

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BYRAM,

Appellant,

-and-

Docket No. IA-2013-012

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

In the Matter of

TOWNSHIP OF BYRAM,

Petitioner,

-and-

Docket No. SN-2013-045

SUSSEX COUNTY PBA LOCAL NO. 138
(BYRAM TOWNSHIP UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms in part and vacates in part an interest arbitration award establishing the terms of an agreement between the Township of Byram and the Sussex County PBA Local No. 138 (Byram Township Unit). The Commission vacates the portion of the award allowing payments for unused sick leave for officers who remain employed, reasoning that it is not simply a different method of receiving benefits already earned, but is a new economic benefit not contained in the parties prior agreement, thus violating N.J.S.A. 34:13A-16.7. The prior agreement had allowed such payments only on retirement or separation from employment. The arbitration award is otherwise affirmed.

The Commission dismisses, as moot, a scope of negotiations petition related to the interest arbitration proceeding, as the one proposal identified in the petition and awarded by the arbitrator, was not part of the employer's appeal from the 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. 2013-72

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Respondent.

Appearances:

For the Appellant/Petitioner, Laddey, Clark & Ryan,
attorneys (Thomas N. Ryan and Jessica A. Jansyn, on
the brief)

For the Respondent/Respondent, Loccke Correia, Limsky &
Bukosky, attorneys, (Richard D. Loccke, of counsel and
on the brief)

DECISION

On March 11, 2013, a 90 page interest arbitration award was issued to resolve a negotiations impasse between the Township of Byram and the Sussex County PBA Local No. 138 (Byram Township Unit), the representative of the Township's police officers, over

the terms of a collective negotiations agreement to succeed the one that had expired on December 31, 2012.

On March 20, 2013, the Township filed a Notice of Appeal and supporting brief seeking to overturn four aspects of the Award:

- Annual salary increases awarded by the arbitrator;
- New language concerning the procedure for police to apply for approval of tuition reimbursement of college courses;
- Giving employees with large amounts of accumulated, but unused, sick leave, the option of receiving payment for some of the leave while still employed;
- The directive to the parties to study health insurance options for sixty days, after which the arbitrator would make an award if the parties had not reached agreement.^{1/}

On March 26, 2013, the PBA filed a response in opposition to the PBA's appeal.^{2/}

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the factors are deemed relevant, satisfactorily

1/ The Township also filed a petition for scope of negotiations determination (Docket No. SN-2013-045) asserting that several PBA proposals were not mandatorily negotiable. The petition was referred to the arbitrator for a decision. The arbitrator found two of the disputed proposals were not mandatorily negotiable; one issue was withdrawn and another was not awarded. The remaining proposal was awarded by the arbitrator, but the Township's appeal does not contest that ruling. As the PBA has not appealed the arbitrator's ruling that two of its proposals were not mandatorily negotiable, we need not rule on the issues raised by the scope of negotiations petition. See N.J.A.C. 19:16-5.7(i).

2/ The Township's request for oral argument is denied. The matter has been fully briefed.

explain why the others are not relevant, and provide analyze the evidence on each relevant factor. The statutory factors are:

- (1) The interests and welfare of the public
. . . ;
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) in private employment in general . . . ;
 - (b) in public employment in general . . . ;
 - (c) in public employment in the same or comparable jurisdictions;
- (3) the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received;
- (4) Stipulations of the parties;
- (5) The lawful authority of the employer
. . . ;
- (6) The financial impact on the governing unit, its residents and taxpayers
. . . ;
- (7) The cost of living;
- (8) The continuity and stability of employment including seniority rights
. . . ; and

- (9) Statutory restrictions imposed on the employer. . . .

[N.J.S.A. 34:13A-16g]

We will not vacate an interest arbitration award unless 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. 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 judgment unless an appellant shows that the arbitrator did not adhere to the standards. Teaneck, 353 N.J. Super. at 308-309; Cherry Hill. The Appellant must show how the arbitrator misapplied the law. See City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242, 243 (¶30103 1999).

Payment of accumulated sick leave during active employment

The most recent agreement provides that:

- At retirement, an officer will be paid for accumulated, unused sick leave at the rate of one hour of pay for every two hours in the officer's sick leave bank;
- An officer who terminates employment with the Township in good standing, at any time prior

to retirement, will be compensated for unused, accumulated sick leave at the rate of one hour of pay for every four hours in the officer's sick leave bank.

The PBA proposed a third method of payment for unused sick leave available only to officers with large balances (750 or more hours) of accumulated sick leave. The proposal would allow an officer to a "cash-out" of up to 240 hours of the accumulated leave at the end of a calendar year, provided that the payment, a maximum of 120 hours of compensation, would not reduce the officer's sick leave balance below 750 hours.^{3/} The subtraction of 240 hours from the officer's sick leave bank must keep the balance at no less than 750 hours, assuming no other use of sick time. The arbitrator awarded this proposal, but included language requiring that an officer submit a notice to the Township by July 1 listing how much leave was to be cashed in.

The Township argued to the arbitrator, as it now does to us, that the PBA proposal cannot be awarded, because it is a "new economic benefit," prohibited by N.J.S.A. 34:13A-16.7. This statute provides in pertinent part:

An award of an arbitrator shall not include
base salary items and non-salary economic

^{3/} Thus, under these conditions, an officer with 990 hours of unused sick leave could exchange 240 hours for a cash payment equivalent to 120 hours of compensation at the officer's rate of pay for that calendar year. The Interest Arbitrator's report [at 79-80] identifies three current officers who could meet these conditions and partially cash in their accumulated sick leave.

issues which were not included in the prior collective negotiations agreement.

The employer asserts that a cash payment for unused sick leave during employment, rather than on retirement or separation from employment, is an economic benefit not currently provided for in the agreement.

The arbitrator reasoned:

The contract already provides for payment of unused sick leave - currently upon retirement or termination of employment in good standing. The proposal simply advances the date on which an employee could cash in.

[Award at 78]

We find that the additional option awarded by the arbitrator is not simply a different method of receiving the benefits already earned under the previous contracts. The most recent agreement provides that an officer can only receive payments at the end of his/her service with the employer; either on retirement (1 day of pay for every 2 days of sick leave) or when the employee terminates "in good standing," (1 day of pay for every 4 days of sick leave). The additional language allows an officer to a partial payout of accumulated sick leave while remaining on active duty. Potentially, veteran officers with large amounts of unused accumulated sick leave, could receive such payments every year at the same compensation ratio that

applies to payment on retirement.^{4/} We conclude that the award of the sick leave payout "while still employed" option conflicts with and is therefore preempted by N.J.S.A. 34:13A-16.7. We will vacate this aspect of the award.^{5/}

Educational Incentive

The parties expired agreement (Article XVII) provides:

In addition to all other wages and benefits provided in this Agreement, each employee shall be entitled to an additional payment, if the Employee is qualified for same,

4/ Noting that two officers who retired in 2012 had received unused sick leave payments, the arbitrator posited that the PBA proposal could save the Township money as sick leave payments during active employment would be at lower rates.

That observation assumes that any remaining sick leave would only be paid out on retirement. But the benefit could be used by officers who later separate from employment in good standing rather than retire.

The arbitrator noted that there were two employees with 1500 hours or more of accumulated unused sick leave. [Award at 79-80]. They could take advantage of the benefit for three straight years by exchanging 240 hours of sick leave for a cash payment equivalent to 120 work hours in each year while maintaining at least 750 hours in their sick leave "banks". If they separated from Township employment in good standing, in the next year, they could receive one hour of pay for every four hours left in their sick leave banks. Under the most recent agreement, the 1 for 2 payment ratio only applies where the officer retires. Given the above example, the arbitrator's award of this option potentially makes the sick leave payment benefit more valuable to the officers and more costly to the Township than it was under the prior agreement.

5/ Given our ruling we need not discuss how this benefit would affect the availability of sick leave if needed in future years for long-term illnesses or injuries.

pursuant to the qualifications and limitations as set forth in Schedule B.^{6/}

The Township proposed these changes to Schedule B:

1. Addition to Section B

Approval for reimbursement of tuition and book costs is at the sole discretion and approval of the Township manager with recommendation from the Chief of Police. Approval must be obtained prior to start of classes for which reimbursement will be sought.

2. New Section D:

A single employee shall in one calendar year receive no more than \$1,500 in required tuition, fees, and textbooks. Reimbursement of tuition, books, and fees shall be made upon presentation of certificates

6/ Schedule B contains multiple paragraphs addressing:

- Compensation per credit hour (A);
- That, following exhaustion of outside sources of payment, the Township will reimburse for tuition and related expenses (B);
- Documentation required to show credits that were earned and when payments will be made (C);
- Reimbursement of tuition & book fees shall be made upon documentation of successful course completion and documentation that outside sources of payment are unavailable (D);
- To be eligible for reimbursement a grade of "C" or better must be earned (E);
- The maximum credit hours eligible for reimbursement is 175 (F);
- An officer employed prior of December 31, 1980 is eligible for reimbursement of all credit hours earned prior to the start off the agreement (G).

establishing that a course has been successfully completed as required in Section E and documentation that all other means of payments by outside agencies are unavailable. The total education payments to the police department shall not exceed \$15,000 in anyone calendar year.

The arbitrator declined to award the \$15,000 cap proposed by the employer.^{7/} She awarded a modified version of the Township's proposed supplement to Section B, reasoning that the Township should have advance notice in order to know how much it may have to allocate for tuition and related expenses in a given year. The language [Award at 87] reads:

Employees shall be required to obtain preliminary approval from the Chief of Police before taking any course for which reimbursement is expected. Preapproval will be based upon the criteria set forth in this paragraph and in paragraph C of this Article.

The Township argues that this language improperly shifts, from the Township Manager to the Chief of Police, the authority to approve educational reimbursement requests and conflicts with its "Council-Manager" government, N.J.S.A. 40:69A-81, et seq.

The PBA responds that the employer is misreading the award. It asserts that the new language appropriately provides that the chief is to be a "conduit" for requests and approvals as part of

^{7/} The Township makes no specific arguments concerning the arbitrator's denial of its proposed annual cap on reimbursements. Accordingly, that ruling is not part of its appeal. Cf. Gormley v. Wood-El, 422 N.J. Super. 426, 437, n.3 (issue not briefed on appeal is deemed abandoned).

the chain of command. The PBA maintains that the award makes no substantive change, emphasizing that there is no alteration of the criteria determining the types of courses and degrees that are eligible for reimbursement.

Given the terms of the additional language awarded (e.g. "Preliminary approval" and "Preapproval") we cannot agree that the award diminishes the authority of the Township Manager on this subject, assuming, for the sake of argument, that the Township Manager and/or the Township have the final say on courses that qualify for reimbursement.^{8/} The employer cites no statute or court decision that specifically speaks to this issue and supports its position. And, tuition reimbursement is normally mandatorily negotiable. See Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1, 8 (1973). We affirm this aspect of the award.

Health Insurance (Current and New Employees)

The Township proposed that police be moved from their current plan (Aetna Open Access) to the same health insurance plan that covers civilian employees (Aetna Patriot V Plan). In addition, the Township proposed that officers hired after January 1, 2013 be placed on one of three other plans, Preferred

^{8/} N.J.S.A. 40A:14-118 allocates the authority to conduct day-to-day operations of a police department to the chief, while reserving policy matters for the governing body.

Choice Plan, the HMO Plan, or the High Deductible Plan (HSA). Initially, the PBA sought to maintain the current health insurance plan for the employees it represents. But, near the conclusion of the interest arbitration, it proposed that a study committee, composed of labor and management, be formed to study plan alternatives for a period of 60 days. If the parties could not agree upon alternative plans, then the arbitrator would impose a plan from among those offered by the parties.

The arbitrator's award contains a thorough discussion and comparison of the current and alternative health insurance plans that were presented by the parties. [Award at 63 to 73]. She reviewed all cost factors for both current and new employees and for the Township, including the rising employee share of health insurance premiums (considering the impact of P.L. 2011, c.78), differences in coverages, and the increasing cost to the employer of providing health insurance, particularly under the Open Access Plan available to the negotiating unit which has lower co-pays and deductibles for using out-of-network providers than the plan covering the Township's civilian employees. She determined:

[I]t is in the interests of both the Township and the PBA to consider alternative health care plans. The current Open Access Plan, which has all the earmarks of traditional plan coverage, is a costly plan and for most employees - both public and private - an option which is no longer available. I am convinced that the parties need to get out of this plan.

However, I am not satisfied that the alternative plans proposed by the Township are the best alternatives that can be found. Quite candidly, the plan costs seem expensive compared to the quality of benefits offered, in comparison to other plans I have been presented with in other arbitrations.

[Award at 70]

Rather than award one or more of the proposed alternatives she agreed with the PBA proposal to have the parties explore and, hopefully, come to an agreement on, a change in health coverage:

The Township and the PBA (together with representatives of the Township's civilian employees, (if such participation is required) shall, within ten days of this award, form a joint labor management committee to study health care plan alternatives to the current Aetna Open Access Plan. The committee shall exercise due diligence to explore options with an objective of reaching an agreement upon alternative plans to be offered to current employees and alternatives to be offered to new employees. In the event that the parties fail to reach agreement upon mutually satisfactory plans, then I will retain jurisdiction to impose alternative plans upon the parties.^{9/}

The Township asserts that this directive violates N.J.S.A. 34:13A-16f(5) which it construes as requiring an arbitrator to render an award on all issues within 45 days of her assignment to

9/ The arbitrator also referred to a proposed, but not yet adopted, Department of Community Affairs regulation addressing the approval of health insurance plans for public employers that do not participate in the State Health Benefits Program. As the parties have not commented on this issue, we do not offer any opinion on the proposal.

the case. It argues that the arbitrator cited no authority that would allow her to issue this directive, nor did she set a deadline on when she would make her determination if the parties could not agree.

The PBA responds that the directive to form a study committee on health care was a "decision" by the arbitrator and does not violate the interest arbitration law.

The directive that the parties form a health insurance study committee does not violate the interest arbitration law. The Commission can remand an appealed award. A remand produces a final award issued past the 45-day window. See City of Camden, P.E.R.C. No. 2013-49, 39 NJPER 318 (¶109 2013), (vacating December 17, 2012 award; remanding for a new award within 45 days, i.e., March 11, 2013).

The parties must implement an award on receipt.^{10/} Thus, the health care study committee should already have been formed and be pursuing its assigned task. We do agree that the arbitrator should not have an unlimited amount of time to issue a

^{10/} N.J.S.A. 34:13A-16f(5) (b) provides, "An arbitrator's award shall be implemented immediately." P.L. 2010, c. 105, deleted language that had allowed a grace period where the award was appealed. The same statute previously read:

An award that is not appealed to the commission shall be implemented immediately. An award that is appealed and not set aside by the commission shall be implemented within 14 days of the receipt of the commission's decision absent a stay.

ruling on health care coverage in the event the parties do not reach an agreement. In accordance with our normal practice when we remand all or part of an interest arbitration award, we will direct that the arbitrator issue a ruling on health care plans, if necessary, within 45 days of receipt of this decision.^{11/}

Salary Increases

The arbitrator awarded these across-the-board base salary increases:

Effective and retroactive to 1/1/13: 1.25% to all employees;

Effective 1/1/14: 1.5% to all employees;

Effective 1/1/15: 2.0% to all employees;

The Township argues these increases are excessive asserting:

1. The award exceeds the two per cent salary cap established by N.J.S.A. 34:13A-16.7;
2. The arbitrator miscalculated the costs to the Township of the salary increases.

^{11/} As we have previously emphasized, because immediate implementation of an award is required by law, the parties should have formed their study committee 10 days after receipt of the March 11, 2013 award. Assuming they did so, the 60 day period will expire on May 20. This remand would require the arbitrator to issue her supplemental ruling on or before June 3. That date is approximately two weeks after the health insurance study committee should have finished its work or reached an agreement. We deem that a sufficient period for the interest arbitrator to receive any supplemental submissions and to make her determination.

With regard to its first contention, the Township argues that the arbitrator's calculation of the costs of her salary award improperly took into account longevity payment savings in 2013 resulting from the retirement of two veteran officers in 2012 who had been receiving such payments.

Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340, 344 (¶116 2012) explains how an interest arbitrator must calculate and cost out base salary:

The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.^{12/}

^{12/} All of the officers employed by the Township in 2012 were at the top step of their salary guides. Accordingly, no base salary increases resulted from incremental steps. In addition, because the Byram employees received a split raise in 2012, the arbitrator appropriately factored that in to her base salary computations rather than rely on a scattergram showing salary placement at the end of 2012.

In New Milford, the PBA asserted that the base salary increase should factor in savings realized from the retirement of two officers. We responded [Id.]:

The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.

The arbitrator [Award at 41 to 42] discussed the issue.

[D]ue to retirements of two top-paid officers with maximum longevity, the Township will spend fewer dollars on police department salaries in 2013 and again in 2014 than it did in 2012. This is true, even if it hires two new recruits in 2013, as it anticipates doing. More specifically, the cost of base pay and longevity for all unit employees in 2012 was an aggregate of \$1,492,985. With the increases being awarded herein, the 2013 cost for unit employees' base pay and longevity will be \$1,311,146. In 2014, the cost will be \$1,319,649. In 2015, the cost will be \$1,379,223. The projected costs above do not include the costs of new hires as the salaries are speculative.

Her award contains a chart showing her computations of base salary increases:

Year	ATB Cost	Longevity	Total
2013	15,658.91	(7,059.54)	8,599.37
2014	19,091.35	4,621.59	23,712.94
2015	25,964.23	7,651.60	33,615.83
Totals	60,714.49	5,213.65	65,928.14

The arbitrator explained:

This amount is well below the 2% arbitration cap of \$29,859.72 per year. Further, as explained above, it will cost the Township less in 2013 and 2014 to fund its police salary and longevity payments than what was spent in 2012. Thus, this award will not exceed the Township's appropriation cap and tax levy cap.

Based upon New Milford, we conclude that the longevity savings resulting from the retirement of the two officers in 2012, should not have been included in the calculation of base salary increases for 2013. Accordingly, the above chart should be corrected as follows:

Year	ATB Cost	Longevity	Total
2013	15,658.91	0	15,658.91
2014	19,091.35	4,621.59	23,712.94
2015	25,964.23	7,651.60	33,615.83
Totals	60,714.49	12,273.19	72,987.68

Despite this error, the arbitrator's award did not exceed the 2% per year cap on salary increases mandated by N.J.S.A. 34:13A-16.7.

The arbitrator accepted the Township's position that base salary, as defined by N.J.S.A. 34:13A-16.7, could increase by no more than \$89,579.16 over the life of the new agreement. Thus both the figure reached by the arbitrator (\$65,928.14) by factoring in saved longevity payments attributable to the retired employees, and our revised total (\$72,987.68), omitting that deduction, are still well within the cap. Thus even though the arbitrator erred by deducting the saved longevity payments, that error was harmless.

The second aspect of the employer's appeal from the salary award lacks merit. The Township claims that the arbitrator did not take into account that the employees received a split raise in 2012. The award expressly shows that the arbitrator was aware of and took into account the split raise.

In accepting the Township's 2012 base salary figure, and rejecting the one proffered by the PBA, the arbitrator said:

The Township calculated total base paid at \$1,492,986. It used the correct methodology to arrive at its calculations of total base paid (T-9). The PBA used a scattergram approach and used the final 2012 salary on the step guide, times the number of employees at each step. It arrived at a total base paid of \$1,565,802. This is not accurate because it discounts the fact that employees did not earn this salary until July. The salaries, as well as longevity payments, for 2012 must be pro-rated.

[Award at 38, n.9, emphasis supplied]

We reject the Township's appeal that the arbitrator's award violated the statutory cap on base salary increases.

ORDER

A. The portion of the interest arbitration award allowing payments for unused sick leave to officers who remain on active duty is vacated. The arbitration award is otherwise affirmed, as modified. The arbitrator shall retain jurisdiction to issue a ruling on health insurance coverage in the event the parties have not been able to reach an agreement. The arbitrator shall issue a supplemental ruling on health care coverage, if necessary, on or before June 3, 2013.

B. The scope of negotiations petition, SN-2013-045 is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall recused themselves.

ISSUED: April 18, 2013

Trenton, New Jersey