

P.E.R.C. NO. 2020-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Respondent,

-and-

Docket No. IA-2019-017

PBA LOCAL 366,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award issued to settle successor contract negotiations between the Township and PBA. The PBA appealed arguing that the award failed to apply and give due weight to the statutory factors, was not supported by substantial credible evidence, and violated N.J.S.A. 2A:24-8. Particularly, the PBA contested the award's determinations on salary, health benefits contributions, sick leave, and uniform allowance as not being supported by the external comparables submitted by the PBA. The Commission finds that the arbitrator explained the weight he afforded to the statutory factors, demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for each element of the award in light of the evidence and statutory factors.

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, Mets Schiro & McGovern, LLP
attorneys (Leonard C. Schiro, of counsel and on the
brief)

For the Respondent, Apruzzese McDermott Mastro &
Murphy, P.C., attorneys (Arthur R. Thibault Jr., of
counsel and on the brief; H. Thomas Clarke, on the
brief)

DECISION

PBA Local 366 (PBA) appeals from an interest arbitration award involving a negotiations unit of approximately fifteen regular full-time officers in the ranks of police officer and sergeant employed by the Township of Bedminster (Township). The Township and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2014 through December 31, 2018. On March 1, 2019, the PBA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16b(2) in order to resolve disputes during collective

negotiations for a successor agreement. On March 18, the interest arbitrator was appointed by random selection.

After the parties failed to resolve their impasse at arbitrator-led mediation sessions, arbitration hearings were held on May 21 and May 22, 2019. The parties agreed to review the evidence submitted on May 21 and amend their submissions by May 22. On May 22, the Township updated its exhibit costing out the PBA's Final Offer to reflect its new salary proposal, and added information to one of its exhibits concerning the Township's health insurance costs. Also on May 22, the PBA submitted its Amended Final Offer and 29 additional exhibits. On May 23, the Township objected to the PBA's submission of so many additional documents, and on May 24 the arbitrator accepted the PBA's documents subject to the Township's objection and arguments to be made in the parties' post-hearing briefs. On June 3, the parties submitted post-hearing briefs. On June 6, the Township objected to the PBA's submission of a financial report. The parties were given until June 10 to submit post-hearing reply briefs and until June 12 to address the PBA's financial report only.

On June 17, 2019, the statutory deadline for rendering the award (90th day from appointment per N.J.S.A. 34:13A-16f(5)), the arbitrator issued a conventional award as required pursuant to N.J.S.A. 34:13A-16d. A conventional award is crafted by an

arbitrator after considering the parties' final offers in light of the nine statutory factors. N.J.S.A. 34:13A-16g(1)-(9).

The PBA proposed a four-year agreement from January 1, 2019 through December 31, 2022 with the following changes:

- 2% across-the-board raises to be implemented January 1 and July 1 at each step of the salary guide, in each of the four years of the contract.
- A reduction in health benefit contributions from 35% to 30% in 2020 and 25% in 2021 and 2022.
- An increase in the \$450 annual clothing allowance by \$50 each year, starting at \$500 in 2019 and reaching \$650 in 2022.
- Unused vacation to be paid dollar for dollar, and payment for up to two weeks of vacation in lieu of taking vacation.
- Compensatory time increased to federal minimum of 480 hours.
- Sick time be increased to 165 hours per year, which may accumulate from year to year and be carried over; payment upon retirement of 50 cents per dollar for each unused sick time hour, with \$15,000 maximum payment.
- "Road Job" pay of \$80 per hour, emergency road job with three hours notice or less paid \$95 per hour; four hour minimum for each road job, all hours requested will be minimum hours paid and hours may exceed requested time.
- Officer engaged and/or trained as a Drug Recognition Expert (DRE) to be compensated additional \$1,000 to base salary.
- Training exceeding five hours shall count as one work day.

The Township proposed a six-year agreement from January 1, 2019 through December 31, 2024 with the following changes:

- Freeze 2018 salary guide for duration of contract; increase salaries at top step and sergeant position by 1.8% in 2019 and 2020, and by 1.6% each year in 2021, 2022, 2023, and 2024.

- Officers not at top step of 2018 guide shall advance on salary guide in Schedules A and B of the current CNA; once officer reaches top step of 2018 guide, officer shall remain at 2018 top step salary for one year, then go off guide and receive the top step base salary increases set forth above.
- Officers shall continue health insurance contributions at Chapter 78 Tier 4 levels.
- Officers hired on or after January 1, 2019 shall be limited to elect enrollment in either Aetna ACPOS II \$25 Plan or Aetna High-Deductible Health Care option.
- Eliminate clothing allowance; Township will provide newly hired officers with necessary clothes and equipment; Township will provide a drop-off cleaning service.
- Eliminate vacation provision that provides 8 additional hours per year for officers with 26 years or more service; cap vacation at 200 hours per year after 21 years of service, but officers already at 26 years will retain their currently earned vacation hours.
- Proof of illness shall be required for three or more days of consecutive sick leave; sick time shall not count towards the computation of overtime hours.
- Eliminate Article 28 "Pool Time" and replace with "Police Training" provision requiring 48 hours of mandatory training and an optional two days of specialty training.

The arbitrator awarded a four-year agreement with a term of January 1, 2019 through December 31, 2022. The salary award for 2019 includes a freeze of the 2018 salary guide, a 2% salary increase for officers at the top step and sergeants, and continued salary guide advancement on the 2018 guide for officers not at top step. The 2020 salary award provides a 2% across-the-board raise along with step advancement. The 2021 salary award freezes the 2020 salary guide, provides a 2% salary increase for officers at the top step and sergeants, and continues step

advancement for others. The 2022 salary award maintains the frozen 2020 salary guide, provides a 2% salary increase for officers at the top step and sergeants, and continues step advancement for others. The award provides that all officers covered by the Township's health insurance shall continue to make premium contributions consistent with Chapter 78 Tier 4 levels. The award eliminates Article 28 "Pool Time" and replaces it with the Township's proposed new "Police Training" language, but adds the PBA's proposed language that training in excess of 5 hours shall be counted as one day worked.^{1/} All other proposals were denied.

The PBA appeals, asserting that the arbitrator failed to provide a reasoned analysis of its proposals and evidence in light of the N.J.S.A. 34:13A-16g factors (statutory factors). It argues that the arbitrator failed to address the PBA's external comparability evidence of salary increases from settlements in municipalities outside of Somerset County. It asserts that the arbitrator also failed to consider the PBA's evidence of settlements that provided police unions relief from continued Chapter 78 Tier 4 health benefit contributions after expiration of the Chapter 78 mandates. The PBA also contends that the

^{1/} The arbitrator noted that the PBA's post-hearing brief accepted this Township proposal and he found "Based on the PBA's acceptance of the Township's proposal, I award the Township's Final Offer regarding Article 28-Pool Time."

arbitrator ignored the PBA's sick leave proposal even though it demonstrated that its sick leave benefits are the lowest in the County. The PBA argues that the award must be vacated for violating N.J.S.A. 2A:24-8 because the arbitrator so imperfectly executed his powers that a mutual, final, and definite award upon the subject matter submitted to arbitration was not made, and because it was procured by "undue means" due to not adhering to the statutory factors. The PBA also claims that the arbitrator mistakenly granted the Township's Training proposal based on the assumption that the PBA had agreed to it, but it states that it never agreed to it.

Finally, the PBA asserts that the arbitrator failed to disclose a conflict of interest because he was previously the managing partner for the law firm that represented the Township in two civil litigation cases filed by individual PBA members against the Township. It argues that the arbitrator was required by the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (Code of Professional Responsibility) to disclose that he was managing partner while his firm represented the Township, and that his failure to do so gives an appearance of impropriety. It contends that the award should be vacated because the PBA was not fully informed of that prior representational relationship and therefore not given the opportunity to object to the appointment.

The Township responds that the arbitrator's award adequately addressed all of the statutory factors and noted the relative weight given to the factors he found relevant. It asserts that the arbitrator addressed comparability by finding that PBA members are well compensated when compared to their fellow Township colleagues and to other police officers in Somerset County. The Township argues that the settlements submitted by the PBA from Middlesex County are not comparable to the Township because they are larger with greater populations and more service calls. It asserts that for health contributions, the arbitrator correctly relied on the internal comparable of other Township employees who contribute to health insurance at Chapter 78 Tier 4 levels, rather than voluntary settlements from outside of Somerset County. The Township also argues that the arbitrator's award of the "Police Training" language is supported by the PBA's post-hearing brief accepting that change.

We initially address the alleged violation of the Code of Professional Responsibility. Arbitrators serving on the Commission's interest arbitration panel must be guided by the objectives and principles set forth in the Code of Professional Responsibility. N.J.A.C. 19:16-5.10. Section 2B.1. of the Code of Professional Responsibility requires an arbitrator to disclose any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding

in which the arbitrator is being considered for appointment. The PBA has neither alleged nor shown that the arbitrator had any direct involvement in the two civil litigation cases brought by individual PBA members against the Township while he was managing partner of the firm representing the Township's insurance carrier. The Township states that he had no direct involvement and did not represent them. We find that under these circumstances the arbitrator had no duty to disclose before accepting this interest arbitration. Section 2B.2. of the Code of Professional Responsibility requires an arbitrator to disclose any service performed (concurrently or in recent years) as an advocate or representative for other companies or unions in labor relations matters. Disclosure of those activities to the administrative agency in charge of the arbitration roster satisfies the disclosure requirement for cases handled under that agency's referral. We find that the arbitrator satisfied 2B.2. of the Code of Professional Responsibility by disclosing to the Commission his role as a management representative in labor relations matters, and by including such experience on his resume, which is posted on the agency website.

We now address the substantive appeal of the award.

N.J.S.A. 34:13A-16g requires that an arbitrator shall indicate in the award "which of the [16g] 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 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 . . .
 - (b) In public employment in general . . .
 - (c) In public employment in the same or similar 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, 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. . . .
- (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. . . .

[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). 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. Given that the statute sets forth general criteria rather than a formula, 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, 25 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; Lodi.

The arbitrator's award included a section entitled "Application of the 16g Criteria" where he summarized the 16g factors and set forth some of the evidence submitted that might be relevant for certain 16g factors. (Award at 14-18). He first clarified that he was considering interest and welfare of public (16g(1)), lawful authority of employer (g(5)), financial impact

on governing unit and residents (g(6)), and statutory restrictions imposed on employer (g(9)) as a combined multi-factor "Public Interest Criteria." He determined:

The Public Interest Criteria are the most important and I give them great weight in rendering this Award. The criterion has always been recognized to be given great weight because it recognizes the interrelationship of all the statutory criteria and the impact on bargaining unit.

[Award at 15.]

The arbitrator then discussed Comparability (16g(2)). As to internal comparability, he stated that an internal pattern of settlement "is a significant factor in the determination of an award because it usually corresponds to a public employer's budgetary capabilities and connotes uniform treatment." (Award at 15). Regarding external comparability, the arbitrator summarized the five general categories of considerations set forth in the Commission's comparability guidelines.^{2/} He determined: "Now that the 2% cap has sunset, comparability will once again be a significant criterion to address." (Award at 16). The arbitrator then listed the municipalities whose police collective negotiations agreements each party submitted as external comparables for consideration. The Township's list of

^{2/} Those five categories are: geographic, socioeconomic, financial, compensation and other terms and conditions of employment, and any other comparability considerations deemed relevant by the arbitrator. N.J.A.C. 19:16-5.14(d).

14 municipalities were all from Somerset County. The PBA's list included 8 Somerset County municipalities, 9 Middlesex County municipalities, and 1 Union County municipality.

At the outset of the award's next section, entitled "Analysis and Award," the arbitrator provided the following paragraph generally explaining the relative weight he afforded to the 16g factors in crafting the overall award:

After review of the Final Offers, evidence and arguments, the Award in this proceeding is analyzed and discussed below. The Public Interest Criterion has been given the most weight with great scrutiny given to the existing salary and benefits of PBA members, a comparison of police salary and benefits to other Township employees, comparable municipal police officers in the geographic area, and the continuity and stability of employment. I have also given weight to the CPI, COLA, private sector wage increases and PERC settlement statistics.

[Award at 19.]

In considering the evidence and arguments of the parties for his salary award, the arbitrator summarized the PBA's external comparability position as follows:

The PBA submits that other municipalities have recently settled contracts that have provided salary increases clearly exceeding the Township's Final Offer. While they admit there are a dearth of settlements in Somerset County, the PBA argues that neighboring Middlesex County offers a paradigm of economically sound settlements addressing the fiscally employer sided settlements imposed with the economic constraints of legislation. The settlements they submit have salary increases in excess of the Township's Final

Offer and Chapter 78 reductions or eliminated health care contributions.

[Award at 22.]

The arbitrator then considered the Township's external comparability position, as well as its rebuttal to the PBA's proposed comparisons:

The Township also argues that Bedminster police officers enjoy a generous package of benefits when compared to their Somerset County counterparts. In 2018, a Bedminster police officer at Step 1 of the salary guide earned a base salary of \$53,475 fourth among County comparables with top step base salary of \$114,002 third highest. The Township's five sergeants earn a base salary \$125,309 which they argue is competitive with what other sergeants in Somerset County are earning.

The Township submits that the PBA "cherry picked" municipalities in Middlesex and Union Counties that do not compare to Bedminster. They argue that many of the contracts and/or memorandum of agreements submitted by the PBA are newly proposed and are not comparable to Bedminster as required by N.J.A.C. 19:16-5.14(d). The jurisdictions selected by the PBA are considerably larger and, in many instances, much more urban or more densely populated than Bedminster. They also note that the salary levels in many of these municipalities are much less than Bedminster. They submit that these are unfair and unreasonable comparisons and should not be considered.

[Award at 23-24.]

In addition to finding that the record shows that PBA members are well compensated compared to their fellow Township employees, the arbitrator's salary award utilized other Somerset

County police departments as external comparators and found that PBA members' compensation compares well to them too:

PBA members are also competitively compensated when compared to other police departments in Somerset County. In 2018, among Somerset County police departments Township officers ranked fourth in Step 1 compensation of \$53,474.79 and third in Top Step Pay of \$114,002.38. The Step 1 average pay of the Somerset County police departments in 2018 was \$49,463 or 7.5% less than starting pay in Bedminster. In 2018, the average Top Pay of the Somerset County police departments was \$102,866 or 9.8% less than Top Pay for a Township police officer. The Township's Sergeants ranked sixth in starting pay and eighth in Top Pay at \$125,309.99. The 2018 average of Somerset County police departments Sergeants starting pay was \$121,003 and Top Pay of \$122,928, 3.5% less and [sic] in starting pay and 2% less in Top Pay than a Bedminster Sergeant. The Award recognizes the relative standing of the PBA members amongst comparable police departments and maintains that standing. A guide freeze for the duration of the contract as the Township proposed with increases to stop step and sergeants pay would create a disparity in the guide, potential schism between the members, and further erode members standing as other Somerset County municipalities settle post 2% cap contracts. An adjustment to the guide in 2020 will address any guide disparity issues, allow the Township the ability to budget for the guide movement, and allow its PBA members to retain their relative standing amongst their police department peers and keep up with COLA. The Township's proposal for an Officer reaching top step to stay at stop step for a year and go off guide is not granted as it would create a schism among senior officers and the evidence is insufficient to meet the burden to justify awarding same.

[Award at 27.]

Turning to the "Article 7 Health Program" section of the award, the arbitrator noted that although the PBA's members have already satisfied their required Chapter 78 Tier 4 level health benefits contributions, N.J.S.A. 40A:10-21.2 made those levels the status quo for future negotiations. Therefore, he found that as the party seeking a change in the status quo, the PBA bore a heavy burden to support a reduction from Chapter 78 Tier 4 contribution levels. In rejecting the PBA's proposal to reduce health benefits contributions, the arbitrator analyzed and discounted the PBA's proffered external comparables, stating:

As to the PBA's Chapter 78 Tier IV reduction proposal, while the PBA cite to a number of municipalities that have recent contracts with varying forms of Chapter 78 relief, each settlement was mutually embraced by the parties during negotiations and involved varying forms of concessions. I am not aware of any Interest Arbitrator that has awarded Tier IV Chapter 78 relief when the employer has been resistant to change. I am also reluctant to make such an award here. It is important to note that the evidence does not include any Somerset County municipalities which would indicate relief being implemented in the geographic area.

[Award at 30-31.]

Next, we address the "Article 10 Clothing Allowance" section of the award. For this proposal the PBA submitted nine external comparables from Somerset County with higher clothing allowances than the \$450 annual clothing allowance enjoyed by the PBA.

(Award at 31). In rejecting the parties' proposals, the arbitrator considered the significance of the fact that the PBA's

uniform allowance was rolled into base pay in 2010, as well as the overall compensation and benefits of PBA members relative to other Township employees and Somerset County municipalities:

After review of the parties Final Offers and submissions, I find there is insufficient evidence to award either the Township's or PBA's proposals and alter the status quo. The current amount of cleaning allowance is not unreasonable given that a uniform allowance was included in base pay in 2010. Moreover, the Bedminster Officers overall compensation and benefits package compared to Township employees and other Somerset County municipalities warrants maintaining the present level of clothing allowance.

[Award at 32.]

Turning to the "Article 23 Sick/Injury Leave" section of the award, the PBA submitted 14 external comparables from Somerset County with more sick time than PBA members (PBA Post-hearing Brief at 36). The arbitrator cited 12 of the comparables submitted by the PBA, but did not award the PBA's proposed increase in sick hours (Award at 33). He stated:

After review of the parties Final Offers and submissions, I find there is insufficient evidence to award either the Township's or PBA's proposals. The amount of sick leave is not beyond the norm and there is no evidence of sick leave being an on-going issue to warrant awarding the PBA proposal and a need for more sick leave or the accumulation of sick leave. Likewise, there is no evidence of misuse of sick leave to support awarding the Township proposal and insufficient evidence of sick time's impact on overtime to overcome the burden to justify the change.

[Award at 34.]

Finally, we reject the PBA's appeal of the award of the "Police Training" language in replacement of the "Article 28 Pool Time" language. In its post-hearing brief, the PBA stated:

The PBA has proposed that training in excess of five (5) hours shall be counted as one (1) day worked. The PBA is accepting of the Township's proposal concerning eliminating "Pool Time" and replacing with Article 28 - Police Training. (T-1).

[PBA Post-hearing Brief at 38.]

Accordingly, the record supports the Township's assertion and the arbitrator's explanation that the PBA accepted the Township's proposed language (with the PBA's modification that five hours of training would count as a work day).

Applying the interest arbitration review standards to the disputed sections of the award discussed above, we find that the arbitrator gave due weight to the 16g factors, explaining the relative significance he gave to each factor in crafting his award. Teaneck. The arbitrator demonstrated his consideration of the parties' evidence and arguments on each proposal, and explained his reasoning for accepting, rejecting, or modifying their proposals in the context of the statutory factors he found most relevant. Lodi. Accordingly, we reject the PBA's assertions that the award failed to adequately apply the 16g factors, was not supported by substantial credible evidence in the record, and should be vacated pursuant to N.J.S.A. 2A:24-8. The award is affirmed.

ORDER

The interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero recused himself.

ISSUED: August 15, 2019

Trenton, New Jersey