

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

SYNOPSIS

The Public Employment Relations Commission affirms a remanded interest arbitration award between the Passaic County Sheriff's Office and PBA Local 197. Rejecting the PBA's assertion that the arbitrator committed plain error by ordering the parties to submit additional cost-outs on remand, and utilizing those cost-outs in his remand award, the Commission finds that its remand Order empowered the arbitrator to do so; and the facts he adduced therefrom were verifiable and comported with the relevant scattergram evidence in the record. The PBA did not dispute that evidence or identify any particular details in the County's cost-out on remand that could not also be so verified, or that could only be tested through the cross-examination of witnesses or through the presentation of other evidence not already in the record. The Commission further finds that the arbitrator properly declined to consider an award covering the same employer but a different bargaining unit that was issued some four months after the record here closed, finding its consideration was outside the limited scope of the remand Order. But even if it had been considered, the Commission does not find that the two awards are unreasonably inconsistent with one another, to a degree that would require reversal or modification of the remand 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. 2021-54

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PASSAIC COUNTY SHERIFF'S OFFICE,

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Docket No. IA-2021-005

PBA LOCAL 197,

Appellant.

Appearances:

For the Respondent, Florio Perrucci Steinhardt Cappelli
Tipton & Taylor, LLC, attorneys (Lester E. Taylor, III,
of counsel and on the brief)

For the Appellant, Crivelli & Barbati, LLC, attorneys
Frank M. Crivelli, of counsel and on the brief)

DECISION

On March 15, 2021, we remanded an interest arbitration award between the Passaic County Sheriff's Office (County) and PBA Local 197 (PBA). P.E.R.C. No. 2021-34, __ NJPER __ (¶____). 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. On May 13, 2021, the arbitrator issued a 30-page remand award.

Following the Commission's initial decision, the arbitrator conducted a March 19, 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 3.) After summarizing his initial award, the arbitrator clarified the economic aspects of the award. (Remand Award at 21-24.) Specifically, the arbitrator presented, compared, and analyzed the cost-outs provided by the parties. (Id.) The arbitrator found that the PBA's cost-out, which includes "breakage" savings, accounting for the loss of some employees and replacement of others, was more accurate. (Remand Award at 24.) However, he also determined that the County's cost-out made valid points, including that the PBA's cost-out failed to include two employees in its calculations, erroneously asserting one had retired and the other had resigned, and that employees at step 4 of the salary guide earned a higher salary than was indicated in the PBA's cost-out. (Remand Award at 23-24). The arbitrator explains that he verified the County's claims, respectively, by locating employees at the same step in the scattergram and tracing their salary progressions, and by reviewing the scattergram and locating employees whose pay was improperly listed. (Id., footnotes 8 and 9.) The arbitrator then revised the PBA's cost-out accordingly. Using the revised cost-out, the arbitrator provided the net annual economic changes

including the annual costs of all base salary items. (Remand Award at 24). He calculated the total cost of the award, as a percentage, as being 7.6% over the life of the contract, which equals a 1.52% average increase for each year of the CNA. (Id.)

The PBA and the County submitted supplemental briefs following the issuance of the remand award, as permitted by the remand Order in P.E.R.C. No. 2021-34, which directed that the parties' post-remand submissions be "limited to five pages and limited to responding to the cost-out and clarification provided by the arbitrator on remand." Id. at 13. Our decision also left "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." Id. at 12.

The PBA asserts that the arbitrator committed "plain error" by ordering the parties to submit additional cost-outs that were utilized in constructing his remand award, resulting in the County producing a cost-out that differed from those it submitted prior to the issuance of the initial arbitration award. The PBA asserts that the Commission must "reject the remand award in totality" because it did not have an opportunity to challenge the veracity of any of the County's cost-outs through the presentation of witnesses and evidence.

The PBA next asserts that the arbitrator committed plain

error by failing to consider Passaic County Sheriff's Office and PBA Local 286, IA-2021-004, an award issued by a different arbitrator on April 27, 2021, subsequent to the December 21, 2020 initial award in this matter. The PBA contends that, in light of a long-standing history of wage parity between Local 197 and Local 286, their prior history as a single bargaining unit, and the fact that both units work for the Passaic County Sheriff, the award in Passaic County, IA-2021-004 (which specified a 2% annual salary increase for Local 286 members from 2019 through 2023), is directly applicable to considering a "pattern of settlement" and for purposes of evaluating comparability of wages, salaries, hours, and conditions of employment of other law enforcement personnel in the same jurisdiction, citing N.J.S.A. 34:13A-16g(2)(c). The PBA further argues that a pattern of settlement is encompassed within N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. The PBA contends that a consideration of Passaic County, IA-2021-004, was within the scope of Commission's Remand Order, and the fact that it was issued on April 27, 2021, after the record had closed in the instant matter, was not grounds for the arbitrator to refuse to consider it, because as decisional precedent (which no party appealed), it does not have to be included in the evidentiary record. The PBA further emphasizes that in his analysis of

"breakage," the arbitrator properly considered another award, Mercer County Prosecutor's Office, IA-2020-008, that was issued on April 29, 2021, two days after Passaic County, IA-2021-004.

The County objects to the PBA's post-remand submission in its entirety on procedural grounds, arguing that by incorporating prior submissions by reference and attaching them as exhibits, the PBA exceeded the five-page limit set forth in the remand Order.

Next the County argues that a consideration of Passaic County, IA-2021-004, was outside the scope of the remand and the arbitrator's purview, because his role on remand was solely to calculate a cost-out of the initial award, not change or revise the award itself. The County argues that consideration of the Passaic County award would have been inappropriate, as it constitutes superfluous evidence, citing N.J.A.C. 1:1-2.1, which defines "evidence" as "the means from which inferences may be drawn as a basis of proof in the conduct of contested cases," and "[c]lose of the record" as "that time when the record for a case closes and after which no subsequently submitted information may be considered." The County argues that while it would have been appropriate for the arbitrator to consider decisional precedent or a change in the law that occurred after the close of evidence but before he issued his initial decision, the Passaic County, IA-2021-004, award does not fit those parameters, because it was

not issued until approximately 4 months after the close of evidence and the issuance of the initial award.

The County concedes that a pattern of settlement is relevant, but asserts that the variation between awards was based upon a substantial difference in the facts and circumstances of each matter, including as to the unions' size, salaries, training, job duties/responsibilities, etc. Therefore, the County argues, the arbitrator in IA-2021-004 was not bound to provide an identical award to the one issued here, and neither was the arbitrator in this matter bound by the award in IA-2021-004. Any consideration of the IA-2021-004 award by the arbitrator in this matter would have raised issues of fact, which was outside the scope of his review, and properly disregarded. The County disagrees with the arbitrator's decision in this matter relating to the utilization of breakage, but recognizes that he relied on the recent decision in Mercer County, IA-2020-008, only to affirm his legal conclusion about breakage, not to decide an issue of fact.

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 N.J.S.A. 34:13A-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, and reject, the PBA's assertion that the arbitrator committed plain error by ordering the parties to submit additional cost-outs on remand, and utilizing those cost-outs in his remand award. Our remand Order empowered the arbitrator with the discretion to do so. The arbitrator explained why he found the facts he adduced from County's cost-out on remand to be verifiable: they comported with the relevant scattergram evidence in the record. The PBA does not dispute the veracity of the scattergram evidence, and otherwise identifies no particular details in the County's cost-out on remand that could not also be verified through the record evidence, or that could only be tested through the cross-examination of witnesses or through the presentation of other evidence not already in the record.

We next address the PBA's assertion that the arbitrator committed plain error by failing to consider the award issued in Passaic County, IA-2021-004, which was issued on March 9, 2021. The PBA, over the County's objection, asked him to consider it on remand but, the arbitrator noted, "PERC's Order has directed me to cost-out the Initial Award. Therefore, I will not include [the IA-2021-004] Award in my analysis." (Remand Award at 15,

n.4.) We do not find that the arbitrator's refusal to consider the IA-2021-004 award on remand constitutes reversible error, or requires modification of the award on "pattern of settlement" grounds. Units of correctional officers and their superiors employed by the County have been bargaining separately since 2015. (Initial Award at 20-21; Remand Award at 13.) The arbitrator discussed the standards applicable to a pattern of settlement in both his initial award and on remand, quoting Tp. of West Windsor and P.B.A. Local 271, IA-2019-014 (2019). (Initial Award at 46-47; Remand Award at 16-17.)

We find that the arbitrator properly declined to consider the award issued in IA-2021-004. That award came out some four months after the record closed here, and its consideration was outside the limited scope of our remand Order. But even if it had been considered, we do not find, on this record, that the award issued in IA-2021-004, covering Local 286, and the award covering Local 197 in this matter, are unreasonably inconsistent with one another, to a degree that would require reversal or modification of the Remand Award. Moreover, the PBA initially argued that Local 286A, not Local 286, was the most comparable unit to Local 197. In its appeal of the Remand Award, the PBA does not challenge the arbitrator's determination that Local 197

is not directly comparable to Local 286A.^{1/} Our remand Order limited the issue on remand to a clarification of the arbitrator's cost-outs. We find the arbitrator's remand decision complies with our Order.

The fact that the arbitrator cited Mercer County, IA-2020-008, when discussing the issue of breakage in his Remand Award does not alter our conclusion. Although it also came out after the Initial Award in this matter, the Mercer County award comports with our decision in Hopewell Tp. and Hopewell PBA Local 342, P.E.R.C. No. 2020-10, 46 NJPER 117 (¶26 2019), which the arbitrator cited in both the Initial and Remand Awards, in concluding, as a legal matter, that after the statutory elimination of the 2% hard salary cap, interest arbitrators have discretion to consider breakage in their awards. (Initial Award at 28; Remand Award at 23.) Thus, the Mercer County decision merely tracked established precedent and did not consider additional factual evidence. The arbitrator's reliance on it, while refusing to consider the award in IA-2021-004, was not improper. The remand award is affirmed.

^{1/} Specifically, the PBA does not challenge the arbitrator's conclusion that Local 286A is not comparable to Local 197 because, unlike Local 197, Local 286A represents superior officers, who work in smaller units, and whose contracts provide for only limited step movement. (Initial Award at 33, 47; see also, Remand Award at 16-17.)

ORDER

The interest arbitration award, as supplemented by the remand award, is affirmed.

BY ORDER OF THE COMMISSION

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

ISSUED: June 24, 2021

Trenton, New Jersey