

P.E.R.C. NO. 2015-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Respondent,

-and-

Docket No. IA-2014-044

PBA LOCAL 164,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award establishing the terms of a successor agreement between the Borough of Oakland and PBA Local 164. The PBA appealed the award, asserting that the arbitrator modified contract provisions, mostly related to new hires, without making any cost analysis for each year of the contract. The PBA also argued that the arbitrator failed to sufficiently explain which statutory factors were deemed relevant or not relevant, and why. The Commission finds that the arbitrator properly did not factor projected retirements or new hires into his calculations under the 2% salary cap, and was not required to provide a cost analysis for modifications of economic terms for new hires. The Commission also finds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, and analyzed the evidence on each relevant factor.

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, Loccke, Correia & Bukosky, attorneys
(Richard D. Loccke, of counsel and on the brief)

For the Respondent, Cleary Giacobbe Alfieri Jacobs,
LLC, attorneys (Matthew J. Giacobbe, of counsel; Adam
S. Abramson-Schneider, on the brief)

DECISION

PBA Local 164 (PBA) appeals from an interest arbitration award involving a unit of approximately 24 police officers in the ranks of patrol officer, sergeant, lieutenant, and captain.^{1/}

The Borough filed a Petition to Initiate Compulsory Interest Arbitration on March 31, 2014. On May 4, 2015, the arbitrator issued a conventional award as he 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.

^{1/} We deny the PBA's request for oral argument. The issues have been fully briefed.

The PBA appeals the award asserting that the arbitrator erred in modifying contract provisions with respect to salary guides for new hires, elimination of longevity for new hires, and caps on terminal leave payments without explaining the impact or making a cost analysis for each year of the three year contract. The PBA further asserts that the arbitrator violated N.J.S.A. 2A:24-8 by not sufficiently indicating which N.J.S.A. 34:13A-16g statutory factors were or were not relevant, and not providing an evidentiary basis or cost out of the 16g factors deemed relevant. The PBA requests that the award be reversed and remanded to a different arbitrator.

The Borough responds that the Commission should affirm the award because the arbitrator properly applied the subsection 16g statutory criteria; the arbitrator correctly determined that the award will not exceed the statutory 2% salary cap; the arbitrator was not required to cost-out modifications to benefits for new hires; and the arbitrator did not violate N.J.S.A. 2A:24-8(d) because he provided sufficient analysis of the evidence related to the relevant statutory factors and gave due weight to the final offers presented by both the Borough and PBA.

The parties' final offers can be summarized as follows. The PBA's final offer would have continued regular step payments in 2014, and delayed step payments six months while providing 2% raises to top-step and supervisory officers in 2015, 2016, and

2017. The Borough's final offer included proration of sick leave, vacation leave, and holiday pay during an officer's last year of employment, a cap of \$15,000 on terminal leave payments, raises for current officers compliant with the 2% cap, a new salary guide with 15 equalized steps for new officers, and elimination of longevity for new officers.

The arbitrator issued an 89-page Decision and Award. After summarizing the proceedings, quoting from the parties' arguments and proposals from their post-hearing briefs, and addressing the required statutory factors, the arbitrator awarded a three year contract effective January 1, 2014 through December 31, 2016. He froze salary guides for current employees at 2013 levels for 2014 and 2015, maintained step and longevity increases based on the 2011-2013 contract, and provided an across-the-board salary increase of 0.81% in 2016. He awarded a new hire salary guide with 15 equalized steps and an increase of 0.81% to all steps in 2016, eliminated longevity for new hires, and capped terminal leave payments at \$15,000 for employees hired on or after May 22, 2010.

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

- (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). 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). 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 (¶29214 1998).

In cases where the 2% salary cap imposed by P.L. 2010, c. 105 applies, we must also determine whether the arbitrator established that the award will not increase base salary by more

than 2% per contract year or 6% in the aggregate for a three year contract award.

P.L. 2010, c. 105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding CNA or award expired after December 31, 2010 through April 1, 2014.^{2/} The version of N.J.S.A. 34:13a-16.7 incorporating the changes from P.L. 2010, c. 105 and in effect at the time of this petition 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

^{2/} P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. However, the petition herein was filed on March 31, 2014, prior to the new law's effective date, so P.L. 2010, c. 105 is applicable.

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.

Borough of New Milford P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012) was the first interest arbitration award that we reviewed under the new 2% limitation on adjustments to base salary. We modified our review standard to include a determination of whether the arbitrator established that the award would not exceed the Hard Cap, holding that such determination depends on the arbitrator stating the total base salary for the last year of the expired contract, and calculating the costs of the award for unit members as they proceed through each year of the award. Id. at 344.

The PBA's chief argument is that the arbitrator erred by not providing a cost analysis for benefits modifications, and that he was unable to provide such an analysis without knowing who would be hired or who would retire or otherwise leave the unit during the term of the award. For the foregoing reasons, we reject the PBA's argument that the arbitrator erred by failing to cost out the effects of the award for new hires, or that the

arbitrator erred by awarding speculative modifications such as elimination of longevity and terminal leave benefits for new hires which are not capable of being costed out.

The Cost Out of the Award

In New Milford, the Commission endorsed the following method for "costing out" an interest arbitration award within the parameters of the 2% Hard Cap:

Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. 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.

[38 NJPER at 344, emphasis added]

In Borough of Ramsey P.E.R.C. No. 2012-60, 39 NJPER 17 (¶3 2012), we rejected the union's assertion that the arbitrator should have taken into account a recent retirement and recent promotions when projecting salary costs in the award. We

reaffirmed our position in New Milford regarding the speculative nature of unknown future employment actions by the employer and employees:

In New Milford, we determined that reductions in costs resulting from retirements or otherwise, or increases in costs stemming from promotions or additional new hires, should not affect the costing out of the award. N.J.S.A. 34:13a-16.7(b) speaks only to establishing a baseline for the aggregate amount expended by the public employer on base salary items for the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. The statute does not provide for a majority representative to be credited with savings that a public employer receives from any reduction in costs, nor does it provide for the majority representative to be debited for any increased costs the public employer assumes for promotions or other costs associated with maintaining its workforce.

[Ramsey, 39 NJPER at 20, emphasis added]

Subsequent Commission decisions have similarly found that the interest arbitrator should not factor in projected retirements or hiring during the term of the new contract as such projections are not consistent with the precise mathematical calculations necessary to determine compliance with the 2% annual base salary cap. See, e.g., City of Camden, P.E.R.C. No. 2014-95, 41 NJPER 69 (¶22 2014) (arbitrator did not err by failing to deduct decreased longevity costs from first year of award for employees who left the unit in the base year); Township of Byram, P.E.R.C. No. 2013-72, 39 NJPER 477 (¶151 2013) (longevity savings

from officers who retired during the base year should not have been included as savings credited to the PBA for the first year of the award).

In a case very similar to the present case, and recently affirmed by the Appellate Division, the Commission found that the arbitrator properly followed the guidance of New Milford and Ramsey and was not required to provide a cost analysis for modifications affecting longevity, terminal leave, and other benefits for new or recent hires. Borough of Tenafly and PBA Local 376, P.E.R.C. No. 2013-87, 40 NJPER 90 (¶34 2013), aff'd 41 NJPER 257 (¶84 App. Div. 2015), pet. for certif. pending. Furthermore, even when the arbitrator has had actual total base salary expenditure data for several years of the award, we have found that the actual savings realized by the employer should not be credited to the unit because N.J.S.A. 34:13A-16.7(b) requires that the 2% Hard Cap analysis be based on the last year of the prior agreement. See State of NJ and New Jersey Law Enforcement Supervisors Association, P.E.R.C. No. 2014-60, 40 NJPER 495 (¶160 2014), app. pending. Citing New Milford and Ramsey, we stated:

Whether speculative or known, we again hold that any changes in financial circumstances benefitting the employer or majority representative are not contemplated by the statute or to be considered by the arbitrator.

[State of NJ, 40 NJPER at 500-501]

In the present case, the arbitrator cited New Milford and his overall salary award was consistent with our guidance in that decision and the interest arbitration law. Using the total base year salary of 2013 of \$2,740,442.90 that the parties agreed upon, he determined that the annual 2% Hard Cap was \$54,809. Using the twenty-one police officers in the unit as of December 31, 2013, he costed out his award for the years 2014-2016, showing how the projected salary increases for those officers would total \$164,418 over three years [Award at 70-74, 80-85]. This results in an average annual base salary increase of \$54,806, which is just under 2.00% per year and therefore compliant with the 2% Hard Cap imposed by P.L. 2010, c. 105. The arbitrator correctly assumed "for the purposes of comparison there are no resignations, retirements, promotions or additional hires," and specifically excluded information about two new 2014 hires from his analysis [Award at 82-83].

Consideration of the Statutory Criteria

The next basis for the PBA's appeal is that the arbitrator failed to properly apply, sufficiently explain, or provide an evidentiary basis in his analysis of the 16g statutory factors. The PBA's brief 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 complied with N.J.S.A. 34:13A-16g and sufficiently explained his

basis for finding some statutory factors more relevant than others, gave due weight to the factors deemed relevant, and analyzed the evidence on each relevant factor. We summarize below the arbitrator's analysis of the 16g factors.

The arbitrator found that all of the 16g factors were relevant, but were not entitled to equal weight. [Award at 70]. He gave greater weight to the following factors: the Borough's ability to pay; the lack of adverse impact; the interests and welfare of the public; and public sector comparability.

The arbitrator addressed "ability to pay," "lack of adverse impact," and "interests and welfare of the public" factors through analysis of factors g(1) (interests and welfare of the public), g(5) (lawful authority of the employer), g(6) (financial impact on the government unit, its residents, the property tax levy limitations, and taxpayers), and g(9) (statutory restrictions imposed on the employer). He found that: his Award serves the interest and welfare of the public through a thorough weighing of the statutory criteria after due consideration of the Hard Cap; his Award would not cause the Borough to exceed its lawful authority or prohibit it from meeting its statutory obligations; the Borough did not claim an inability to pay up to the statutory permitted levels; and his Award would not have an adverse impact on the Borough, its residents, or taxpayers. [Award at 75-76].

In addressing comparability to public employment (factors g(2)(b) and (c)), the arbitrator explained why he gave less weight to private sector employment comparisons (factor g(2)(a)), and greater weight to comparisons with other public sector law enforcement units. He cited submissions by the parties and trends in average interest arbitration awards and settlements, concluding that the PBA's economic benefits through his Award are competitive and within the range of those benefits received in other law enforcement units. [Award at 76-77].

The arbitrator granted less weight to the remaining statutory factors, addressing them as follows. For overall compensation (factor g(3)), he found that: the evidence does not require full implementation of either party's final offer; his Award is fair, reasonable, and competitive; and his Award serves the interests and welfare of the public because the salary increases do not exceed the Hard Cap and the modifications for new hires will improve the Borough's ability to manage its operations within statutory limitations. [Award at 78]. For stipulations of the parties (factor g(4)), the arbitrator noted that the parties stipulated to the Borough's ability to pay up to the Hard Cap, and to the health care contribution amount paid by officers at or above top pay with full family medical coverage. [Award at 78]. For cost of living (factor g(7)), the arbitrator cited consumer price index statistics but granted this factor

little weight, finding that it not does not impact his awarded salary increases which will not exceed the Hard Cap. [Award at 79]. Finally, for continuity and stability of employment (factor g(9)), the arbitrator noted that he considered the evidence on this factor. He concluded that the modifications awarded are reasonable under the circumstances, that the Borough's proposals would have had more of a negative impact on this factor, and that the Award is consistent with recent trends and will maintain the continuity and stability of employment. [Award at 79-80].

New Jersey Arbitration Act

Finally, we address the PBA's assertion in the notice of appeal that the arbitrator's award violated section N.J.S.A. 2A:24-8(d) of the New Jersey Arbitration Act due to the award's alleged failure to comply with N.J.S.A. 34:13A-16g. N.J.S.A. 2A:24-8(d) provides that the arbitration award should be vacated:

d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

The PBA's brief did not address N.J.S.A. 2A:24-8(d), but its notice of appeal essentially argued that because the arbitrator insufficiently explained or analyzed the N.J.S.A. 34:13A-16g standards, the award violated N.J.S.A. 2A:24-8 as well. As the previous section of this decision addressed the PBA's 16g factors argument and concluded that the arbitrator's award complied with N.J.S.A. 34:13A-16g, and no separate arguments have been made for

the asserted N.J.S.A. 2A:24-8(d) violation, we find no basis for finding that the arbitrator's award violated the Arbitration Act. See Borough of Englewood Cliffs, P.E.R.C. No. 2012-35, 38 NJPER 273 (¶94 2012).

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: June 25, 2015

Trenton, New Jersey