

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 198,

Petitioner,

-and-

Docket No. IA-2015-010

CITY OF ATLANTIC CITY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission affirms an interest arbitration award, notwithstanding a minor revision removing the word "seriously" from the sick leave provision, establishing the terms of a successor agreement between the International Association of Firefighters Local 198 and the City of Atlantic City. The IAFF and the City cross-appealed. Overall, the Commission holds that the arbitrator addressed all of the N.J.S.A. 34:13A-16g statutory factors, adequately explained the relative weight given, analyzed the evidence on each relevant factor, and did not violate N.J.S.A. 2A:24-9.

With respect to economic issues, the IAFF argued the award was not supported by substantial credible evidence or the 16g statutory factors. The City argued that the arbitrator failed to properly apply the statutory factors of interests and welfare of the public and the financial impact on the municipality, its residents, and taxpayers. The Commission finds that the IAFF's economic proposals were inappropriate due to the City's financial condition while the City's economic proposals were not realistic and would result in a dramatic reduction in firefighters' pay.

With respect to non-economic issues, the IAFF argued that "parent of child" be included as "immediate family" for purposes of sick leave, that a change in acting out-of-title pay procedures was not justified by evidence, and that the arbitrator cited no direct evidence supporting a change in prescription co-payments, the deductible for dental services, or retiree health benefit service requirements. With respect to sick leave, the Commission finds there was insufficient testimony to include "parent of child" and no explanation for adding "seriously" before the word "ill." The Commission also finds that the arbitrator properly factored internal comparability into the change in acting out-of-title pay procedures and heavily weighed all of the statutory factors regarding the City's financial condition with respect to the change in health benefits.

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 Petitioner, O'Brien, Belland, Bushinsky, LLC
(Mark E. Belland and David F. Watkins, of counsel)

For the Respondent, Cleary, Giacobbe, Alfieri Jacobs
LLC (Matthew Giacobbe of counsel)

DECISION

This case comes to us by way of cross-appeals^{1/} of an interest arbitration award pertaining to the International Association of Firefighters Local 198 (IAFF) and the City of Atlantic City (City).^{2/} The award involves a unit of approximately 235 firefighters. The arbitrator conducted two days

1/ IAFF filed its appeal on June 22, the City filed its cross-appeal and opposition brief to the IAFF's appeal on June 29, and the IAFF filed its brief in opposition to the City's cross-appeal on July 2.

2/ In response to a scope of negotiations petition filed by the City, we issued a decision preliminarily declaring some proposed issues mandatorily negotiable and others not mandatorily negotiable. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015).

of hearings during which IAFF submitted the written report and testimony of a financial analyst and the City submitted testimony and written reports of two financial analysts and the testimony of its State Monitor.

On June 4, 2015, the arbitrator issued a 186-page Opinion and Award with a three-year term covering the period of January 1, 2015 through December 31, 2017. The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2010, c. 105, effective January 1, 2011. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. The Award addressed a myriad of economic and non-economic issues that were raised by the parties during the proceedings. Our decision focuses only on those issues raised in IAFF's appeal and the City's cross-appeal. We affirm the arbitrator's Award except for a minor revision noted hereafter in Section II, A.

I. Standard of Review

N.J.S.A. 34:13A-16g requires that an arbitrator state in the award which of the following factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

- (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]

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 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. 289, 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)). 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-16g; N.J.A.C. 19:16-5.9; Borough of Lodi, P.E.R.C. No. 99-28, 24 NJPER 466 (¶29214 1998).

P.L. 2010, c. 105 amended the interest arbitration law, imposing a 2% "Hard Cap" on annual base salary increases for arbitration awards where the preceding collective negotiations agreement (CNA) or award expired after December 31, 2010 through

April 1, 2014. P.L. 2014, c. 11, signed June 24, 2014 and retroactive to April 2, 2014, amended the interest arbitration law and extended the 2% salary cap, along with other changes, to December 31, 2017. N.J.S.A. 34:13A-16.7 provides:

Definitions relative to police and fire arbitration;
limitation on awards

a. As used in this section:

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

"Non-salary economic issues" means any economic issue that is not included in the definition of base salary.

b. An arbitrator shall not render any award pursuant to section 3 of P.L.1977, c.85 (C.34:13A-16) which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent

increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

II. Economic Issues

The economic issues in the Award center around the payment of salary increments and increases, educational incentives, longevity and terminal leave.

A. Payment of Salary Increments and Increases

The salary schedule in the expired agreement contains two tiers - Tier 1 for employees hired before January 1, 2012 and Tier 2 for employees hired after January 1, 2012. Both tiers contain sixteen titles ranging from Apprentice 1 to Chief of Fire Prevention and annual salaries from \$57,309 to \$137,690 on Tier 1 and \$45,000 to \$125,000 on Tier 2.

The City proposed zero salary increases or increment payments, and to make a general salary range for Apprentice I through Senior Journeyman of \$40,000 - \$70,000 in place of specified salaries for each title.^{3/} The IAFF proposed a 2% increase for employees annually. The arbitrator awarded increment payments to eligible employees on their anniversary date, continuation of the two-tiered salary guide, and an

^{3/} Pursuant to a pending clarification of unit petition that the City filed on September 8, 2014, it is seeking to remove fire superiors from the agreement. CU-2015-004.

increase of \$1,000 to employees in the senior journeyman and above title only.

B. Educational Incentive

The expired agreement provides an educational incentive for Tier 1 employees ranging from 2% to 10% of base salary which is driven by completed credit hours or degree achieved. The educational incentive for Tier 2 employees ranges from \$1,000 on top of base salary to \$2,500 and is degree driven. The arbitrator found that the average incentive pay for firefighters currently receiving the benefit is \$7,276, and all employees currently receiving this benefit are in Tier 1. The City proposed to remove this benefit entirely. The arbitrator froze the current value of employees' educational incentive pay for the life of the contract.

C. Longevity

The expired agreement provides a longevity schedule for Tier 1 employees ranging from 2% to 10% depending on years of service. For Tier 2 employees, longevity is paid in flat payments of \$1,140 to \$8,000 depending on years of service. The City proposed to eliminate longevity entirely. IAFF proposed to increase longevity at certain benchmarks for Tier 2 employees in the amount of \$550. The arbitrator froze longevity rates at their current level for Tier 1 employees and eliminated longevity entirely for Tier 2 employees.

D. Terminal Leave

The expired agreement currently provides for terminal leave for employees upon retirement. The City proposed to cap terminal leave at \$15,000 for employees hired after 2010.

The arbitrator found that the terminal leave benefit is a significant expense to the City, which in 2012, 2013 and 2014 cost the City \$1,506,523, \$2,138,027 and \$3,086,418 respectively. She found that these payments are extravagant for any municipality, and particularly burdensome for the City given its financial condition. The arbitrator found that employees' cash out for paid sick leave is a benefit earned which cannot be eliminated for current employees. Therefore, the arbitrator found it appropriate to scale back the benefit by eliminating terminal leave for newly hired employees, capping the benefit at \$15,000 for employees hired after January 1, 2010, and permitting cash out at the maximums set forth in the contract for employees hired prior to January 1, 2010.

E. Parties' Arguments Regarding Economic Issues

With regard to the economic issues, the IAFF argues generally that the arbitrator's award is not supported by substantial credible evidence, the requisite statutory factors, and violates N.J.S.A. 2A:24-9. The City responds that with regard to the economic issues, the Award is supported by substantial credible evidence, is consistent with the statutory

factors and does not violate N.J.S.A. 2A:24-9. However, in its cross-appeal the City also argues that with regard to the economic issues, the arbitrator failed to properly apply the statutory factors of interests and welfare of the public and the financial impact on the municipality, its residents and taxpayers. In response to the City's cross-appeal, IAFF asserts that the arbitrator provided a reasonable explanation of all statutory criteria with regard to her award on the economic issues.

F. Analysis on Economic Issues

On the whole, the arbitrator found that the City's proposals on economic issues were not realistic and would result in a dramatic reduction in firefighters' pay. She also generally found that IAFF's economic proposals were not appropriate due to the City's financial condition. The arbitrator conducted a general analysis of all of the statutory factors throughout the Award and placed substantial weight on interests and welfare of the public (a statutory factor that implicates virtually all of the factors), financial impact on the governing unit, its residents and taxpayers, and the City's statutory budget limitations. She also weighed, albeit less heavily, continuity and stability of the unit, cost of living, comparison of the wages with other employees both internally and externally, and existing wages and benefits. Award at 34-35.

She set forth thorough findings of fact with regard to the City's financial condition. Award at 49-78. She found that the Casino Revenue Fund has steadily declined since 2006 (Award at 50-51); the City's tax base has been eviscerated to one third of the level it was at five years ago (Award at 52-54); the City's receipt of Transitional Aid in 2014 is dependent upon it detailing its plan to reduce its reliance on such aid (Award at 54-55); the City has had an increase in tax appeals totaling 6,000 this year (Award at 55); and there is pending legislation to set a flat rate for casino taxes to aid in the City's tax appeals and loss of tax base. She also reviewed evidence regarding the City's surplus balance, appropriations, funded debt, pension and healthcare costs, ratables and levy caps. (Award at 58-73, 76-78). She noted that an Emergency Manager has been appointed to analyze the City's financial condition and place its finances in stable condition on a long-term basis. She also noted the City's reliance on SAFER grants which are grants funded at the federal level to insure that fire industry minimum manning standards are met. Award at 49-78.

With regard to financial impact of the Award on the City, its residents and taxpayers, the arbitrator weighed most heavily that the City's overall appropriations budget in 2014 was \$261 million, and its goal was to reduce it in 2015 to \$192 million. In 2014, the amount budgeted for the Fire Department was

\$22,807,914; however it actually spent \$20,414,487, leaving in reserve \$1,153,427. In 2014, 27 firefighters retired and their pro-rated salaries were included in the 2014 total base salary. By not carrying these firefighters, the savings in 2015 will be an additional \$1,567,728. Given the savings realized by the fire department, the arbitrator found that it had already conceded its share of the City's goal in reducing spending and such savings would help to fund the very modest increases that she awarded. She also noted that in the Award leading to the 2012-2014 contract, the interest arbitrator not only created a new lower pay scale for new hires, but also significantly reduced educational incentive, longevity and terminal pay for Tier 2 employees. Award at 97.

The arbitrator found that the only cost impact to the City for the payment of increments is \$11,062 since all firefighters who are increment eligible, except one, are paid through the federal SAFER grant. She found that the cost of the \$1,000 increase for the 184 firefighters at top pay is \$92,000 in July, 2016 and an additional \$92,000 in 2017. The arbitrator found that these very modest increases do not place the City at risk of violating the arbitration cap, the tax levy cap, or the appropriations cap. She also found that delaying the increases to 2016 would provide additional time for the City to stabilize its finances.

With regard to comparability of the firefighters' salaries and continuity and stability of employment, the arbitrator found the City's firefighters' existing salary and benefits package is in line with or above average for comparable jurisdictions.^{4/} She found the most relevant comparison to be to the City's other uniformed officers - salaries for the City's top paid police officers in Tier 1 is about \$4,000 higher than a firefighter and Tier 2 is \$10,000 higher than a firefighter. While the salary guide for police officers was frozen for the length of their contract, increments were paid to those still in steps. Police captains received an increase of 2%, 2% and 1.88% over the length of their contract. She noted that this unit has had a salary freeze for the past two years and found that extending the freeze for another three years would impact unit continuity and give no recognition to cost of living increases or salary levels in other comparable fire departments. Award at 94-96.

With regard to the arbitrator scaling back but not entirely eliminating educational pay incentive and longevity, she generally found that the drawback to completely removing these benefits is that it would reduce firefighters salaries by several thousand dollars, but more significantly would reduce their pensionable income. She found that given that there are 39

^{4/} She noted that the salaries for this unit included holiday pay while it was possible that comparable fire districts did not.

employees with 20 or more years of service, if such changes were made to pensionable income, it would result in numerous retirements of experienced firefighters, which would affect unit continuity and would not be in the public interest.

We find with regard to the economic issues the arbitrator adequately evaluated all of the statutory criteria, placing primary importance on those factors touching upon the City's financial condition and its ability to meet its statutory budget limitations. She explained why she gave more weight to some factors and less weight to others and issued a comprehensive Award that reasonably determined the economic issues, is supported by substantial credible evidence in the record, and does not violate N.J.S.A. 2A:24-9.

II. Non-Economic Issues

A. Sick Leave

The expired agreement contains a sick leave provision but it does not include a definition of when sick leave may be used.

The union proposed to add the following provision:

Sick leave is hereby defined to mean an absence from the post of duty by a bargaining unit member, due to illness, accident, injury, disability, and/or exposure to contagious disease or the necessity to attend to and care for an ill member if his or her immediate family. The term "immediate family" for the purpose of this Article shall include the following: a) spouse; b) parent; c) step-parent; d) child; e) step-child; f) foster child; g) parent of child; and h) any

other relative residing in the bargaining unit member's household.

The arbitrator awarded the union's proposal, finding that it was reasonable, consistent with the parameters of the Family and Medical Leave Act and the New Jersey Family Leave Act, and added clarity to the Agreement. However, she did not include the term "parent of child" as she saw no basis for this inclusion. IAFF appeals this ruling. We agree with the arbitrator's finding that the testimony offered in this regard did not provide enough of a basis for inclusion of this term. The arbitrator also inserted the word "seriously" before the word "ill" in the Award. Since the arbitrator provided no explanation for adding this term, its inclusion was likely an oversight. We revise the Award to omit the term "seriously."

B. Acting Out-of-Title

The expired agreement contains provisions addressing the procedures for acting out-of-title. The City sought, inter alia, to add a requirement that a firefighter must act out-of-title for 30 days before acting pay took effect. The arbitrator awarded that a firefighter must act out-of-title for 8 days before acting pay takes effect. Her explanation for this addition was that the City's PBA contract contained an identical provision, and the arbitrator found internal comparability on this issue necessary to promote fairness and harmony. IAFF appeals, arguing that the City did not provide enough evidence to justify this change. In

issuing a conventional award, the arbitrator has the latitude to fashion the award as she deems appropriate. Consistent with her treatment of the other issues, internal comparability was an important factor, particularly as it relates to the other factors touching upon the City's financial conditions.

C. Procedure for Suspensions

The expired agreement contains provisions providing for a right to a hearing before the Mayor or his designee and then another hearing before the Fire Chief/Fire Director if a firefighter is suspended. The City sought to delete the provision providing for a hearing before the Mayor or his designee. IAFF sought to delete the provision providing for a hearing before the Fire Chief/Fire Director and replace it with a provision allowing for a hearing before a mutually agreed upon neutral. The arbitrator awarded the City's proposal, finding that an employee does not need two disciplinary hearings, and explaining that the hearing officer for the internal disciplinary hearing is appointed by the Employer and there is no pretense of neutrality. Since the City is a Civil Service Jurisdiction, once the City conducts the hearing and if a final notice of disciplinary action is issued, that decision is appealable to either an arbitrator or the Office of Administrative Law, where an employee will be afforded full due process. She also found that if she awarded IAFF's proposal, the cost of the neutral

would have added another layer of expense to the process. We find that the arbitrator provided a reasoned explanation for this proposal.

D. Health Benefits

The arbitrator awarded the City's proposals for an increase in prescription co-payments (to \$15.00 for generic drugs and \$35.00 for non-generic drugs), a \$50.00 deductible for covered dental services, and a requirement that newly hired firefighters have 25 years of service with the City (as opposed to 25 years of general service) to qualify for retiree health benefits. IAFF argues that the arbitrator cited no direct evidence supporting this part of the Award. However, the arbitrator explained that the level of prescription co-payments in the expired agreement had been in effect since 2009, and that an increase was necessary to help mitigate the rising costs of prescriptions. She also found that the dental coverage was generous by today's standards and the award of a modest deductible was warranted. Finally, she found that requiring 25 years of service with the City to qualify for retiree health benefits was warranted so that the City would not have to shoulder the retiree health costs of a firefighter who transferred mid-career to the City. It is clear from the arbitrator's explanation that in awarding the City's proposals regarding health benefits, she weighed heavily all of the statutory factors touching upon the City's financial condition.

ORDER

The Award is affirmed, except for deleting the word "seriously" from the sick leave provision awarded.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself.

ISSUED: August 13, 2015

Trenton, New Jersey