

P.E.R.C. NO. 2021-28

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.

SYNOPSIS

The Public Employment Relations Commission remands an interest arbitration award to the arbitrator for a cost-out of his award that clarifies the net annual economic changes and annual costs of all base salary items. The MCPO appealed from the award setting the terms of a successor agreement with a non-supervisory detective unit (PBA) arguing, among other things, that the arbitrator did not cost-out his award. The Commission declines to decide the MCPO's other cost-related objections to the award prior to reviewing the arbitrator's cost-out on remand. The Commission retains jurisdiction and orders the parties to file supplementary briefs with it following receipt of the arbitrator's cost-out and clarification.

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.

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)

DECISION

On December 2, 2020, the Mercer County Prosecutor's Office (MCPO) appealed an interest arbitration award covering the PBA Local 339 (PBA) negotiations unit.<sup>1/</sup> The PBA consists of approximately 49 non-supervisory detectives employed by the MCPO. The MCPO and PBA are parties to a collective negotiations agreement (CNA) effective from January 1, 2018 through December 31, 2019. On January 17, 2020, the PBA filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A.

---

<sup>1/</sup> The PBA's December 16 response opposing the appeal included a request for oral argument. The PBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

34:13A-16(b)(2) to resolve an impasse over the terms of a successor CNA. On July 27, the interest arbitrator was appointed. After the parties failed to resolve their impasse at arbitrator-led mediation sessions, arbitration hearings were held on September 21 and 30, 2020. After the parties submitted post-hearing briefs by October 30, the record was closed.

On November 17, 2020, the arbitrator issued a 54-page conventional award setting the terms of a successor CNA for a term of three years from January 1, 2020 through December 31, 2022. The 2020 salary award provides for continued salary step advancement on the existing salary guide for all detectives, as well as a 1% salary increase at the top step only. The 2021 salary award also provides for salary step advancement and a 1% salary increase at top step only. The 2022 salary award does not provide for any salary step movement or across the board salary increases to any step on the salary guide. However, the 2022 salary award changes all detectives from an 8-hour workday consisting of a 1-hour unpaid lunch break and a 7-hour paid workday (35-hour paid work week; 1,820 paid work hours per year) to an 8-hour paid workday including a one-half hour paid lunch period in which detectives are subject to recall (40-hour paid work week; 2,080 paid work hours per year). The awarded schedule change for 2022 results in the following 2022 salary increase:

"The employees' annual salary shall be based on their January 1,

2021 hourly wage [which was based on 1820 annual hours] multiplied by 2,080 hours." The 2022 salary award also includes the addition of two steps to the salary guide between the 9<sup>th</sup> step and the 10<sup>th</sup> (top) step, thereby creating new steps 10 and 11 and making the top step the new step 12. The arbitrator also awarded language stating that the CNA will remain in effect "until a new agreement is reached" to ensure continued salary step movement when the CNA expires.

The award included the following non-salary items:

- A change in the Union Security provision to comply with the Workplace Democracy Enhancement Act (WDEA), by providing that revocation of dues deductions shall take place on the 30<sup>th</sup> day after the employee's anniversary date;
- A change in the Agency Shop provision to comply with Janus v. AFSCME, Council 31, et al., 138 S. Ct. 2448 (2018), by specifying that a unit employee who is not a union member may only pay a representation fee to the union by automatic payroll deduction by providing written, voluntary consent;
- Deletion of a provision that had permitted employees to take a non-paid leave of absence for up to four months while working for another governmental agency.

The award also included the following changes to the CNA that the parties stipulated to:

- Minor changes to the CNA's Longevity clause clarifying the years of service required and timing of longevity payments;
- A new clause specifying that all departmental investigations shall be conducted in accordance with the rules and regulations set forth in the

New Jersey Attorney General's "Internal Affairs  
Policy and Procedures."

The MCPO asserts that the interest arbitration award did not provide a cost-out to show the financial impact of the award on the governing unit and its taxpayers as required by N.J.S.A. 34:13A-16(g)(6), or to show the total net economic changes for each year of the award as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c). The MCPO argues that by stating the terms of the award without calculating a cost-out, the arbitrator did not show the cost for awarded items such as the change to the 8-hour workday in 2022. The MCPO contends that the award should be vacated and remanded and that the parties may request the arbitrator's permission to supplement the record with additional information for costing out the award.

The MCPO also asserted the following bases for appeal:

- The arbitrator improperly awarded the paid 8-hour workday by relying on mistakes of fact instead of substantial, credible evidence in the record as a whole;
- The arbitrator did not properly consider the "County Entity Budget Cap," P.L. 2015, c. 249, (CEBC) which caps county entity budget requests to be raised by property taxation to 2% of the previous year's budget;
- The arbitrator failed to give due weight to the interests and welfare of the public (N.J.S.A. 34:13A-16(g)(1));
- The arbitrator improperly awarded higher salary increases to defray Chapter 78 health benefit contributions.

The PBA responds that the arbitrator adequately set forth the parameters of his salary award by stating that salary step progression and 1% top step salary increases would occur in 2020 and 2021 and that the 8-hour workday and addition of two salary guide steps would be implemented in 2022. The PBA asserts that the arbitrator determined the cost of the award by stating that it would be less than the \$1.62 per year per County residential taxpayer calculated by the PBA's financial expert, Dr. Caprio, for the PBA's proposal. The PBA argues that even if the arbitrator's award cost-out was insufficient, the award can be remanded for the limited purpose of conducting the required cost-out without any need to submit additional evidence.

The PBA also responds 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;
- The arbitrator 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 adjustments to comply with the CEBC;
- 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 arbitrator did not offset increased Chapter 78 health insurance premium contributions with salary increases, but merely recognized their impact on total compensation.

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.

We first address the MCPO's assertion that the arbitrator failed to provide the requisite cost-out of the award to show the net annual economic changes and enable evaluation of the financial impact of the award under the subsection 16(g) (6) factor. N.J.S.A. 34:13A-16(d) provides, in pertinent part:

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.105 (C.34:13A-16.7).

We note that the limitations set forth in N.J.S.A. 34:13A-16.7, i.e., the 2% cap on average annual salary increases (P.L. 2010, c. 105; P.L. 2014, c. 11), have expired for this unit and are not applicable to this award. N.J.S.A. 34:13A-16.9. However, the determination of the "total net annual economic changes for each year of the agreement" in light of the 16(g) statutory factors remains a requirement for non-2% cap interest arbitration awards.

N.J.A.C. 19:16-5.9(c), as adopted in 2018, further specifies the necessary elements required for a cost-out to comply with N.J.S.A. 34:13A-16(d):

Where applicable, the arbitrator's economic award must comply with the two percent cap on average annual increases to base salary items pursuant to N.J.S.A. 34:13A-16.7, as amended by P.L. 2014, c. 11. In all awards, whether or not subject to the two percent cap, the arbitrator's decision shall set forth the costs of all "base salary" items for each year of the award, including the salary provided pursuant to a salary guide or table, any amount provided pursuant to a salary increment, any amount provided for longevity or length of service, and any other item agreed to by the parties or that was included as a base salary item in the prior award or as understood by the parties in the prior contract. These cost-out figures for the awarded base salary items are necessary in order for the arbitrator to determine, pursuant to N.J.S.A. 34:13A-16.d, whether the total net annual economic changes for each year of the award are reasonable under the statutory criteria.

[N.J.A.C. 19:16-5.9(c); emphasis added.]



In City of Orange Township, P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016), the Commission remanded an interest arbitration award in a non-2% cap case because it expressed the financial costs of the award as less than half of what the union's financial expert said the employer could afford, rather than specifically showing the net annual economic changes and costs of increases to base salary items. The Commission held:

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.

[City of Orange Tp., 43 NJPER 101.]

Similarly, in Cumberland County Prosecutor, P.E.R.C. No. 2012-66, 39 NJPER 32 (¶10 2012), the Commission remanded a non-2% cap interest arbitration award for failing to set forth the total dollar cost of the salary step progression for each year of the award. The Commission reasoned:

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.

[Cumberland Cty. Pros., 39 NJPER 32, 35.]

Even prior to the enactment of P.L. 2010, c. 105 and the 2% cap, the Commission remanded interest arbitration awards that did not provide the requisite data to exhibit compliance with the statutory requirement to determine whether the total net annual economic changes for each year of the award are reasonable under the 16(g) statutory factors. See, e.g., County of Passaic, P.E.R.C. No. 2010-42, 35 NJPER 451 (¶149 2009); Borough of Paramus, P.E.R.C. No. 2010-35, 35 NJPER 431 (¶141 2009). In County of Union, P.E.R.C. No. 2004-58, 30 NJPER 97, 102 (¶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."<sup>2/</sup>

The arbitrator's award indicates that he considered the record evidence submitted by both the MCPO and the PBA concerning the projected costs of their respective salary offers, including step movement, longevity, and the change to an 8-hour workday. (Award at 16-22, 31-35, 38-45). The arbitrator explained the

---

<sup>2/</sup> The statute cited in Union Cty., Paramus Bor., and Passaic Cty. containing the "total annual net economic changes" language, N.J.S.A. 34:13A-16(d)(2), was the predecessor to the current N.J.S.A. 34:13A-16(d).

terms of his salary award in terms of step movement, salary increases, and the adjustment to an 8-hour workday, and set forth the modified 2022 salary guide including two new steps and the salary increase due to the 8-hour workday. (Award at 40-42, 50-52). In considering the financial impact on the governing unit, 16(g)(6), the arbitrator provided the following analysis comparing the terms of his salary award to the projections from the PBA's financial expert:

Dr. Caprio testified that under the Union's proposal the increase in wages to the bargaining unit, and that the effect on the average Mercer County residential property owner would be \$1.62 per annum. Since the proposed award is less than that sought by the Union, I conclude that the County will be able to afford the increased costs emanating from this award.

[Award at 44.]

Although the arbitrator explained that the overall cost of his award in the context of the average cost per residential taxpayer is less than Dr. Caprio's estimation of the cost of the PBA's proposal, the award did not specifically show the annual costs of his awarded step progression, top step raises, and conversion to the paid 8-hour workday. The award provides a scattergram indicating the numbers of unit members at each step of the salary guide as of the last day of the most recently expired CNA (Award at 15), but does not provide a cost-out of his awarded salary items as applied to the unit members. "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.” City of Orange Tp., 43 NJPER 101. We find that the arbitrator did not adequately present the total net economic change for each year of the award, including the costs of base salary, increments, and longevity as required by N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c). Accordingly, we remand the award for 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.

We note that there is no single correct methodology for costing out once the arbitrator has satisfied the requirements of N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c) discussed above. For instance, unlike in 2% cap cases, arbitrators may use their discretion in deciding whether the record supports the consideration of savings from retirements or costs from new hires that occurred since the previous CNA expired. Hopewell Tp., P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019); see also In re State, 443 N.J. Super. 380, 390 (App. Div. 2016), certif. den., 225 N.J. 221 (2016) (“except for failure to comply with the 2%

salary cap provision, we will not set aside an interest arbitration award for failure to apply a specific methodology.”)

At this time, we decline to decide the MCPO’s objection to the award of the 8-hour paid workday proposal for the year 2022 and other cost-related issues prior to seeing the full financial impact expressed as part of the arbitrator’s cost-out on remand. 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 a cost-out of his award that clarifies the net annual economic changes including the annual costs of all base salary items in compliance with N.J.S.A. 34:13A-16(d) and N.J.A.C. 19:16-5.9(c).

B. The interest arbitrator shall provide the cost-out and 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 MCPO shall have seven days to file a supplementary brief with the Commission limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand. The PBA shall then have

seven days from receipt of the MCPO's supplementary brief to file a supplementary response brief limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand.

BY ORDER OF THE COMMISSION

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

ISSUED: January 28, 2021

Trenton, New Jersey