

P.E.R.C. NO. 99-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LODI,

Appellant,

-and-

Docket No. IA-97-1

PBA LOCAL 26,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award issued to resolve negotiations between the Borough of Lodi and PBA Local 26. The Commission remands the matter to the arbitrator for reconsideration in accordance with its opinion. The Borough had appealed the interest arbitration award.

The Commission finds that although the arbitrator thoroughly reviewed the evidence on all the criteria and appears to have considered all that evidence in arriving at his award, the opinion does not explain what factors he found most important or indicate why he gave those factors more weight than others. The Commission remands so that the arbitrator can issue an award articulating what factors and evidence he considered most important and explain how he weighed and considered all the evidence.

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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Appearances:

For the Appellant, Paul S. Barbire, attorney

For the Respondent, Loccke & Correia, attorneys,  
(Leon B. Savetsky, of counsel)

DECISION

The Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, N.J.S.A. 34:13A-14 to -21, authorizes the Commission to decide appeals from interest arbitration awards. N.J.S.A. 34:13A-16f(5)(a). We exercise that authority in this case, where the Borough of Lodi appeals from an April 20, 1998 award involving the patrol officers, sergeants, lieutenants and captains in its police department.

The arbitrator resolved the unsettled issues in dispute by conventional arbitration, as he was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16d(2). He fashioned a conventional award after reviewing the parties' final offers. Those offers were as follows.

The Borough proposed a four-year agreement from July 1, 1996 through June 30, 2000. For 1996-1997, the Borough proposed a wage freeze for all officers. For 1997-1998, 1998-1999, and 1999-2000, it offered 3% across-the-board increases for patrol officers, 2.5% across-the-board increases for sergeants and lieutenants, and 2% across-the-board increases for captains. It proposed that the increases not be retroactive. The Borough also proposed to replace the three-step salary guide with an eight-step guide, so that it would take patrol officers eight years to reach maximum salary. In addition, it proposed that current officers be frozen at their current longevity rate and that a new longevity program be implemented for new hires. It also sought to reduce, from 220 to 55 days, the maximum accumulated sick leave that an officer was entitled to be paid for upon retirement. Finally, the Borough sought a provision stating that it had the right to select an attorney for police officers when, under N.J.S.A. 40A:14-155, it is required to provide for an officer's defense.<sup>1/</sup>

The PBA proposed a four-year agreement from July 1, 1996 through June 30, 2000, with 6% increases in each year. It also proposed that officers be permitted to accumulate personal leave days from year to year and that officers be permitted to sell back accumulated personal days.

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<sup>1/</sup> N.J.S.A. 40A:14-155 requires a municipality to provide for an officer's defense when he or she is a defendant in an action arising out of the officer's lawful exercise of police powers in furtherance of his or her official duties.

The arbitrator fashioned a conventional arbitration award that established a four-year contract from July 1, 1996 through June 30, 2000, with 4% increases for all ranks for each year of the agreement (Arbitrator's opinion, p. 30). The increases for 1996-1997 and 1997-1998 were retroactive to July 1, 1996 and July 1, 1997, respectively (Arbitrator's opinion, p. 30). Effective July 1, 1998, the arbitrator awarded a six-step salary guide for patrol officers (entry level and five steps), so that patrol officers will reach maximum salary in six years (Arbitrator's opinion, p. 30). He denied the parties' other proposals (Arbitrator's opinion, p. 30).

In formulating his award, the arbitrator summarized the parties' arguments and evidence on each of the statutory criteria (Arbitrator's opinion, pp. 6-29). After this summary, the arbitrator concluded:

[I]t is my view that a four year contract should provide for a 4 percent annual increase across the board for each rank. These raises, to my mind, represent reasonable increases based on application of the relevant statutory standards. [Arbitrator's opinion, p. 29]

The Borough appeals. It contends that the salary increases awarded were too high and that the arbitrator placed too much weight on officers' community involvement and too little on the Borough's decision not to spend up to its Cap limit. It also maintains that the arbitrator disregarded the cost of living, and the wage increases received by state and federal workers, when he awarded 4% wage increases. It argues that the arbitrator's

findings on the financial impact criterion were "woefully deficient" and that the arbitrator noted the income generated by municipal court fines and a joint "911" service without taking into account associated costs and the net monies received from those sources. Finally, it maintains that the arbitrator misstated the number of officers in the unit and erred in finding that the continuity and stability of employment criterion had no application to the proceeding and in indicating that the Borough provides insurance to unit members at one-and-a-half rather than two times salary. It asks that we modify the award to more closely reflect its proposal or remand it to the arbitrator for reconsideration. The PBA counters that the arbitrator's opinion includes a comprehensive analysis of the evidence on all the statutory criteria and that the Borough does not offer a particularized challenge to that analysis.

In requiring that disputes be resolved by conventional arbitration unless the parties agree to another terminal procedure, the Reform Act entrusts the arbitrator with weighing the evidence and fashioning an award. An arbitrator must assess the evidence on individual statutory factors and then weigh and balance the relevant, sometimes competing, factors. In reviewing a challenge to an award, we will determine whether the arbitrator considered the criteria in N.J.S.A. 34:13A-16g and rendered a reasonable determination on the issues. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.A.C. 19:16-5.9.

Consistent with pre-Reform Act case law, we will vacate an award if 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. Cherry Hill Tp.; cf. PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 82 (1994); Div. 540, Amalgamated Transit Union, AFL-CIO v. Mercer Cty. Improvement Auth., 76 N.J. 245, 253 (1978). We will also vacate an award where the arbitrator did not explain the reasons for an award in the context of the statutory criteria. Salem Cty., P.E.R.C. No. 98-107, 24 NJPER 162 (¶29079 1998).

Fashioning a conventional arbitration award is not a precise mathematical process, Allendale Bor., P.E.R.C. No. 98-123, 24 NJPER 216 (¶29016 1998). Given that the statute sets forth general criteria rather than a formula, the setting of wage figures necessarily involves judgment and discretion and an arbitrator will rarely be able to conclusively demonstrate that his or her award is the only "correct" one. Allendale Bor. 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. However, the arbitrator should state what statutory factors he or she considered most important in arriving at the award, explain why they were given

significant weight, and explain how other evidence or factors were weighed and considered in arriving at a final award. Once an arbitrator has provided such a reasoned explanation for an award, N.J.A.C. 19:16-5.9, a party appealing an award to us must offer a particularized challenge to the arbitrator's analysis and conclusions. Cherry Hill Tp.

The arbitrator's opinion thoroughly summarizes the evidence on all the criteria and he appears to have considered all of that evidence in arriving at his award. However, the opinion does not explain what factors he found most important or indicate why he gave those factors more weight than others. We also do not know how he weighed and considered those factors in relation to other evidence or factors in arriving at his final award. As in most arbitration proceedings, the evidence did not point ineluctably to a particular salary increase. The 4% wage increases awarded in each year are somewhat less than interest arbitration awards and settlements in 30 Bergen County municipalities and close to the 4.3% increase in average private sector wages for 1996 (Arbitrator's opinion, pp. 5, 10-11). However, we cannot assess the Borough's arguments that the wage increases were not justified given the Borough's financial condition without, for example, an explanation of how the arbitrator weighed evidence of what he found to be the Borough's severe short-term budgetary difficulties vis-a-vis that concerning the Borough's strong tax base and high tax collection rate

(Arbitrator's opinion, p. 27).<sup>2/</sup> Similarly, we do not know what, if any, weight the arbitrator gave to the cost of living or the Borough's decision not to spend up to its Cap limit or use its Cap bank. In this posture, a remand is required so that the arbitrator can issue an award and opinion that expressly articulates what factors and evidence he considered most important and explains how he weighed and considered all of the evidence.

The arbitrator must also separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria, as required by N.J.S.A. 34:13A-16d(2); Cherry Hill Tp.; Rutgers, the State Univ., P.E.R.C. No. 99-11, 24 NJPER 421 (129195 1998). Finally, the arbitrator should explain the significance of the information presented concerning municipal court and "911" revenues and the potential, if any, for layoffs as well as resignations.

For these reasons, we vacate and remand this award to the arbitrator for reconsideration in accordance with this opinion. We direct that the arbitrator issue a new opinion and award no later than 45 days from the date of this decision.

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<sup>2/</sup> The Borough does not challenge these last two findings.



ORDER

The award is vacated and remanded for reconsideration in accordance with this opinion.

BY ORDER OF THE COMMISSION

*Millicent A. Wasell*

Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Wenzler was not present.

DATED: September 24, 1998  
Trenton, New Jersey  
ISSUED: September 25, 1998