

P.E.R.C. NO. 2020-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL TOWNSHIP,

Respondent,

-and-

Docket No. IA-2019-016

HOPEWELL PBA LOCAL 342,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a conventional interest arbitration award issued on June 5, 2019, covering the period January 1, 2019 through December 31, 2021, on the PBA's appeal from aspects of the award addressing salary only, based upon the interest arbitrator's comprehensive review of the evidence presented and application of the statutory criteria, which the Commission found was satisfactorily explained in her well-reasoned award. The Commission rejects the PBA's arguments that the interest arbitrator improperly relied on a 2% hard cap on base salary increases and that the arbitrator erred by failing to account for savings realized by the Township stemming from employees who had, in 2018, retired or been promoted out of the unit. The Commission finds the interest arbitrator did not limit salary increases to 2% per year, and that she properly took into account the Township's reduced costs stemming from retirements and promotions out of the unit when she considered the statutory factors of impact on the taxpayers and the Township's ability to pay.

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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Appellant.

Appearances:

For the Respondent, Ruderman and Roth, attorneys (Mark S. Ruderman, of counsel; Ellen M. Horn, on the brief)

For the Appellant, Crivelli and Barbati, attorneys (Frank M. Crivelli, of counsel and on the brief; Donald C. Barbati, on the brief)

DECISION

On June 20, 2019, the Hopewell PBA Local 342 (PBA) filed an appeal of an interest arbitration award involving a unit of approximately 23 police officers employed by Hopewell Township (Township).^{1/} It is undisputed that included in the unit of 23 are four officers, who, by the end of calendar year 2018, had either retired or were promoted out of the unit. (April 27, 2019 report of Dr. Ralph J. Caprio, Table 20, showing each employee's name, salary step, base salary step and total 2018 compensation).

^{1/} The PBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

On February 28, 2019, the PBA filed a petition to initiate compulsory interest arbitration seeking to resolve an impasse over the terms of a successor collective negotiations agreement (CNA).^{2/} On March 7, an interest arbitrator was appointed by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). That statute also requires that an interest arbitration award be issued within ninety days of appointment of the interest arbitrator.

The interest arbitrator conducted a mediation session on April 2, which narrowed the issues in dispute but did not result in a voluntary settlement of the successor CNA. The parties submitted their final offers on April 17. On May 2, the interest arbitrator conducted an evidentiary hearing in which the PBA provided testimony including an analysis of its salary proposal. Post-hearing summations were filed by May 17.

On June 5, 2019, the interest arbitrator issued a 117-page decision and award covering the period January 1, 2019 through December 31, 2021.^{3/} The interest arbitrator issued a conventional award, as she was required to do pursuant to P.L.

^{2/} The prior agreement expired on December 31, 2018.

^{3/} The award recited that the successor CNA would be for two years, a clerical error corrected by the interest arbitrator on June 24, 2019, as the parties had agreed to a three-year term. Other similar errors (the amount of the starting salary and the cost of 2019 increments) were corrected on July 2, 2019.

2010, c. 105, after considering the parties' final offers in light of the statutory factors. See N.J.S.A. 34:13A-16. The interest arbitrator awarded in 2019 across-the-board increases of 2.2%, in 2020 the top salary only was increased by 2.0%, and in 2021 across-the-board increases of 1.8%. The noted salary increases were augmented by step increment payments in each year to unit members eligible for those increases. The award also included the elimination of the obsolete six-step guide; elimination of longevity for unit members hired after July 1, 2019; acting squad sergeant compensation; an increase in the uniform allowance; changes to health and prescription plan costs; advance notice of changes to health and life insurance; annual leave changes; and language changes regarding employee rights and the conduct of PBA business.

The PBA appeals the aspects of the award addressing salary only. The PBA sought increases of 3.5% for each year of the agreement. The Township proposed increases of 1.5% per year. The PBA challenges the salary award, arguing:

1. The arbitrator improperly relied on a two percent hard cap on salary increases despite the fact that the legislation imposing that cap had a sunset provision that made it inapplicable to the time period covered by the successor CNA;
2. The arbitrator erred in calculating base salary by failing to take into account savings realized by the Township stemming from employees in the PBA unit, who, during 2018, had retired or had received promotions

to positions that were not represented by the PBA (i.e. promotions to superior officer positions represented by a different majority representative).

The PBA asserts that these errors warrant vacating the salary award and remanding the case to the arbitrator to make a new salary award with directions that she take into account the monetary savings stemming from 2018 retirements and promotions out of the PBA unit.

The Township asserts that the interest arbitrator's decision not to consider alleged savings from 2018 personnel movements was not arbitrary since retirements trigger employer payments for unused sick and/or vacation leave. It urges that we find that the award was a reasoned and sustainable application of all of the nine statutory criteria listed in N.J.S.A. 34:13A-16g.

We affirm the arbitrator's award as set forth below.

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 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[,] and taxpayers

(7) The cost of living.

(8) The continuity and stability of employment

(9) Statutory restrictions imposed on the employer

The standard for reviewing interest arbitration awards is well-established. The Commission 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.

See Teaneck Twp. v. Teaneck FMBA, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003); Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997).

Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Washington Tp. v. Washington Tp. PBA Local 206, 137 N.J. 88 (1994) prescribe the task of an arbitrator in applying the statutory criteria:

[A]n arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence.

[Hillsdale, 137 N.J. at 83-84]

An employer's ability to pay is not the decisive criterion that controls what should be awarded. See Hillside, 137 N.J. at 85-86.

Within the parameters of our review standard, the Commission will defer to the interest arbitrator's judgment, discretion, and labor relations expertise. See City of Newark, P.E.R.C. No. 99-97, 26 NJPER 242 (¶30103 1999). However, an interest 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. See N.J.S.A. 34:13A-16g; N.J.A.C. 19:16-5.9; Lodi Bor., P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

Our review of the award and the portions appealed by the PBA lead us to conclude that the interest arbitrator did an exhaustive review of the evidence presented and properly applied the statutory criteria. She identified and particularly emphasized the significant weight to be attributed to the public interest, comparability, financial impact and lawful authority criteria. Further, she provided a reasoned basis for the award with a proper exercise of discretion, demonstrating that she carefully considered the evidence and properly applied the statutory criteria.

The PBA is correct that the 2% cap per year on base salary increases is no longer statutorily required. Indeed, an examination of the award shows that the interest arbitrator did not limit the salary increases to 2% per year. Across the board increases of 2.2%, 2% (top step only), and 1.8%, for 2019, 2020 and 2021, respectively, were augmented by payment of step increments to unit members eligible for those increases. Thus, the total salary increases in each year of the CNA exceeds 2% and the salary increases over the three years of the CNA exceeds a cumulative total of 6%.

New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012), determined that reductions or increases in employer costs stemming from retirements, promotions, hirings or other personnel

movements should not affect the costing out of the award. New Milford was issued during the period that the 2% cap per year on base salary increases was statutorily required. While consideration of employer cost reductions or increases in costing out an award is no longer prohibited, interest arbitrators may use their discretion in deciding whether it is appropriate to factor in such reductions or increases when rendering a salary award.

The interest arbitrator cited favorably to the costing out approach prescribed in New Milford when she formally costed out this award. However, she did take into account the Township's reduced costs stemming from the retirements and promotions out of the unit during the term of the CNA in connection with the application of the statutory criteria. She noted as follows:

I note that, contrary to the Township's assertion, the retirements and promotions at issue here are not speculative; they have all actually occurred already. However, I will consider the savings to the Township between 2018's salary costs for this unit and the same costs for subsequent years, as did the Township in its 2019 budget plan. This consideration will be with an eye towards the impact on the taxpayers and the Employer's ability to pay.

[Award at 63, emphasis supplied.]

The interest arbitrator found that the impact to the taxpayers is minimal in that the savings generated from retirements and promotions out of the unit render it unlikely

that the Township will have to raise taxes to fund the cost of the award. She also noted that the Township conceded that funding the award is within its lawful authority under the appropriations cap and the tax levy cap. Award at 111 - 112.

The interest arbitrator's comprehensive review of the evidence presented and application of the statutory criteria is satisfactorily explained in her well-reasoned award. Therefore, we affirm the award, deferring to her judgment, discretion and labor relations expertise.

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