P.E.R.C. NO. 2017-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Appellant,

-and-

PBA LOCAL NO. 89 AND — Docket No. IA-2010-101

FMBA LOCAL 10 AND
FMBA LOCAL 210,
FIRE OFFICERS ASSOCIATION — Docket No. IA-2011-024

Respondents.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a supplemental award. The City of Orange appealed from the award setting the terms of collective negotiations agreements for a police officer unit (PBA Local No. 89) and two fire fighter units (FMBA Local 10 and FMBA Local 210, Fire Officers Association). The Commission remands the award for explanation and clarification of the financial impact of the salary award, particularly to set forth calculations showing the total projected net economic changes for each year of the award resulting from all salary increases including salary guide advancement. The Commission also remands the award for specification of which evidence was relied upon and for a more thorough explanation of the statutory factors he considered relevant or not relevant.

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, Joseph M. Wenzel, Attorney at Law (Joseph M. Wenzel, of counsel)

For the Respondent PBA, Detzky, Hunter & DeFillippo, LLC (David J. DeFillippo, of counsel)

For the Respondent FMBA Local 10, Lindabury, McCormick, Estabrook & Cooper, P.C. (Eric B. Levine, of counsel)

For the Respondent FMBA Local 210, FOA, Law Offices of Feeley & LaRocca, L.L.C. (John D. Feeley, of counsel)

DECISION

The City of Orange Township (City) appeals from an interest arbitration award covering the following three collective negotiations units (one police officer and two firefighter units): PBA Local 89 (PBA); FMBA Local 10 (FMBA); and FMBA Local 210, Fire Officers Association (FOA).

On July 7, 2016, the arbitrator issued an 83-page conventional interest arbitration award setting the terms of

successor collective negotiations agreements for all three units. He awarded contract terms of seven years for the PBA and FMBA (from January 1, 2010 through December 31, 2016) and eight years for the FOA (from January 1, 2009 through December 31, 2016) so that all three units would have their contracts expire at the same time and be able to negotiate based on the same relevant evidence during the next round of negotiations (Award at 29-30). The arbitrator awarded across-the-board salary increases of 1.5% annually for all three units for the years 2010-2016, and retained the existing salary guide's annual step increases for those employees still moving up the salary guide towards the maximum step (Award at 74-75).

The City appeals arguing that the arbitrator failed to properly address the financial impact of the award as required by subsection N.J.S.A. 34:13A-16(g)(6), specifically by not calculating whether the 2% statutory cap was violated, not taking into consideration evidence of the City's financial circumstances and real expenses for the units for the years 2013-2016 after the record was closed, and not providing calculations of costs. The City also makes a general claim that the arbitrator failed to properly address the N.J.S.A. 34:13A-16(g) statutory factors (16(g) factors), but does not specifically argue regarding any factors other than the aforementioned subsection 16(g)(6) "financial impact" assertions.

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 16(g) 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). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill.

Arriving at an economic award is not a precise mathematical process. The treatment of the parties' proposals involves judgment and discretion and an arbitrator will rarely be able to demonstrate that an award is the only "correct" one. See Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998). Some of the evidence may be conflicting and an arbitrator's award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi. Therefore, 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-16(g); N.J.A.C. 19:16-5.9; Lodi.

The City's chief argument that the award's average annual salary increases were required to comply with the statutory 2% cap (N.J.S.A. 34:13A-16.7(b)) is without merit. P.L. 2010, c. 105 and its amended version, P.L. 2014, c. 11, specify the effective dates for the 2% cap provision of the Police and Fire Public Interest Arbitration Reform Act (the Act):

> This act shall take effect January 1, 2011; provided however, section 2 . . . [C.34:13A-16.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter [until the expiration of the 2% cap provision]. . .
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> [N.J.S.A. 34:13A-16.9.]

In Borough of Bloomingdale, P.E.R.C. No. 2011-70, 37 NJPER 143 (¶43 2011), the Commission held that the 2% cap does not apply to interest arbitration awards when the prior contract expired on December 31, 2010 or earlier. In Burlington County Prosecutor's

Office and PBA Local 320, P.E.R.C. No. 2012-61, 39 NJPER 20 (¶4 2012), rem'd 40 NJPER 41 (¶17 App. Div. 2013), certif. den. 217 N.J. 287 (2014), after the Commission again held that the 2% statutory cap does not apply to interest arbitration awards when the prior contract expired prior to January 1, 2011, the Appellate Division affirmed that aspect of the decision, stating:

> On appeal, Burlington County argues . . . that the CBA expired on January 1, 2011, thereby implicating the two percent salary cap enacted pursuant to N.J.S.A. 34:13A-16.7. Based on our review of the record and the controlling legal principles, we conclude that defendant's two-percent argument is without sufficient merit to warrant extended discussion in a written opinion. R. 2:11-3(e)(1)(E).
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> [Burlington, 40 NJPER 41 at 42.]

In the instant case, the FOA's prior contract expired on December 31, 2008, while the prior PBA and FMBA contracts expired on December 31, 2009 (Award at 16). Therefore, as the prior agreements all expired prior to January 1, 2011, none are subject to the 2% statutory cap.[1/]

In its appeal, the City asserts that the arbitrator did not properly weigh the award's financial impact on the employer (as required by N.J.S.A. 34:13A-16(g)(6)) "for the years after the

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1/ Should the parties require an interest arbitration award to establish the terms of their next collective negotiations agreement after the December 31, 2016 expiration of the terms of this award, then that award would be subject to the 2% cap which is in effect until December 31, 2017. See N.J.S.A. 34:13A-16.9, as amended by P.L. 2014, c. 11.

record was essentially closed in 2012." (City brief at 2). It argues that because the record was closed for nearly four years before the issuance of the award, there was additional financial documentation about the City's financial circumstances and real expenses for each of the fire and police units that were not, but should be, considered in the final award.

The timeline of the interest arbitration proceedings can be summarized as follows. The unions filed interest arbitration petitions in 2010. The parties engaged in many mediation and arbitration sessions from October 18, 2010 through May 21, 2013 in which they submitted evidence and attempted to settle (Award at 17). The final hearing was held on July 28, 2013, and post-hearing briefs were filed in January 2014 (Award at 17-18). The arbitrator reopened the record from October 29, 2014 until December 18, 2014 to accept submissions by the PBA and FOA regarding the City's finances, as well as the City's response (Award at 3-4). The award was issued on July 7, 2016.

The City requests that the award at least be remanded for modification of the years 2013-2016; however, there is no claim or indication in the record that the City ever requested that the arbitrator reopen the record for the addition of new evidence regarding the City's financial condition in the years 2013-2016. Not only did the City not attempt to submit additional evidence for those years, but the arbitrator was under no obligation to

accept it. Although this award is unusual in that it was issued with approximately six months left until the expiration dates of the awarded contracts (meaning most of the award term has already passed and most of it is retroactive), there is nothing in the Act requiring the arbitrator to reopen the record following the completion of interest arbitration hearings to consider any additional evidence of personnel costs or economic conditions.

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). It is the arbitrator's discretion to administer oaths, require witnesses, and require the production of documents "as he may deem material to a just determination of the issues in dispute." N.J.S.A. 34:13A-17. Typically, following the production of documents, submission of final offers, conduct of formal hearings, and submission of post-hearing briefs, the record is closed. See N.J.A.C. 19:16-5.7(a) et seq. "The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator." N.J.A.C. 19:16-5.7(k).[2/]

Furthermore, interest arbitration awards are expected to be prospective because they cover terms reaching several years into the future but are constructed based on evidence of financial

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2/ This section of the rules regarding post-hearing briefs is now contained in N.J.A.C. 19:16-5.7(l) per the 2012 rules.

conditions and personnel costs taken from a particular snapshot in time. We have consistently held that an award is not per se flawed in its assessment of financial impact for future years because the interest arbitration process contemplates awarding terms of employment for future years based on the record evidence. See, e.g., Union Cty. and PBA Local No. 108, P.E.R.C. No. 2013-4, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 App. Div. 2014); Borough of Englewood Cliffs, P.E.R.C. No. 2012-35, 38 NJPER 273 (¶94 2012); Mercer Cty., Mercer Cty. Prosecutor and Prosecutor's Detectives and Investigators PBA Local 339; Prosecutor's SOA, P.E.R.C. No. 2012-15, 38 NJPER 183 (¶60 2011), aff'd 39 NJPER 112 (¶39 App. Div. 2012); and Town of Kearny, P.E.R.C. No. 2011-37, 36 NJPER 413 (¶160 2010). Even where a party requested, but the arbitrator declined, to reopen the record for submission of additional economic evidence prior to issuance of an award, the Commission affirmed the award, noting that future salary increases in multi-year awards are an inherent part of the interest arbitration process. See City of Asbury Park, P.E.R.C. No. 2011-17, 36 NJPER 323 (¶126 2010)[3/].

To require an arbitrator to indefinitely allow submissions impacting upon his economic award and analysis would unduly delay and complicate the process. In Burlington County Prosecutor's

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3/ Unlike the requesting party in Asbury Park, the City has not provided us the evidence it would have submitted to the arbitrator had the arbitration record been reopened.

Office and PBA Local 320, 41 NJPER 376 (¶118 App. Div. 2015), the Appellate Division agreed with the Commission's decision to affirm an arbitrator's remand award in which he did not allow the submission of additional documents after the award was remanded. The court found:

> As to the new documents submitted on remand, while N.J.A.C. 19:16-5.7(e) provides that an arbitrator may compel the production of evidence, "the arbitrator need not require the production of evidence on each factor." Hillsdale, supra, 137 N.J. at 84. "Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations . . . ." Ibid. . . . Our decision did not call for the Arbitrator to accept new evidence or expand the record previously submitted by the parties. . . . Accordingly, PERC's decision to uphold the Arbitrator's Remand Decision based on the existing record was not arbitrary, capricious or unreasonable.
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> [Burlington, 41 NJPER 376 at 377-378.]

Here, all parties submitted final offers prior to the hearing and presented revised final offers during the course of the proceedings (Award at 4). The City had its opportunities to submit all evidence it deemed relevant for the arbitrator's determination of financial impact. Other than its December 2014 response to the unions' supplemental submissions, which was accepted by the arbitrator and used to reject the unions' argument that new utility revenues should offset salary costs (Award at 25, 72), the City made no attempt to submit additional information to the arbitrator. Just because there was a lengthy

period between the closing of the record and award issuance does not entitle the City to belatedly attempt - through the appeal process - to supplement the record regarding the later years of the award, and is not a basis for finding that the award failed to adequately address the subsection 16(g)(6) factor of financial impact. Under these circumstances, we find no reason to require the arbitrator to reopen the record. Accordingly, the City's request for remand in order to submit additional evidence of its financial situation and salary expenditures is denied.

Subsection N.J.S.A. 34:13A-16(g)(6) requires that the arbitrator analyze:

> The financial impact on the governing unit, its residents 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 (c) initiate any new programs and services for which public moneys have been designated by

> the governing body in a proposed local budget.[4/]

The arbitrator considered the record evidence regarding the City's revenue and expenditures and opined on its ability to afford the awarded salary increases without exceeding applicable spending caps or imposing an excessive financial burden on its taxpayers (Award at 18-26, 66-76).[5/] After setting forth the awarded step increases and annual 1.5% raises, the arbitrator explained:

> The costs of funding the terms of the award have been shown by the testimony and exhibits from the Union's financial expert to be within the City's ability to fund without creating adverse financial impact and within the City's statutory spending and tax levy limitations. While I do not agree that the City is capable of funding the costs of the Union's proposals, the costs of the award are less than half of what the Unions contend fall within the City's capability as

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4/ This is the language in the Act from P.L. 1995, c. 425 applicable to this case. P.L. 2010, c. 105, enacted after these petitions were filed, amended subsection 16(g)(6) to specifically reference the 2007 property tax levy cap statute. However, the version of the Act applicable here already references the property tax levy cap statutes in subsections 16(g)(1), 16(g)(5)(codified from P.L. 1995, c. 425), and 16(g)(9)(codified from P.L. 2007, c. 62).

5/ We note that the parties have not provided us with the entire evidential record on appeal, so we do not have the parties' exhibits or a hearing transcript of expert witness testimonies. However, counsel for the PBA included a copy of their Financial Expert's report (authored by Dr. Raphael J. Caprio, Ph.D.) in its appendix, and counsel for the FOA submitted a full copy of the report with exhibits with its response to the Commission's request for copies of the parties' post-hearing briefs.

> reflected in its comprehensive financial analysis. The terms of the Award have attempted to ease the cost impact of the wage changes on the City. There is no cost impact in contract year 2009 for the FOA until January 1, 2015. There is no retroactive cost impact for contract years 2010, 2011 and 2012 until 2016 (50%) and the end of the first pay period in 2017 (the remaining 50%). The funding for contract years 2013 and beyond have been shown to be within the City's means to fund due to several factors in the record that have not been rebutted, including: the City's unencumbered fund balance is increasing and approached $4,000,000 by the end of 2013; the City's tax collection rate rose significantly in 2013; there has been a substantial decrease in payroll costs in the PBA Local 89 and FMBA Local 10 bargaining units due to lower staffing levels.
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> [Award at 75-76.]

Although the arbitrator explained his salary award and determination of financial impact based largely on the report prepared by the unions' Financial Expert (Dr. Caprio), he failed to specifically include many of the relevant numbers concerning annual salary increases and projected salary expenditures in the body of the award itself. The arbitrator did not present calculations showing the total net economic change for each year of the award, and did not set out the total dollar costs of the step movement and the 1.5% annual raises over the term of the award. In Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), we held:

> The arbitrator did construct a new salary guide that reflects the salary increases that

> he awarded. However, the award does not set out the total dollar cost of the step movements over the term of the agreement. Interest arbitration awards filed with this agency must now include this information in a standard summary format to facilitate comparisons. Moreover, the Police and Fire Public Interest Arbitration Task Force is charged with studying the relative growth in total compensation rates for all interest arbitration awards. N.J.S.A. 34:13A-16.8(e)(2). Because the terms and spirit of the 2010 amendments to the interest arbitration law are aimed at transparency and consistency, we think it is appropriate for all interest arbitration awards to cost both step movement and percentage increases for each year of the contract. This explanation should be reflected in the interest arbitration award. It is not appropriate for us to perform those calculations for the first time in considering an appeal of an award. Therefore, we remand the award to provide such clarification. We expect that in future cases, interest arbitration awards will detail the dollar cost of awards, where the same or similar issues are present.
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> [Cumberland Cty. Pros., 39 NJPER 32 at 35; internal footnote omitted.]

Similarly, in other non-2% cap cases, the Commission has remanded interest arbitration awards in order to clarify the base year salary and the resulting total costs of step movement and salary increases annually and over the term of the award. See Morris County Sheriff's Office, P.E.R.C. No. 2013-3, 39 NJPER 81 (¶31 2012); and North Hudson Regional Fire and Rescue, P.E.R.C. No. 2013-25, 39 NJPER 193 (¶62 2012).

In the instant case, the Financial Expert's report provided cost-out projections using the unions' proposed 3% annual raises,

but instead of including a precise dollar amount costing out the lower salary increases awarded, the arbitrator simply noted that the award costs "less than half" of what the Financial Expert said the City could afford (Award at 75). Even if the Commission could marshal all the pertinent financial exhibits and perform its own cost-out calculations from the base salaries and scattergrams provided, Cumberland Cty. Pros., supra, specified that the arbitrator should express these figures in the award and that it is not appropriate for the Commission to attempt to make these calculations for the first time on appeal.

Furthermore, not only have we found such information necessary to comply with the spirit and terms of the 2010 Act for transparency, consistency, and purposes of comparison with other awards and agreements (whether subject to the 2% cap or not), but we have required such economic specifics based on the 1995 version of the Act under which these arbitrations were conducted based on their filing dates (Award at 17). In County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009), a decision which pre-dated the enactment of P.L. 2010, c. 105 by over one year, the Commission held:

> We also vacate and remand the award for the arbitrator to consider the total net annual economic change for each year of the agreement. The Associations argue that the arbitrator's failure to perform this calculation was harmless since the only economic change was in gross salary. We disagree. The interest arbitration statute

> charges the arbitrator with the responsibility to determine whether the economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b[sic](2). The arbitrator did not make this calculation and must do so on remand.
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> [Passaic Cty., 35 NJPER 451 at 455.]

Similarly, in Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009), the Commission held:

> We also vacate and remand the award for the arbitrator to consider the total net annual economic change for each year of the agreement. The arbitrator must determine whether the economic changes for each year of the agreement are reasonable under the statutory factors. N.J.S.A. 34:13A-16b[sic](2). The arbitrator did not make this calculation and must do so on remand.
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> [Paramus Bor., 35 NJPER 431 at 433.]

The statute cited in Passaic Cty. and Paramus Bor., N.J.S.A. 34:13A-16d(2)[6/], was a part of the 1995 Interest Arbitration Reform Act, P.L. 1995, c. 425, that provided, in pertinent part:

6/ This provision was amended by P.L. 2010, c. 105 and retained in the following form, codified as N.J.S.A. 34:13A-16d:

> The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L.2010, c.104 (C.34:13A-16.7).

> The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria set forth in subsection g. of this section.

In County of Union, P.E.R.C. No. 2004-58, 30 NJPER 97 (¶38 2004), the Commission explained:

> An arbitrator satisfies N.J.S.A. 34:13A-16d(2) if he or she identifies what new costs will be generated in each year of the agreement; figures the change in costs from the prior year; and determines that the costs are reasonable. Rutgers, The State Univ., P.E.R.C. No. 99-11, 24 NJPER 421, 424 (¶29195 1998).
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> [Union Cty., 30 NJPER 97 at 102.]

Here, because the arbitrator did not present calculations showing the total net economic change for each year of the award and did not set out the total dollar costs of the step movement and the 1.5% annual raises over the term of the award, we remand the award to provide for such clarification.

Next, we also remand for clarification of which specific evidence from Dr. Caprio's report, or from the City's Tax Collector and CFO testimonies, was relied upon or rejected in the arbitrator's determination that the terms of the award are within the City's ability to fund without creating adverse financial impact. We note that the arbitrator was quite clear on several points. For example, he specifically addressed the claims of Dr. Caprio and the unions that the increased employee health care contributions required by P.L. 2011, c. 78 should count as salary

reductions or savings to the City. The arbitrator correctly found that "[W]age increases must be awarded only as justified by the statutory criteria which do not include offsetting the cost contributions with salary increases." (Award at 72-73)[7/] The arbitrator also specifically addressed a revenue source (the City's water and sewer utility) identified by Dr. Caprio and the unions and concluded such revenues are not relevant to funding the costs of the salary proposals because they are unpredictable and beyond the City's control (Award at 72). However, there are other assumptions made in Dr. Caprio's report that must be clarified as to the arbitrator's reliance on them, if any, in determining financial impact and ability to pay. For instance, the award summarized Dr. Caprio's observation that "State aid has been consistent, stable and predictable" but the arbitrator's analysis did not address the City's State aid as a component of ability to pay (Award at 24). We remind the arbitrator on remand that while he may consider the historical facts regarding the levels of State aid to the City, State funds cannot be guaranteed as a revenue source because the City does not control the State's legislative or appropriations process and the State is not a party to these interest arbitrations. See City of Camden and

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7/ See County of Union, supra, 39 NJPER 83 (¶32 2012), aff'd 40 NJPER 453 (¶158 App. Div. 2014)(an arbitrator may not equate savings from Chapter 78 health benefits contributions with wages or credit the unit with higher salary increases to defray their increased contributions).

IAFF Local No. 788, 429 N.J. Super. 309, 329-331 (App. Div. 2013), certif. den. 215 N.J. 485 (2013).

Finally, we remand the award because it did not explain why some of the N.J.S.A. 34:13A-16(g) factors were either irrelevant or less relevant than those specifically identified as most relevant to resolving the dispute. As noted above, an arbitrator is required to address all nine 16(g) factors and "shall indicate 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... ." N.J.S.A. 34:13A-16(g). "The arbitrator need not rely on all factors, but must identify and weigh the relevant factors and explain why the remaining factors are irrelevant." City of Camden, supra, 429 N.J. Super. at 326; accord N.J.A.C. 19:16-5.9b.

In Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994), the Supreme Court held:

> Whether or not the parties adduce evidence on a particular factor, the arbitrator's opinion should explain why the arbitrator finds that factor irrelevant. Without such an explanation, the opinion and award may not be a "reasonable determination of the issues." N.J.A.C. 19:16-5.9. . . . In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant.
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> [137 N.J. 71 at 84-85.]

In Burlington, supra, 40 NJPER 41 (¶17 App. Div. 2013), the Appellate Division applied Hillsdale in remanding an award for

failure to adequately indicate which factors he deemed relevant and explain why other 16(g) factors were irrelevant. Accord Union Beach Bor., P.E.R.C. No. 2014-4, 40 NJPER 150 (¶57 2013) (Commission remanded award for failure to explain which 16(g) factors were deemed relevant or not relevant and why).

In the instant case, the arbitrator listed the nine 16(g) factors but only specifically addressed the following five as those he deemed "most relevant": interests and welfare of the public (16(g)(1)); internal and external comparability (16(g)(2)); financial impact (16(g)(6)); and statutory limitations on the City (16(g)(5) and (9)) (Award at 26-28, 74). On remand, the arbitrator must explicate the relative weight and relevance, if any, he ascribed to the other 16(g) factors. If the parties failed to submit relevant evidence on a factor, that also needs to be stated in the award.

ORDER

A. The interest arbitration award is remanded for an explanation and clarification of the financial impact of the salary award. Such clarification shall take into account both the percentage increases awarded for the term of the successor agreement and the raises resulting from advancement on the salary guide. Such clarification shall also explain which specific evidence from the parties' experts/witnesses was relied upon.

B. The interest arbitration award is remanded for explanation regarding the relevance, if any, ascribed to the 16(g) factors not specifically identified in the award as being most relevant.

C. The arbitrator has the discretion to issue his explanation and clarification based upon the record created during interest arbitration, or, in his sole discretion, may solicit additional comment or argument from the parties based on matters already in the record.

D. The interest arbitrator shall provide the explanation and clarification described in Sections A. and B. of this Order within 60 days of receipt of this decision.

BY ORDER OF THE COMMISSION

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

ISSUED: September 8, 2016

Trenton, New Jersey