P.E.R.C. NO. 2003-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION LOCAL NO. 23,

Appellant,

-and-

Docket No. IA-2000-56

CITY OF EAST ORANGE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and remands in part an interest arbitration award issued to resolve negotiations between the City of East Orange and Firemen's Mutual Benevolent Association Local No. 23. The FMBA appealed the award alleging that the awarded salary increases are too low and that the arbitrator did not give due weight to several of the statutory factors. The Commission remands the award to the arbitrator for the limited purpose of allowing the arbitrator to address the issue of whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000. The Commission concludes that except for this limited issue, the arbitrator reached a reasonable determination of the issues and the award is supported by substantial credible evidence. While a full remand is unnecessary, the award is stayed pending issuance of a supplemental opinion and award within 30 days from the date of this decision.

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, Courter, Kobert, Laufer & Cohen, attorneys (Fredric M. Knapp, of counsel)

For the Respondent, DeCotiis, Fitzpatrick, Gluck & Cole, LLP, attorneys (J.S. Lee Cohen, of counsel; Avis Bishop-Thompson, on the brief)

DECISION

Firemen's Mutual Benevolent Association Local No. 23 appeals from an interest arbitration award involving a negotiations unit of approximately 138 uniformed firefighters, linemen and dispatchers. N.J.S.A. 34:13A-16f(5)(a).

The arbitrator issued a conventional arbitration award, as she was required to do absent the parties' agreement to use another terminal procedure. N.J.S.A. 34:13A-16f(2).

The parties' final offers were as follows.

The City of East Orange proposed a five-year contract from July 1, 1999 through June 30, 2004, with a 0.5% increase effective July 1, 1999; a 1% increase effective July 1, 2000; a 1.5% increase effective July 1, 2001, and 2% increases effective

on July 1 of 2002 and 2003. It also proposed that new hires be paid a $25,000 probationary salary throughout their working test period, at the end of which they would be placed on a new seven-step salary guide. The City also sought to eliminate longevity payments for new hires, and to freeze current employees' longevity payments at their current dollar amounts. It sought to reduce temporary disability payments to the statutory minimum, or approximately 70% of the employee's wages. With respect to health benefits, it sought to increase HMO co-pays and institute premium co-payments for current employees and retirees with traditional coverage. Finally, it proposed, for employees who are promoted, that their "time on the books" be frozen at the dollar value immediately preceding the promotion.

The FMBA also proposed a five-year contract from July 1, 1999 through June 30, 2004, with 2% increases effective July 1, 1999, January 1, 2000, July 1, 2000, and January 1, 2001. It proposed a 3.75% increase effective July 1, 2001, a 4% increase effective July 1, 2002 and a 4.25% increase effective July 1, 2003. In addition, it proposed that, effective July 1, 2001, holiday pay be included in base salary from the date of hire. The FMBA also proposed to reduce the starting salary for a probationary firefighter to $25,500 and to increase from five to six the number of salary guide steps required to achieve the Firefighter First Grade rank. It sought additional vacation days for firefighters with fifteen years of service; proposed an

increase in the clothing allowance from $525 to $600, and sought tuition reimbursement for courses taken to obtain an associate's or bachelor's degree. It also proposed increases in prescription co-pays and HMO doctor visit co-pays. Finally, it asked that the City be directed to negotiate over the impact of its alternate duty policy and sought a provision specifying that the City assign acting captains on a rotating basis by seniority.

The arbitrator awarded a five-year contract from July 1, 1999 through June 30, 2004 with 1% increases for fiscal years 2000 and 2001 and 3.5% increases for fiscal years 2003 and 2004. She awarded no across-the-board increase for fiscal year 2002 but, effective July 1, 2001, awarded the FMBA's proposal to include holiday pay in base salary from the date of hire. She also awarded the $25,000 starting salary proposed by the City; directed that the salary guide have six steps after the probationary level; and awarded the FMBA's proposal for prescription and HMO doctor visit co-pays. She directed the City to negotiate with the FMBA over the impact of the alternate duty policy and, at the FMBA's request, the proposal to assign acting captains on a rotating basis in order of seniority. All other proposals were denied.

On June 17, 2002, three days after the arbitrator issued the award, she sent the parties new versions of two award pages. As we discuss later, the replacement pages corrected arithmetical and typographical errors.

On June 25, 2002, the FMBA's attorney wrote to the arbitrator and requested that she clarify the award with respect to the amount of holiday pay included in base salary. On June 28, the City's attorney responded that she could not consent to the request for clarification until she consulted with her client. The award was appealed on July 1, 2002 and the arbitrator has not ruled on the clarification request.

The FMBA appeals, alleging that the awarded salary increases are too low and that the arbitrator did not give due weight to several of the statutory factors, N.J.S.A. 34:13A-16g. It also maintains that the arbitrator abused her discretion in allowing the late submission of the City's final offer and lacked authority to change the award without mutual consent. It asserts that its clarification request, and the arbitrator's June 17, 2002 letter making changes to the award, demonstrate that the arbitrator did not issue a final and definite award, as required by N.J.S.A. 2A:24-8. It asks that we modify the award to provide for salary increases consistent with the evidence. In the alternative, it requests that we remand the case to a different arbitrator.

The City counters that the arbitrator awarded wage increases based on a reasonable determination of the issues. It also maintains that the arbitrator appropriately exercised her discretion and authority in allowing the City to submit its final offer when it did and in making the June 17, 2002 corrections.

However, it maintains that there is no ambiguity in how the arbitrator calculated the amount of holiday pay included in base salary and that this aspect of the award is not grounds for vacation or remand.

The standard for reviewing interest arbitration awards is now established, and was recently affirmed by the Appellate Division. 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. Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199), aff'd in part, rev'd and remanded in part on other grounds, 353 N.J. Super. 289 (App. Div. 2002), certif. granted, ___ N.J. ___ (2002); City of Clifton, P.E.R.C. No. 2002-56, 28 NJPER 201 (¶33071 2002), app. pending App. Div. Dkt. No. A-4573-01T2; 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. 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-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

We consider the FMBA's appeal within this framework. Preliminarily, we decline to disturb the arbitrator's discretionary decision to allow the late submission of the City's final offer. N.J.A.C. 19:16-5.7(f) states that the parties must submit their finals offers to the arbitrator, and to each other, ten days prior to the hearing. The City submitted its offer on the third day of hearing, without objection by the FMBA, and the FMBA extensively cross-examined the City's witness. The award resolved the unsettled issues, and the FMBA has not shown that it was prejudiced by the arbitrator's decision. Compare Borough of Bogota, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (employer not prejudiced by union's failure to submit written final offer). While we reiterate that compliance with N.J.A.C. 19:16-5.7(f) ensures that the proposals to be considered by the arbitrator are identified prior to the proceeding, Bogota, the arbitrator's decision to relax the rule's time requirement is not a basis to vacate this award.

We turn now to the FMBA's challenges to the across-the-board salary increases awarded.

This is the background.

The FMBA's salary proposal would have resulted in a non-compounded increase of 20% over the life of the contract,

resulting in a maximum salary of $63,850, while the City's proposal would have resulted in a 7% non-compounded increase, or a maximum salary of $56,209.[1/] In urging adoption of its proposal, the FMBA emphasized that the maximum salary for the unit ranked below that of most other firefighters in Essex County; stressed that award of the City's proposal would expand that gap; and noted the high level of firefighting activity in the City, including over eighty major fires in 2000 and five civilian fatalities. It asserted that the City's economic proposals would, if awarded, result in a package substantially lower than the cost of living.

The FMBA recognized that the City had experienced a series of cumulative deficits beginning in 1997. However, it stressed that the City had been able to generate budget surpluses in 2000 and 2001 and argued that the City's finances had improved to the extent that it could reasonably and equitably compensate its employees. It maintained that its salary offer would provide an incentive for unit members to remain with the City and that its proposal to include holiday pay in base salary was a relatively inexpensive way to increase firefighter base salaries.

The City argued that its "spartan" offer was the only offer that would not negatively affect City finances and the

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1/ These figures do not reflect inclusion of holiday pay in base salary, which the FMBA proposed to take effect July 1, 2001.

public interest. It stressed that, in October 1999, it was placed under State supervision, after having accumulated deficits and deferred charges of close to $26 million, or approximately 25% of its budget. While it acknowledged that "recent years have seen somewhat of a fiscal recovery," it maintained that its fiscal situation was still fragile and that the FMBA's financial analysis did not take into account that, at the close of the June 30, 2001 fiscal year, it still had an accumulated deficit of over $8 million that had to be paid off in fiscal years 2002 through 2004. It asserted that it does not have a true operating surplus; has been required to issue tax anticipation notes to meet revenue needs; and has relied substantially on State aid. It also cited a decline in tax ratables and a recent increase in taxes and tax title liens.

In addition, the City asserted that the firefighters' compensation was adequate given the City's fiscal constraints and "was generally on par with state and local government employees and private sector employees." It also urged the arbitrator to consider that increases of the magnitude proposed by the FMBA would hamper its ability to comply with the CAP law, since retroactive salary increases for fiscal years 2000 and 2001 would have to be funded out of the budget for subsequent fiscal years,

along with any increase awarded for those years.[2/] Finally, it asserted that the FMBA's proposal to include holiday pay in base pay would increase the overtime rate and the City's pension contributions.

The arbitrator analyzed these arguments and evidence in the context of all of the statutory criteria and stated the relative weight she gave to each factor. For example, she noted that the public interest was of prime importance and that it supported a compromise between the two offers. She reasoned that the evidence on this factor was in equipoise with respect to the competing interests it encompassed -- the need for fiscal constraint versus the need for an adequately compensated work force. She accorded "considerable weight" to the overall compensation criterion and found that unit members' total compensation was lower than it should be considering such factors as workload, population, number of calls per year, number of vacant buildings, level of crime, relative poverty of citizens and the relative wealth of the community (Arbitrator's opinion, pp. 9, 14).

Similarly, she found that comparisons with the salaries of firefighters in adjacent locales, including similarly situated cities, "pointed in the direction of the FMBA's somewhat too

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2/ The City's financial expert testified that no money was set aside in the fiscal year 2000 budget for a salary increase, and that "very limited" funds were set aside in the fiscal year 2001 budget (T403-T404).

expensive offer." She gave "little weight" to the evidence concerning private sector wage increases and the average percentage increases included in recent interest arbitration awards, commenting that, in her view, raw percentages are not reliable for setting increases in a particular municipality. She found that the continuity and stability of employment criterion was of minimal assistance in resolving the impasse and, as we discuss later, she gave little weight to the cost of living. (Arbitrator's opinion, pp. 12-13, 19).

Finally, the arbitrator determined that the financial impact and lawful authority criteria were entitled to significant weight. (Arbitrator's opinion, p. 18). She concluded that the City's estimate of the financial impact of an award above its offer was overstated, reasoning:

> The City has amply demonstrated that it has suffered through devastating economic reverses over the past several years. The record also establishes that the City's aggressive efforts over the past few years have succeeded in reversing the City's economic downslide. The evidence supports the proposition that the City can afford an increase in firefighter salaries that are in line with similar Essex County municipalities. [Arbitrator's opinion, p. 18]

In setting the terms of the award, she concluded that:

> [S]alaries should be increased to a level that brings the top salary above $61,500, which is the County average for 2002 and the anticipated top rate in Irvington in 2003, by the time the agreement expires. This would be accomplished by awarding the FMBA's holiday fold-in proposal. In consideration of the fact that several budget years have already passed, I have awarded only 2% for the first two years,

> 1999 and 2000, with larger increases towards the end of the contract. [Arbitrator's opinion, pp. 19-20]

The arbitrator commented that the award would increase base salary by 17% -- counting the holiday fold-in as an 8% increase -- without making an untenable dent in the City's budget. She noted that the award was considerably less costly than the FMBA's last offer but found it was high enough to begin to bring East Orange firefighter salaries in line with wage levels in similarly situated municipalities. The arbitrator recognized that the fold-in was not new money in 2001, since it otherwise would have been paid as a lump sum (Arbitrator's opinion, p. 20).

The FMBA maintains that there is no reasoned explanation for the award and that it is inconsistent with her analysis of comparability, financial impact, and the public interest, as well as her stated intention to provide for increases comparable to those received by similarly situated firefighters. It also argues that she did not give due weight to the prior interest arbitration award for this unit or to evidence concerning internal settlements, the cost of living, and private sector employment. It asserts that she exceeded her authority by not awarding an across-the-board salary increase for fiscal year 2002, even though each party had proposed one.

We have often stressed that fashioning a conventional arbitration award is not a precise mathematical process. 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 an award is the only "correct" one. Lodi; see also City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999); Borough of Allendale, P.E.R.C. No. 98-123, 24 NJPER 216 (¶29103 1998). Further, some of the evidence may be conflicting and an award is not necessarily flawed because some pieces of evidence, standing alone, might point to a different result. Lodi.

Within this framework, we find that the arbitrator provided a reasoned explanation for the award and gave due weight to the statutory factors, reached a reasonable determination of the issues, and issued an award supported by substantial credible evidence.

Considered in isolation, certain of the arbitrator's comments could be read as pointing to increases higher than those she awarded. For example, she stated that comparability weighed in favor the of the FMBA's "somewhat too expensive" offer and commented that the City could afford an increase -- which could suggest a percentage increase -- in line with those granted in similar Essex County municipalities. However, read as a whole, there is no inconsistency between the awarded increases and the arbitrator's findings and discussions concerning comparability, financial impact, lawful authority, and the public interest.

The linchpin of the award is the arbitrator's conclusion that, by the end of the contract, the base salaries of unit members should be above the average 2002 salary for Essex County firefighters and at the level of the anticipated 2003 salary for firefighters in Irvington -- a community both parties found to be comparable to East Orange. The FMBA does not question this objective or challenge the accuracy of the salary figures the arbitrator cites. Instead, it argues that the arbitrator should have placed greater weight on the percentage increases received by public safety employees in other jurisdictions. However, it does not raise any particularized challenge to the arbitrator's decision to focus on actual dollar figures, rather than raw percentages, in setting her award. That decision was an appropriate exercise of her discretion and we will not disturb it. Compare Fox v. Morris Cty., 266 N.J. Super. 501, 518 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994) (disapproving arbitrator's focus on percentage increases in making comparisons between groups of law enforcement employees, and stressing that the statute requires a discussion of actual dollar figures).

Similarly, we find that the increases awarded are consistent both with the arbitrator's finding that the public interest evidence was in equipoise and her characterization of the financial impact evidence. The thrust of her discussion on these factors -- with which the FMBA appears to agree -- was that the City had suffered devastating economic reversals; was emerging

from that crisis; and could afford an award above its offer so that firefighter salaries could begin to be brought in line with those of comparable communities. The salaries that will result from this award accord with this discussion: the maximum salary at the end of the contract term is $61,623 -- slightly above the anticipated 2003 salary for Irvington. Moreover, the arbitrator declined to award City proposals -- the freeze on longevity, reduction of temporary disability payments, and health insurance premium co-payments -- which would have negatively affected the unit's overall compensation but which the City had argued were necessary given its financial condition.

The FMBA focuses on the increases in the first years of the contract and argues that they are inconsistent with the evidence and the arbitrator's own discussion. However, we review an award as a whole to determine whether it represents a reasonable determination of the issues and is supported by substantial credible evidence. Allendale. In any case, the arbitrator stated that she structured the award in the manner she did because several budget years had already passed when the award issued in July 2002. She thus implicitly accepted, and gave weight to, the City's argument that there were limited funds available for retroactive increases and that increases for the entire contract term would have to be funded from the 2002-2004 fiscal year budgets. In this posture, we decline to disturb the arbitrator's judgment concerning the increases awarded for July 1999 through June 2001.

In that vein, the award is not per se invalid because the arbitrator did not direct an across-the-board increase for July 2001 through July 2002, even though both parties had proposed such an increase. See Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78 (¶29043 1997) (conventional award is not necessarily flawed because, in evaluating the relationship among, or combined effect of, different proposals, the arbitrator goes outside the parties' positions on one of the issues in dispute).

Instead of an across-the-board increase, the arbitrator awarded the FMBA's proposal to include holiday pay in base salary, a proposal that the FMBA had argued was an important part of its total economic package and one that would help further its goal of raising unit members' base salaries to the level of firefighters in other jurisdictions. The arbitrator accepted the FMBA's position that the proposal was a relatively inexpensive way to improve firefighter compensation while at the same time recognizing that it entailed additional costs to the City -- in the form of higher overtime payments and pension contributions -- that would not be triggered if holiday pay continued to be paid as a lump sum. The arbitrator explained that those additional costs were offset by other elements of the award including, presumably, the lack of an across-the-board increase for fiscal year 2002 (Arbitrator's opinion, p. 22). We note that the fold-in enhanced the effect of the across-the-board increases awarded for the final two years of the contract and will increase overtime payments.

In this posture, we find no basis to disturb the arbitrator's exercise of discretion in awarding only the fold-in for one year of the five-year contract, where it was linked to her objective of raising maximum base salaries, by the end of the contract term, to the level of Irvington firefighters. Compare Hudson Cty. Prosecutor (arbitrator appropriately exercised discretion in awarding, for one year only, step advancement proposed by union, even though both parties had proposed across-the-board increases for each year of the contract).

Nor are we persuaded that, in assessing the financial impact of the award, the arbitrator should have given more weight to the predecessor award for this unit or viewed it as a model for the percentage increases that should be granted given the City's fiscal condition. The arbitrator noted that the award had granted 12.25% in increases over a three and one-half year term. The award included a 3.25% increase in January 1999, when the City was experiencing serious financial problems. However, the City had offered 2.5% to 3.5% in that proceeding; the prior arbitrator found that the City had made a compelling case that its financial condition was tenuous; and he awarded increases much closer to the City's offer than to the FMBA's (Aa, Exhibit 3, pp. 28-29, 33). The award was issued in December 1998, prior to the State supervision plan going into effect in October 1999. In these circumstances, the FMBA has not explained why the award is probative of the increases that should have been awarded for the July 1, 1999 through June 30, 2004 contract term.

We next discuss the FMBA's objections to the arbitrator's analysis of internal comparability evidence, the cost of living, and private sector wage increases.

The FMBA contends that the award is inconsistent with the arbitrator's acknowledgement that two non-public safety units received increases of 2.5%, 3%, and 3.5% in 1997 through 1999, as well as with her statement that, during 1992-1999, the salary ranges of certain City employees and officials increased by 31%. While the arbitrator noted this information, it did not appear to weigh significantly in her analysis of the increases that should be awarded for this unit (Arbitrator's opinion, p. 20). That exercise of judgment is not a basis to disturb the award.

Preliminarily, as we have noted, the arbitrator reasonably exercised her discretion in fashioning an award that focused on the actual salary to be achieved by the end of the contract, rather than on the percentage increases received by other groups. That analysis is also pertinent here. Further, because the noted evidence for the most part covers periods prior to the term of this contract, it is less probative of what should be awarded for July 1, 1999 through June 30, 2004 than more current percentage figures. In any case, under the prior award, this unit received 3% increases for 1997 and 1998 and a 3.25% increase for January 1, 1999 through June 30, 1999. This arbitrator awarded a 1% increase for July 1, 1999 through June 30, 2000. Therefore, this unit received greater increases for calendar years 1997, 1998, and 1999 than the units the FMBA cites.

With respect to the salaries of non-unionized City employees, the City maintains that their salaries were frozen between 1992 and 1999 and that, in asserting that their salaries increased by 31% during that period, the FMBA relies on a proposed salary ordinance (Aa, Exhibit 28) that was never adopted. The FMBA did not seek to rebut that assertion. In any case, it appears that this unit received non-compounded salary increases of 27.25% between 1993 and 1999 (Aa, Exhibits 2 & 3).

Finally, we turn to the arbitrator's discussion of the cost of living and private sector wage increases.

The arbitrator noted the FMBA's position that the City's offer would result in wage increases substantially lower than the cost of living, as reflected in the Consumer Price Index (CPI), as well as the City's contention that the FMBA had proposed increases far in excess of that figure. After noting that the FMBA had submitted recent CPI figures, she stated:

> This criterion is entitled to little weight in this decision. Bargaining gains over the past decade have raised public sector wages to respectable levels compared with increases in the cost of living. [Arbitrator's opinion, p. 18]

N.J.S.A. 34:13A-16g(7) requires an arbitrator to consider cost of living evidence unless he or she explains why the factor is not relevant to a particular proceeding, and we would not endorse an analysis that found the criterion irrelevant given general wage trends. However, reading the award as a whole, it appears that the arbitrator placed the greatest weight on the comparability,

financial impact, overall compensation and public interest criteria, and found that the cost of living evidence did not warrant an award higher or lower than was indicated by those criteria. In this posture, we find no basis to remand the award for the arbitrator to reconsider whether the cost of living evidence would support a different award.3/

With respect to private sector employment evidence, the arbitrator cited New Jersey Department of Labor statistics showing that average private sector wages increased 3.9% in 1999 and that, for the first nine months of 2000, the Newark labor area showed greater employment growth than the State as a whole. The arbitrator then stated:

> This factor is more important in terms of East Orange citizens than it is for determining what a reasonable wage increase would be. Notwithstanding that the City appears high on overall poverty indexes, the data include favorable economic indicators for those individuals employed in the private sector. The FMBA's offer is slightly higher than average private sector settlements in 1999. The City's offer is well below that figure. This criterion is given little weight in setting the economic package. [Arbitrator's award, p. 13]

The thrust of this analysis is that there is a tension between the City's own financial condition and the 1999 private sector wage

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3/ The CPI for all urban consumers -- the evidence submitted by the FMBA -- increased 10.4% between 1999 and the first half of 2002, U.S. Bureau of Labor Statistics, www.bls.gov, and the arbitrator awarded 9% in new money, plus the holiday fold-in.

increases, such that the arbitrator found the latter should not be a significant factor in determining wage increases. That conclusion is supported by substantial evidence.

Finally, we turn to the FMBA's contention that the award should be vacated and remanded because, given its clarification request and the arbitrator's own decision to change the award, the award is not final and definite, as required by N.J.S.A 2A:24-8.

The FMBA argues that an arbitrator may not clarify or interpret an award without both parties' consent. This principle is codified in the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (Code), which is in turn incorporated in N.J.A.C. 19:16-5.10. However, a correction is distinct from an interpretation or clarification and we conclude that the arbitrator's corrections do not affect the validity of the award.

In the non-interest arbitration context, N.J.S.A. 2A:24-9a provides that a court shall modify or correct an award where "there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to therein." This section enables a court to correct simple arithmetical errors or obvious mistakes in identification. Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 359 (1993); see also Creter v. Davis, 30 N.J. Super. 60 (Ch. Div.), aff'd 31 N.J. Super. 402 (App. Div. 1954). The Reform Act

gives us authority to modify awards and states that an award may be appealed on the grounds that it did not comply with N.J.S.A. 2A:24-9. See N.J.S.A. 34:13A-16f(5)(a). Thus, we have authority to make the types of corrections or modifications referred to in N.J.S.A. 2A:24-9.

The changes the arbitrator made here were of the type referred to in N.J.S.A. 2A:24-9a. The award as initially issued, like the corrected award, set out the maximum salary that would result from the award and directed that holiday pay be included in base salary effective July 1, 2001. The arbitrator stated that this fold-in represented 8% of base salary and, in adding that figure to the across-the-board increases awarded, she calculated that the award increased base salary 16%, with a "new money payout" of 8%. The latter two figures were simple arithmetical errors that were apparent on the award's face: the increases of 1%, 1%, 3.5%, 3.5%, plus the 8% fold-in, add up to 17%, while the two 1% and two 3.5% increases add up to 9%.

The second error was an evident mistake in description that was also apparent on the award's face. In summarizing the proposals she had granted and the increases she had directed, the arbitrator stated that the term of the award was from July 1, 1999 through June 30, 2003, even though both parties had proposed a contract extending through June 30, 2004 and the arbitrator had earlier stated that the contract term was July 1, 1999 through June 30, 2004 (Arbitrator's opinion, p. 19).

These minor typographical and arithmetical errors did not affect the finality and definiteness of the award and, while there is no express statutory or Code authority for an arbitrator to correct an award, no interest would be served by vacating and remanding the award on this ground. This is particularly so because, if the arbitrator had not made the corrections, we would have had the authority to do so on appeal.

On the other hand, we conclude that a limited remand is necessary for the arbitrator to explain one aspect of the holiday pay portion of the award.

The FMBA maintains that the lump sum holiday payments received by unit members prior to July 1, 2001 should have been enhanced by the percentage increases the arbitrator granted on July 1, 1999 and July 1, 2000 before being included in base salary.4/ The City counters that there is no ambiguity concerning how the arbitrator included holiday pay in base salary and no basis for a remand or clarification.

Because the arbitrator did not discuss whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000, we cannot assess the FMBA's arguments. Accordingly, we are remanding this matter for the limited purpose of allowing the arbitrator to address that point. The arbitrator shall issue a supplemental

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4/ Under the FMBA's calculations, the maximum base salary at the end of the contract would be $61,710 instead of $61,623.

opinion and award that reflects her consideration of the issue, and shall do so within 30 days from the date of this decision, absent an extension of time for good cause shown.

Except for this limited issue, the arbitrator reached a reasonable determination of the issues and her award is supported by substantial credible evidence. While a full remand for reconsideration of the entire award is unnecessary, the award is stayed pending issuance of the arbitrator's supplemental opinion and award.

ORDER

The award is affirmed in part and remanded in part for the limited purpose of allowing the arbitrator to address whether the holiday pay included in base salary effective July 1, 2001 should reflect the increases awarded on July 1, 1999 and July 1, 2000. The arbitrator shall issue a supplemental opinion and award that reflects her consideration of that point, and shall do so within 30 days from the date of this decision, absent an extension of time for good cause shown. The award is stayed pending issuance of the arbitrator's supplemental opinion and award.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Ricci and Sandman voted in favor of this decision. Commissioner Mastriani abstained from consideration. None opposed. Commissioner Katz was not present.

DATED: December 19, 2002
Trenton, New Jersey
ISSUED: December 20, 2002