

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OLD TAPPAN,

Appellant,

-and-

Docket No. IA-2021-001

PBA LOCAL 206,

Respondent.

Appearances:

For the Appellant, McCusker, Anselmi, Rosen &
Caravelli, P.C., attorneys (John L. Shahdanian II,
Esq., on the brief)

For the Respondent, Limsky Mitolo, attorneys (Merrick
H. Limsky, on the brief)

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator to clarify an issue concerning retiree healthcare contribution levels. The Borough of Old Tappan's (Borough) appeal of the award asserts that it failed to address retirees' healthcare contributions as presented in the Borough's final offers, specifically that retirees must contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78 (Chapter 78). The PBA responds that the award does not require clarification because it clearly did not change the prior contract's healthcare benefits for current PBA members, which provided for fully paid healthcare benefits for retirees. The Commission finds that the award requires clarification because it addressed one aspect of the Borough's final offer - whether new hires would be limited to single health insurance coverage - but it did not address the other aspect - contribution levels for retiree healthcare benefits. The Commission retains jurisdiction and orders the parties to file supplementary briefs with the Commission following receipt of the arbitrator's clarification of the award.

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.

P.E.R.C. NO. 2021-43

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DECISION

On February 23, 2021, the Borough of Old Tappan (Borough) appealed an interest arbitration award (Award) covering the PBA Local 206 (PBA) negotiations unit.^{1/} The PBA is the majority representative of all police officers employed by the Borough, other than the Chief of Police. The Borough and PBA are parties to a collective negotiations agreement (CNA) with a term of January 1, 2015 through December 31, 2018.

^{1/} The Borough's February 23 appeal included a request for oral argument. The Borough's request for oral argument is denied given that the parties have fully briefed the issues raised.

On August 13, 2020, the Borough filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b) (2) to resolve an impasse over the terms of a successor CNA. On August 19, the interest arbitrator was appointed. After the parties failed to resolve their impasse at an arbitrator-led mediation session on October 20, the parties elected to proceed with a document-only hearing. On December 4, the parties submitted and exchanged their final offers and all evidence; they submitted briefs on December 11, and the record was closed. On February 9, 2021, the arbitrator issued the 52-page conventional Award setting the terms of a successor CNA for a term of four years, from January 1, 2019 through December 31, 2022. After receipt of the Award, the Borough requested clarification on the portion of the Award addressing retiree healthcare coverage; however, the PBA would not consent to the arbitrator providing such clarification. The Borough's appeal pertains to retiree healthcare coverage only, although the Award addressed numerous issues submitted by the parties.^{2/}

The Borough's final offer submitted to the arbitrator proposed the following two items concerning retirees' healthcare benefits:

^{2/} In addition to "Retiree Healthcare", the Award addressed the following subjects: "Term of the Agreement", "Salaries", "Detective Stipend", "Outside Detail", "Out of Title Pay", and "Work Schedule".

1. New hires to receive, after retirement, single coverage until eligible for Medicare and no further healthcare coverage. (Item 1).

[Exhibit B at item (4)].

2. Retirees' healthcare coverage contribution is pursuant with levels set forth by P.L. 2011, c.78 (Item 2).

[Exhibit B at item (8)].

In the Award's "Retiree Healthcare" section, at 42-46, the arbitrator begins discussing Item 1 and then states that the PBA opposes this proposal and seeks to maintain the status quo. The arbitrator then appears to transcribe the Borough's position from its brief, stating "In defense of their proposal the Borough argues:" (Award at 42-45). Following the recitation of the Borough's position, the arbitrator proceeds similarly, stating "In defense of their position the PBA argues:" (Award at 45-46). On page 46, the arbitrator provides his analysis and award, as follows:

In this decision, this Arbitrator must Award the Borough's position that new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate that their proposal is necessary and advisable.

The internal and external comparability evidence, provided by the Borough above, is overwhelming and outweighs, in this Arbitrator's mind, any arguments made by the

PBA to the contrary. For this Arbitrator to do anything different would not be in the interest and welfare of the public.

However, it is clear from the Borough's proposal and submissions that current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

Award:

Effective the date of this decision new hires will be limited post retirement to single health insurance coverage until eligible for Medicare and then no further coverage.

Current PBA members will be grandfathered. Current Officers will maintain all coverage rights.

The Borough asserts that the Award failed to address retirees' healthcare contributions, which it claims is the only issue submitted by the parties in their final offers that was not addressed by the Award. The Borough asserts that the impasse over the retirees' healthcare contributions was the main issue that led to the initiation of compulsory interest arbitration, and the Award's failure to render a final and definite award pursuant to N.J.S.A. 2A:24-8(d) requires that the Commission remand it to the arbitrator for clarification of that unresolved issue.

Notwithstanding the foregoing arguments, the Borough further argues that, despite the lack of clarity in the Award, the arbitrator did ultimately decide the issue of retiree healthcare contributions in favor of the Borough, i.e. that retirees must

contribute towards their healthcare at the statutory levels set forth in P.L. 2011, c.78 (Chapter 78). The Borough bases this argument on several passages from the Award where the arbitrator states, among other things, "This Arbitrator is convinced that the Borough has met its burden of proof to demonstrate their proposal is necessary and advisable..."^{3/}

In response to the Borough's assertions, the PBA argues that the Retiree Healthcare Award section is not ambiguous and does not require clarification because current PBA members being "grandfathered" and maintaining "all coverage rights" clearly means that the prior contract's healthcare benefits remain unchanged for current PBA members. The prior contract provided for fully paid healthcare benefits for retirees. Thus, according to the PBA's interpretation of the Award, the only change to the retirees' healthcare benefits made by the Award was Item 1, which only applies to new hires and not current PBA members. The PBA further asserts that it is illogical for the Borough to argue that the arbitrator did not render a final and definite award which requires remand and clarification on the issue of retirees' healthcare contributions while also maintaining that the

3/ We note that the passage from pages 8-9 of the Award quoted by the Borough to evidence the arbitrator's support of its position appears to be transcribed from the Borough's arbitration brief (at page 3) to explain "The Parties Negotiation History" rather than an adoption of the Borough's position.

arbitrator ultimately awarded the Borough's entire proposal on that issue. Thus, the PBA argues the Award does not need remand and clarification, and the Borough's appeal should be dismissed.

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.

Applying this standard, we find that the Award requires clarification of Item 2 concerning retiree healthcare contribution levels in the Borough's final offer. The Borough's proposal submitted two items regarding retirees' healthcare benefits: Item 1 concerning whether new hires would be limited to single health insurance coverage upon retirement; and Item 2

concerning retirees' healthcare contribution levels. The Award was clear as to Item 1, but unclear as to Item 2.

It is ambiguous whether the paragraphs, 2-4, immediately preceding the "Award" section pertain to both Items 1 and 2. The Borough and PBA have differing views on this point. As stated above, the Borough's position is that the Award, citing the second paragraph of the arbitrator's analysis, among other passages, endorsed the Borough's final position in its entirety, calling the Borough's proposal "necessary and advisable." However, it is unclear if the arbitrator's statement in the second paragraph is simply referring to his granting of Item 1, which is referenced in the first paragraph of his analysis. The PBA's interpretation of the arbitrator's statement - "Current PBA members will be grandfathered. Current Officers will maintain all coverage rights." - is that it preserves, unchanged, the status quo from the previous contract, which provides for fully paid healthcare benefits for retirees.

Regarding the PBA's interpretation of the Award, it remains unclear what the status quo in the successor CNA would be for healthcare contribution levels - Tier Four or a different level. N.J.S.A. 40A:10-21.2^{4/} provides that during negotiations for the

^{4/} This statute further provides: "A public employee whose amount of contribution in retirement was determined in accordance with section 42 (N.J.S.A. 40A:10-21.1) or 44 (N.J.S.A. 40A:5A-11.1) shall be required to contribute in
(continued...)

next CNA to be executed after employees in a unit have reached the full Chapter 78 Tier Four contributions levels, the parties "shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract." Thus, once Tier Four is reached in a CNA, it remains the status quo until an agreement is reached on a different contribution level in a successor CNA. See Lacey Tp., P.E.R.C. No. 2020-66, 47 NJPER 49 (¶12 2020); Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016).

Here, the record demonstrates that the parties reached full implementation of Chapter 78 (Tier Four) in 2015, the first year of their 2015-2018 CNA. The CNA which is the subject of the instant interest arbitration is the first CNA following full implementation where healthcare contribution rates could become negotiable. Consistent with the above-cited cases, absent negotiations in a successor agreement establishing a lower healthcare contribution rate, Tier Four remains the status quo. Thus, the Award requires clarification as to the retirees' healthcare contribution levels in this successor CNA.

4/ (...continued)
retirement the amount so determined pursuant to section 42 or 44 notwithstanding that section 42 or 44 has expired, with the retirement allowance, and any future cost of living adjustment thereto, used to identify the percentage of the cost of coverage."

Accordingly, we remand the Award to the arbitrator to clarify the issue concerning retiree healthcare contribution levels. We leave to the arbitrator's discretion any determination of whether to request additional evidence from the parties as he may deem necessary and material to a just determination of the issues in dispute. See N.J.A.C. 19:16-5.7(e).

ORDER

A. The interest arbitration Award is remanded for the arbitrator to provide clarification as to the Borough's final proposal seeking that retirees' healthcare coverage contribution be pursuant with levels set forth by P.L. 2011, c.78.

B. The interest arbitrator shall provide clarification described in Section A. of this Order within 60 days of receipt of this decision.

C. We retain jurisdiction. Following receipt of the arbitrator's remand award, the Borough shall have seven days to file a supplementary brief with the Commission limited to five pages and limited to responding to the clarification provided by the arbitrator on remand. The PBA shall then have seven days from receipt of the Borough's supplementary brief to file a supplementary response brief limited to five pages and limited to responding to the clarification provided by the arbitrator on remand.

BY ORDER OF THE COMMISSION

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

ISSUED: April 29, 2021

Trenton, New Jersey