. It should also be noted that the cost calculation of \$587,193.00 for the original award was inaccurate since, as acknowledged by the arbitrator, it did not include the longevity cost increases in 2015 and 2016. Remand Award at 12, fn 7.^{1/}

The arbitrator analyzed the senior pay movement as a form of longevity for length of service. In the remand award, she explicitly laid out the cost of advancing a firefighter to the senior step in 2016 after the across-the-board increases from the original award were applied, and acknowledged that the cost of increments was over-calculated by \$138,622. After considering that the actual cost of increments for all years would exceed the hard cap maximum of \$688,111.31 by \$54,972.55, she determined that adjustments in the economic package would be required.

¹ "Award" refers to the original award issued on June 26, 2014 and "Remand Award" refers to the remand award issued on August 9, 2014.

Remand Award at 11 - 12. Since the actual costs of the increments was much smaller than she previously found, she lifted the freeze on movement to the senior step in 2015 and 2016, but found that adjustments in the across-the-board increases would be necessary, and found cost savings for the City by reducing the increases for 2015 and 2016 from 1.5% to 1.25%.

The arbitrator also considered two additional exhibits submitted by the IAFF on remand - - UX95 and UX96. UX95 is an excerpt from New Jersey Pensions and Benefits Manual showing employer contribution rates to the Police and Firemen's Retirement System and UX96 is an excerpt from the PFRS Employee Benefit Manual summarizing pension benefits. UX96 showed that for PFRS members who were enrolled before May 21, 2010, a pension is based upon the final 12 months of pension credits. The arbitrator found as a fact that all IAFF members started with the fire department before May 21, 2010. The arbitrator considered that a firefighter with 24 years of service would have his base pay in his final year of service reduced by the longevity amount of \$8,949. After considering the "dramatic" effect the removal of longevity from base pay would have on a firefighter's pension, she found that in rebalancing the award, it was appropriate to convert longevity back into base pay. Remand Award at 13 - 14.

We disagree with the City's argument that the unfreezing of the senior step movement and the conversion of longevity back

into base pay was not supported by substantial credible evidence in the record. There is not one correct way to fashion the economic aspects of an award. Provided an award is based on substantial, credible evidence in the record and does not violate the 2% cap limitation, we will generally defer to the discretion and judgment of the arbitrator who has presided over the proceedings and weighed the record evidence. City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (30103 1999); New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). In our original decision, we found that the arbitrator comprehensively summarized her application of the statutory factors she found most significant in arriving at the economic aspects of her award. The original award contains background about existing working conditions including detailed information about the existing salary guide, longevity plan and shift complements. Award at 19 - 25. The arbitrator set out comprehensive information about comparables internally, externally and in the private sector. She placed greater weight on those fire departments located in Southern New Jersey and gave no weight to private sector comparisons. Award at 25 - 29. She noted PERC settlement rates for the average 2012 award for post-2011 with a 2% cap was 1.98%, and settlement rates for the same time period averaged 1.82%. Award at 29. She considered the Consumer Price Index for all Urban Consumers (CPI-U) and noted that cumulative wage growth of

23.0% over the nine-year period from January 2005 through December 31, 2013 outpaced increased of 16.7%. Award at 29 - 30. With regard to the City's ability to pay, she acknowledged that given the extraordinary weakness of the County's local economic base, the City is highly dependent on State aid and Transitional aid to fund the majority of its core municipal operations, and both are trending downward. The original award also outlines various other forms of aid and grants that the City receives, most of which are projected and varying forms of income and cannot be relied on as exact revenue streams. Award at 30 - 39. She also discussed the appropriation cap and the tax levy cap. Award at 40 - 41. In her analysis of the statutory factors, the arbitrator commented as follows:

In applying the statutory criteria to the record in this matter, it is necessary to balance these factors against each other to come up with a fair and reasonable result. The factor that requires the greatest consideration is the public interest, which also encompasses the Employer's ability to pay, the levy cap, and the impact of the new contract on the taxpayers. Also worthy of considerable weight and viewed to be a component of the public interest is consideration of the morale of the employees and the continuity of the bargaining unit, which in turn necessitates consideration of comparability with other employees and the cost of living.

An additional factor that is considered part of the public interest is the City's ability to attract and retain highly qualified employees to the Fire Department. This is essential to providing the public with firefighting services to protect life and property. But just as important is the City's ability to maintain a sufficient

staffing level to protect the city. Therefore, the public interest demands a compensation plan that attracts and retains highly qualified employees but not one that prevents the City from sufficiently staffing its force.

I have balanced these factors against each other to reach the resulting award herein. The resulting award seeks to maintain the integrity and comparability of the firefighters' compensation and benefit plan, while at the same time it moderates the financial impact to the extent that I believe it is within the City's ability to pay and still maintain current staffing levels in the Fire Department.

Award at 59 - 60.

We find that the same analysis that was applied in the original award continues to support the remand award. None of the economic adjustments in the remand award negates the fiscal balance that the arbitrator was seeking. The arbitrator's remand award acknowledged a significant miscalculation in the 2016 cost of senior step movement in the original award, which caused her to reevaluate other economic aspects of the award. The economic adjustments she made in the remand award did not significantly alter the balance she tried to achieve in providing the firefighters with a fair and reasonable salary increase while also employing methods to mitigate escalating costs. The economic adjustments still allowed the award to come in well

below the maximum allowed under the 2% cap. Indeed, in the remand award the arbitrator commented as follows:

This revised award will allow the City to reduce some of its long-term labor costs associated with the Fire Department while at the same time, preserve some of the firefighters existing benefits. I believe it strikes an equitable balance between the needs of the City to prudently manage its budget and the needs of the employees to be fairly compensated. The revised award will continue to fit within the Fire Department budget and will not violate the cap restrictions [for] 2014. Moreover, it will permit the City to maintain unit continuity as there will be no special incentives for employees to seek early retirement.

Remand Award at 16.

The City further asserts that the arbitrator's decision to convert longevity back into base salary exceeded the "limited scope" of the remand, and that the arbitrator improperly considered UX-95 and UX-96 on remand, citing to N.J.S.A. 34:13A-16g. We disagree. In our instructions for the remand we advised the arbitrator to comment on whether any miscalculation would cause her to reconsider the economic aspects of her award. Given the significant miscalculations in the cost of the 2016 senior step movement, she rebalanced other economic aspects of the award, and it was well within her authority and our remand instructions to do so. Neither N.J.S.A. 34:13A-16g or any other relevant statute or rule prevents her from considering additional information on remand that she deemed necessary to comply with

the remand instructions. Indeed, "the conduct of the arbitration proceeding shall be under the exclusive jurisdiction and control of the arbitrator." N.J.A.C. 19:16-5.7(a). We do not consider the City's arguments regarding the payment liability it will incur in 2017 as a result of the unfreezing of the senior step movement as that issue does not effect the term of this agreement and can be considered when the parties negotiate the terms of the next agreement.

Finally, the City contests the arbitrator's directive that longevity not be included in base salary for overtime purposes. Other than citing to the City's estimated proffer on what it spent in overtime in 2013, there is no significant discussion in the original award or the remand award with regard to overtime costs. Given that the arbitrator did not provide a reasoned explanation for excluding longevity from base salary for overtime purposes, we vacate this portion of the award. Based on the scant evidence and discussion in the record with regard to overtime, the payment of overtime was not a significant issue or focus of either party during the arbitration proceedings. Indeed, the arbitrator noted that the City had determined that it would no longer adhere to minimum staffing standards that were previously in effect and set forth in the contract and was not using overtime as a method for achieving minimum staffing. Award at 20. Our vacating of this portion of the remand award will

restore the parties to the same position they were in prior to the arbitration proceedings with regard to the treatment of overtime. Since we have vacated this portion of the remand award, the City's arguments that this portion of the remand award violated the Fair Labor Standards Act and the New Jersey Wage and Hour Law are rendered moot.

ORDER

The remand award is affirmed except that we vacate the part of the award that directed that longevity not be included in base salary for overtime purposes.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Voos and Wall voted in favor of this decision. None opposed. Commissioner Eskilson recused himself. Commissioner Jones was not present.

ISSUED: October 23, 2014

Trenton, New Jersey