

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MERCER COUNTY PROSECUTOR'S OFFICE,

Appellant,

-and-

Docket No. IA-2020-008

PBA LOCAL 339,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief;
Mohammad Barry, on the brief)

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

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration remand award after the interest arbitrator on remand provided a cost-out of his award and clarified the net annual economic changes and annual costs of all base salary items. The MCPO appealed from the remand award, asserting that the award does not comply with the County Entity Budget Cap (CEBC), that the record did not support the award of an 8-hour workday, and that the arbitrator failed to give due weight to certain statutory 16(g) factors such as the interests and welfare of the public. The Commission finds that the arbitrator considered the MCPO's and PBA's arguments regarding the impact of the CEBC and supported his determination that the award does not present a CEBC issue by citing to the record including witness testimony, the county's current fiscal condition and revenue capacity, and the fact that the county had previously adjusted to comply with the CEBC despite overtime costs exceeding the budgeted amount. The Commission also finds that the arbitrator supported the award of the 8-hour workday by noting internal and external comparability, costing out the projected salary increases while accounting for reduced costs from overtime savings, and recognizing that despite the Prosecutor's testimony

against the 8-hour workday, the Prosecutor previously but recently advocated for the 8-hour workday due to overtime savings and scheduling flexibility. The Commission finds that the arbitrator's decision to award some elements of each party's proposal, such as the 3-year term proposed by the MCPO, and awarding a delay in the implementation of the PBA's proposed 8-hour workday, was supported by his consideration of the parties' interests and the public interest. Finally, the Commission finds that the arbitrator gave due weight to the 16(g) statutory factors and that he did not improperly offset the PBA's Chapter 78 health insurance premium contributions with salary increases.

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. 2021-42

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DECISION

On January 28, 2021, we remanded an interest arbitration award between the Mercer County Prosecutor's Office (MCPO) and PBA Local 339 (PBA). P.E.R.C. No. 2021-28, 47 NJPER 331 (¶79 2021). On remand, we asked the arbitrator to provide a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items. The Commission decision also declined to decide on the MCPO's objections to the award prior to seeing the arbitrator's cost-out on remand. On March 9, 2021, the arbitrator issued a 31-page remand award.

Following the Commission's initial decision, the arbitrator conducted a February 1, 2021 conference call with the parties setting forth a schedule allowing both parties to submit proposed cost-outs of the award and to respond to the other party's cost-out. (Remand Award at 4). After summarizing his initial award, the arbitrator clarified the economic aspects of the award. (Remand Award at 11-25). Specifically, the arbitrator presented, compared, and analyzed the cost-outs provided by the parties. (Remand Award at 23-25). The arbitrator found that the cost-out that includes "breakage" savings accounting for the loss of some employees and replacement of some employees gives a more precise calculation of wage costs. (Remand Award at 24). He also determined that the cost-out that includes the minimum level of expected overtime savings from the change to an 8-hour workday in the third year of the award provides the "real increase in wages." (Remand Award at 24-25). Using that cost-out, the arbitrator provided the annual net economic changes of the award in both dollars and as a percentage. (Remand Award at 24). He calculated the total cost of the award as \$455,079.11 or 11.02% over three years, which is 3.67% annually. (Remand Award at 24). The arbitrator concluded that the awarded wage increase is reasonable and in the public interest. (Remand Award at 25).

Pursuant to the Commission Order in P.E.R.C. No. 2021-28, the MCPO and PBA submitted supplemental briefs responding to the

remand award's cost-out and clarification of the economic award. The MCPO asserts that although the remand award provides cost-outs, it is non-compliant with the "New County Entity Budget Cap," P.L. 2015, c. 249, (CEBC) which caps county entity budget requests to be raised by property taxation to 2.0% of the previous year's budget. It argues that the arbitrator did not calculate if the award complies with the CEBC, but suggested that the County could make appropriate budgetary adjustments because it had previously. The MCPO contends that the award in 2022 will create substantial CEBC issues and therefore violate the provisions of N.J.S.A. 34:13A-16(g)(5), (6), and (9) of the Act concerning the lawful authority of the employer, the financial impact on the governing unit, its residents, and taxpayers, and the statutory restrictions placed on the employer, including property tax levy caps.

The MCPO also asserts that the arbitrator improperly awarded the 8-hour workday by relying too heavily on two letters from Prosecutor Onofri in favor of the 8-hour work day and disregarding his testimony opposing it. It argues that due to the 8-hour workday change, the arbitrator's award of the MCPO's proposed three-year contract is effectively more costly per year than if the arbitrator had awarded the PBA's proposed five-year contract. Finally, the MCPO contends that the arbitrator failed to give due weight to the interests and welfare of the public

(N.J.S.A. 34:13A-16(g)(1)) and improperly awarded higher salary increases to defray Chapter 78 health benefit contributions.

The PBA asserts that the arbitrator properly considered the CEBC because he acknowledged the MCPO's argument on the issue, evaluated the evidence presented on the impact of the award on the CEBC, and determined that the County has previously had enough flexibility in its overall budget to make appropriate adjustments to comply with the CEBC. It argues that the arbitrator's award of the paid 8-hour workday and the salary increases associated therewith was thoroughly explained and well-supported by the record evidence that shows it would eliminate costly and unpredictable overtime caused by employees having to work through their unpaid lunches in the current 7-hour paid workday, that the County Prosecutor had previously supported it, that it would be consistent with what the County voluntarily agreed to with its other law enforcement units, and that it is supported by comparability data from other county prosecutor's offices. The PBA also asserts that the arbitrator properly considered the N.J.S.A. 34:13A-16(g) statutory criteria, including financial impact on the governing body and its taxpayers, and the interests and welfare of the public. The PBA argues that the arbitrator did not credit the PBA with Chapter 78 contributions by offsetting them with salary increases, but

merely recognized that Chapter 78 contributions in the past and going forward detract from salary increases.

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. 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-16(g); N.J.A.C. 19:16-5.9; Lodi.

We first consider the MCPO's assertion that the arbitrator failed to properly consider the 2% CEBC and therefore did not give proper weight to statutory factors 16(g)(5), lawful authority of the employer, 16(g)(6), financial impact, and 16(g)(9), statutory restrictions. P.L. 2015, c. 249 applies to certain county entity budget entities, including county prosecutor's offices, and was first applicable to the 2017 budget year. It limits any increase in the portion of that entity's budget request that is to be raised by property taxes to 2% of the previous year's budget request. See N.J.S.A. 40A:4-45.45b(b). The county entity's budget request should also include amounts to be funded by federal or state funds, fees raised by the County entity, or other sources. N.J.S.A. 40A:4-

45.45b(a). N.J.S.A. 2A:158-7 permits the county prosecutor to seek approval from the county's Superior Court assignment judge to exceed the budget approved by the county freeholders.

The award indicates that the arbitrator considered the MCPO's assertion that the PBA's proposal would exceed the 2% CEBC cap for the entire MCPO and its assertion that Dr. Caprio failed to take the CEBC cap into account. (Award at 34-35). The arbitrator also considered the PBA's arguments that: the calculation of the CEBC must be based on the entire MCPO budget; both the PBA's and MCPO's proposals exceeded the cap as testified to by County Chief Financial Officer Miller; the County has previously had the flexibility to make necessary budget adjustments and has not had a CEBC problem despite previous overtime expenditures exceeding the budgeted amounts; and the Prosecutor could file a "Bigley Action" (N.J.S.A. 2A:158-7 request to county Superior Court assignment judge) to request a budgetary enhancement. (Award at 22, 29).

The arbitrator explained his analysis of the effect of the 2% CEBC as follows:

The County also contends that the salary increase proposed by the Union would fail to comply with the County Entity Budget Cap, N.J.S.A. §40A:4-45.44. This statute limits the budget increases for Constitutional officers such as the Prosecutor to annual increases of two percent. However, that figure concerns the entire Prosecutor's office budget, and while personnel costs represent a significant portion of the

Prosecutor's Office's costs, the Union has established that unlike the rigid hard cap which recently lapsed, there is more flexibility in the County Entity Budget Cap. On cross-examination, Chief Financial Officer Miller testified that when the County Entity Budget Cap is in danger of being reached, the County has in the past made appropriate adjustments to comply with the statute. Also, on cross-examination, CFO Miller conceded that the Prosecutor's budget for overtime was frequently understated, and that annual overtime costs often exceeded the budgeted amount.

[Award at 39.]

On remand, the arbitrator reiterated his justification for finding that the award does not present a CEBC issue, supported by citation to CFO Miller's testimony. (Remand Award at 15).

The arbitrator further examined the impact of the 2% CEBC on the award in light of the 16(g)(5), (6), and (9) statutory factors:

I am also required to consider the lawful authority of the County and the financial impact on the governing unit. N.J.S.A. 34:13-16(g)(5)&(6). As noted above, the County has stressed that the "Constitutional Officer Cap." P.L. 2015 c. 249 restricts the ability of the Prosecutor to increase his budget by more than two percent per annum. However, constitutional officers such as the Prosecutor have a broad range of discretion in setting their budgets and in reallocating funds to operate and manage their offices. I accept the testimony of Dr. Caprio, that the County is in good fiscal condition, and has a healthy fund balance and that the County had excess statutory levy capacity. . . . The final statutory provision to be reviewed is N.J.S.A. 34:13-16(g)(9) which requires me to consider the statutory restrictions placed on

the Employer. I have discussed the Constitutional Officer Cap P.L. 2015 c. 249 above, and I conclude that there is no statutory impediment to this Award.

[Award at 44, 45.]

On remand, the arbitrator reiterated this analysis with additional references to the record and noting that Dr. Caprio testified that the County had over \$2.8 million in unused revenue capacity. (Remand Award at 22, 23). Based on the above, we find that the arbitrator analyzed the parties' arguments and the record evidence on the CEBC, including testimony from the financial expert and the County's CFO, to reasonably conclude that the economic terms of his award are not precluded by the statutory budget constraints of the CEBC.

We next address the MCPO's appeal of the award of the 8-hour paid workday for the year 2022. The award indicates that the arbitrator considered both the MCPO's argument that the proposal would result in a 14.3% salary increase when implemented, and the PBA's arguments regarding projected overtime savings, previous support by the Prosecutor, and both internal and external comparability. (Award at 16-20, 27-28, 30-31, 38-39). Contrary to the MCPO's assertion, the arbitrator acknowledged Prosecutor Onofri's testimony opposing the 8-hour workday; however, he balanced that testimony against Prosecutor Onofri's previous but recent advocacy for the 8-hour workday which included letters setting forth overtime savings and scheduling flexibility from

changing to the 8-hour workday. (Award at 38-39; Remand Award at 12-15).

In the initial award, the arbitrator generally accounted for the increased salary costs of the 8-hour workday proposal by supplying a conversion factor to multiply by the previous year's hourly wage rate to calculate the new higher salary levels commensurate with the increased work hours. (Award at 40-41). In the remand award, the arbitrator's cost-out specifically accounted for the projected minimum overtime savings from the change to the 8-hour workday. (Remand Award at 23-25). The arbitrator's calculation of projected overtime savings was supported by the record, including from Prosecutor Onofri's own estimate during cross-examination. (Remand Award at 14, 24). The arbitrator's cost-out of the percentage salary increase in 2022, including both the increase caused by the change to the 8-hour workday and the concomitant reduction in overtime costs, was 4.94%, which is significantly less than the MCPO's 14.3% calculation. (Remand Award at 24-25). Accordingly, the arbitrator determined that in the context of the cost of the full award, which amounts to 11.02% over three years (3.67% annually), the 8-hour workday and overall wage increase is reasonable and in the public interest. We find that the arbitrator's award of the 8-hour workday in the third year of the award is supported by the record evidence demonstrating comparability with other units

internally and externally, operational efficiencies recently touted by the Prosecutor, and by the overall financial impact on the cost-out of the award when accounting for minimum overtime savings.

We next address the arbitrator's award of a "blended proposal" that included some elements of each party's proposals, including the MCPO's three-year contract proposal and the PBA's 8-hour workday proposal. We find that the arbitrator provided a reasonable explanation for awarding the MCPO's three-year contract proposal with modest salary increases, rather than the PBA's five-year contract proposal, as well as awarding the 8-hour workday but delaying its implementation until the third year of the award rather than awarding the change and related salary increases immediately. (Award at 39-41; Remand Award at 15-17). The arbitrator balanced the parties' interests, as well as the public interest, regarding both contract duration and the overall costs of the award over the three-year term including the 8-hour workday. (Remand Award at 15-18, 23-25).

Finally, we decline to vacate the award based on the MCPO's arguments that the arbitrator failed to give due weight to statutory factors 16(g)(1), (3), and (7). Specifically, we reject the MCPO's contention that the award improperly offset or made up for PBA unit members' Chapter 78 health premium contributions. The award indicates no credit or offset for these

increased health insurance costs, but properly takes them into account as part of the detectives' "overall compensation" (16(g)(3)) and "cost of living." (16(g)(7)). (Award at 43-44).

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. The remand award is affirmed.

ORDER

The interest arbitration remand award is affirmed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Jones and Voos voted in favor of this decision. Commissioner Papero recused himself.

ISSUED: April 29, 2021

Trenton, New Jersey