P.E.R.C. NO. 2003-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Appellant,

-and- Docket No. IA-2001-46

UNION COUNTY CORRECTIONS OFFICERS,
PBA LOCAL NO. 199,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award and remands the matter to the Director of Arbitration for assignment to a different arbitrator to be either mutually agreed to by the parties or appointed by lot. The County of Union appealed from an interest arbitration award involving approximately 200 corrections officers. The award was issued after a May 15, 2002 award was vacated and remanded to the same arbitrator for reconsideration and further analysis and discussion. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002). The Commission concludes that the arbitrator's discussion of salary and health benefits proposals did not include the findings and analysis concerning internal settlements that was directed in Union Cty. The Commission further concludes that the best course is to allow a new arbitrator to consider all of the parties' proposals and issue a new opinion and award in accordance with the statutory criteria and the principles set out in Union Cty.

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, Schenck, Price, Smith & King, attorneys (Kathryn V. Hatfield, of counsel)

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

DECISION

Union County appeals from an interest arbitration award involving approximately 200 corrections officers. See N.J.S.A. 34:13A-16f(5)(a). The award was issued after a May 15, 2002 award was vacated and remanded to the same arbitrator for reconsideration and further analysis and discussion. Union Cty., P.E.R.C. No. 2003-33, 28 NJPER 459 (¶33169 2002).

The parties' final offers, submitted before the May 2002 award, were as follows. The County proposed a four-year contract from 2001 through 2004, with a 1.5% across-the-board salary increase effective January 1, 2001 and a 1.5% increase effective

June 23, 2001. For 2002 through 2004, it proposed increases of 4% for officers at the maximum guide step and increases of 3.5% for officers "in guide." Almost all officers are at the maximum step. The County also proposed to increase the clothing allowance by $25 in each of the first three years of the agreement.

The County further proposed health benefits changes for both new and current employees. For current employees, it proposed, effective January 1, 2002, to increase prescription co-payments and institute an employee contribution towards health benefit premiums. Employees earning under $65,000 would pay a $10 per month premium contribution; those earning between $65,000 and $75,000 would pay $25; and those earning over $75,000 would pay $35. In 2003 and 2004, employees earning over $75,000 would pay $40 per month. For members of Horizon PPO (Blue Select), the County proposed a $5 doctor visit co-pay for 2002 and a $10 co-pay for 2003 and 2004; and, for all unit members, it proposed an increase in the out-of-network cost share from 80/20 to 70/30. The County also proposed a health benefit buyout option where an officer covered under his or her spouse's plan could decline additional health coverage and receive $2,500 annually. Effective January 1, 2003, the County proposed to reduce the deductible for any single benefit period.

The County also proposed that, effective January 1, 2002, new employees would be limited to a choice of Physician's Health Service (PHS) or Blue Choice coverage, unless they opted to pay the difference between these plans and their chosen plan. Those choosing PHS or Blue Choice would pay $15 per month for single coverage and $25 per month for family coverage. Those contributions would be increased by the proportionate annual increase in the plan cost.

The County also proposed enhancements to sick leave, retiree and vacation benefits, but linked these enhancements to the award of the noted health benefits proposals. Thus, it proposed to increase its subsidy of retiree health benefits from approximately 25% to approximately 75%; raise the maximum reimbursement for unused sick leave, on a graduated basis, for those with more than 200 accumulated sick days; and grant additional vacation days for each year of service from 25 through 30. Finally, the County also sought the award of several proposals that it describes as "operational" and that we described in our first Union Cty. opinion.

The PBA proposed a three-year contract from 2001 through 2003 with 5% increases in each year. It sought to increase the 10-year senior officer differential from $2365 to $2500 and also proposed that the 20-year differential be increased by the same

percentage as base salaries were increased, as provided for in the expired contract. In addition, the PBA sought a $1500 stipend for employees in the Special Operations Unit (SOU) and an increase in the County contribution to the PBA Insurance Development fund from $135 to $158 per employee. It also made proposals concerning orthodontic coverage, grievance arbitration, compensatory time, and food pick-up, all of which are described in our first Union Cty. opinion.

In the arbitrator's first award, he awarded a three-year contract from 2001 through 2003, with 4% across-the-board increases for all unit members for each year of the agreement. He also awarded the County's clothing allowance proposal. All other proposals were denied.

When the County appealed the award, we concluded that the award should be vacated and remanded for reconsideration because first, by emphasizing that the health benefits changes sought were best achieved in negotiations, the arbitrator appeared to have applied an improper presumption that the proposal should not be awarded in interest arbitration. Second, the arbitrator did not fully discuss, or explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements with other County negotiations units. Finally, we found that a

remand was required because the arbitrator did not analyze the County's operational proposals and did not explain his salary award.

On remand, the arbitrator awarded 4% salary increases for 2001 through 2003, as he had in the first award. However, he awarded a four-year contract extending through 2004 - instead of the three-year term originally awarded - and ordered a 4% salary increase for 2004. As he had in the first award, the arbitrator awarded the County's proposal to increase the clothing allowance but denied all other County and PBA proposals.

The County appeals, contending that the arbitrator did not give due weight to the statutory criteria or comply with our instructions to provide a fuller discussion of the County's settlements with other of its negotiations units in analyzing its salary and health benefits proposals. It also maintains that the arbitrator did not individually analyze its operational proposals and asserts that the award is not supported by substantial credible evidence. It asks us to vacate the award and remand it to a different arbitrator.[1/]

The PBA counters that the issue is not whether the arbitrator complied with Union Cty., but whether the award

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1/ We deny the County's request for oral argument. The matter has been fully briefed.

comports with the Police and Fire Public Interest Arbitration Reform Act, N.J.S.A. 34:13A-14 et seq. It contends that the arbitrator gave due weight to the statutory criteria and incorporated the analysis of the statutory factors contained in his first award. In considering the internal settlements, the PBA maintains that the arbitrator reasonably focused on the unique circumstances of this work unit. Finally, the PBA contends that the arbitrator fully analyzed each of the County's operational proposals and explained his ruling on the contract term. If a remand is ordered, the PBA asks that it be to the same arbitrator.

The standard for reviewing interest arbitration awards is now established, and has been 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 175 N.J. 76 (2002); 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.

Within this framework, we have interpreted Reform Act provisions and provided direction concerning the analysis required of arbitrators. An arbitrator must provide a reasoned explanation for an award and 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 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 applied these principles in vacating and remanding the arbitrator's first award when we required him to analyze the County's operational proposals; explain how his salary award was shaped and supported by the statutory criteria; and more fully discuss, and explain how he analyzed and weighed, the parties' arguments and evidence concerning internal settlements with other County units. We also found that a remand was required because, by emphasizing that the health benefits changes sought were best

achieved in negotiations, the arbitrator appeared to have applied an improper presumption that the proposals should not be awarded in interest arbitration. See Cherry Hill.

We turn first to the County's contention that, in analyzing its health benefits and salary proposals for the second time, the arbitrator did not comply with our instructions to more fully discuss the County's internal settlements. This is the background.

In its presentation and submissions prior to the first award, the County had asserted that its health benefits proposals had been accepted by six other negotiations units, including three law enforcement units. The County maintained that these units had also accepted the salary, sick leave, retiree health benefits, and vacation proposals that it was offering to this unit. It urged the arbitrator to maintain this alleged pattern and argued that to do otherwise would disrupt labor relations stability because it would discourage future settlements and undermine the morale of employees in other units. It also asserted that award of its health benefits proposals would help offset its escalating health care costs.

The PBA countered that the settlements the County reached with other law enforcement units in fact supported the award of its offer, because the County had agreed to substantial economic

benefits in addition to the package offered to this unit. It also asserted that the County had not shown what savings would accrue by extending its health care proposals to this unit.

In reviewing the arbitrator's first award, we first held that he appropriately placed the burden on the County to justify its health benefits proposals. 28 NJPER at 461; see also Cherry Hill. We then set out several principles that underpinned our conclusion that the arbitrator's analysis of the internal settlements did not comport with the Reform Act. Those principles are as follows:

> N.J.S.A. 34:13A-16g(2)(c) requires an arbitrator to consider evidence of settlements between the employer and other of its negotiations units, as well as evidence that those settlements constitute a pattern.
>
> Pattern is an important labor relations concept that is relied on by both labor and management.
>
> A settlement pattern is encompassed in N.J.S.A. 34:13A-16g(8), as a factor bearing on the continuity and stability of employment and as one of the items traditionally considered in determining wages. Thus, interest arbitrators have traditionally recognized that deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units. [28 NJPER at 461]

Against this backdrop, we noted that the arbitrator had reasoned that other units' acceptance of the health care

proposals was "supportive but not persuasive," but that he did not make findings as to whether the settlements differed from the offer to this unit; the significance of any differences; and whether in fact there was a settlement pattern among the County's negotiations units. On remand, we stated that he should make those determinations; discuss and apply the above-noted principles concerning pattern and internal comparability; and explain how he weighed the County's arguments and evidence concerning the settlements vis-a-vis the PBA's. Because the County maintained that there was a pattern as to both health benefits and across-the-board increases, we stated that the arbitrator's review on remand of the parties' salary proposals should be informed by the same findings and analysis.

In his opinion and award on remand, the arbitrator incorporated the analysis of the statutory factors set out in his first opinion and then described how, in March and April of 2001, one-third of the corrections officers' negotiations unit had been laid off. That information had not been discussed in the analysis portion of the first award, but had been included in the summary of the PBA's evidence. Prior to reconsidering the parties' proposals, the arbitrator made the following comments with respect to internal settlements and pattern:

> Certainly the efficacy of pattern bargaining in cases involving a single employer is

> recognized as being reasonable and even desirable in many cases. That does not mean it is feasible or more reasonable in every case, however. In the present case, the increased demands created upon the remaining correction officers by the massive layoffs of one third (1/3) of the rank and file workforce are unique and create all kinds of work problems. They make it more reasonable and equitable to compare the Union County Correction Officers to correction officers of other counties than it does to other employee groups of Union County, both law enforcement and non-law-enforcement, for the sake of achieving some degree of uniformity. . . . Moreover, the PBA offered evidence that there was, in fact, no real uniform pattern and that the County's settlement with several units provided significant economic benefits which were not given to employees in other units. [Arbitrator's second opinion at 6]

The arbitrator then stated that comparisons with four other counties' corrections officers' units warranted the 4% increases. After discussing the County's operational proposals, the arbitrator described the County's health benefits proposals. He stated that the burden was on the County to justify the health benefits changes sought. He then wrote:

> Leaving aside the proposed inducements to the acceptance of the change health benefit plan, it is obvious that the County's proposal would effect a major change in a very important employee benefit. While the County demonstrated that the cost of health insurance is rising, it has not demonstrated how much money it would save by the implementation of its proposed plan or how the PBA's inclusion in that plan would affect such cost. . . . <u>The County appeared to primarily base its argument in favor of its</u>

> health care proposal upon the fact that it had been accepted by several other County unions. This, and the fact that the County was seeking to offset the costs of higher health insurance premiums, were the main arguments offered in support of its proposal. The County did not offer any evidence of any financial difficulty or inability to pay the premiums of the current plan, nor did it attempt to financially justify its proposal on any basis other than the fact that employee contributions would decrease the cost to the County. Considering the testimony and the evidence presented by the County on this proposal, it cannot be said that the County has demonstrated that its present proposal on health coverage is more reasonable than the health benefit plans which the correction officers presently enjoy. In effect, the County has not met its burden of proof and has not presented sufficient evidence with respect to this proposal to warrant its award by the arbitrator. [Arbitrator's second opinion at 16; emphasis added]

The underscored language is the only discussion of internal settlements vis-a-vis the County's health benefits proposals, but we will assume for purposes of analysis that the arbitrator intended his earlier "pattern" analysis to pertain to both salary and health benefits. In any case, we conclude that the arbitrator's analysis of the internal settlements does not comply with the Act or our earlier decision.

Preliminarily, the arbitrator did not make explicit findings as to whether or not there was a settlement pattern with respect to health benefits and salary - or either of those items. Nor

did he make findings as to whether the settlements differed from the offer to this unit or analyze the significance of any differences. These are critical omissions because, as we explained in Union Cty., the existence - or not - of a pattern is an element that should be considered in determining the weight to be given internal settlements and in assessing the effect of an award on the continuity and stability of employment. 28 NJPER at 461. Further, Union Cty. stated that the Reform Act requires the arbitrator to explain the reasons for adhering or not adhering to any proven settlement pattern. Without specific findings as to the existence, nature or scope of an alleged settlement pattern, we cannot evaluate whether the arbitrator fulfilled that function.

We recognize that the arbitrator identified the layoffs experienced by this unit as a reason for deviating from the pattern - thus implying that one exists. But later he noted that the PBA had "offered evidence" that there was no real uniform pattern and that "several" of the settlements provided significant economic benefits not offered to this unit. That language suggests agreement with the PBA's argument. The opinion does not include an analysis of the PBA's arguments on the settlements and the County's response or explain the reasons for finding or not finding a pattern. Moreover, while alluding to

the PBA's argument about the economic benefits offered to other units, the opinion does not address the County's argument that the agreements with the Sheriff's Superior Officers, Sheriff's Officers, and Prosecutor's Detectives & Investigators Superior Officers should be considered part of a settlement pattern, even though they included senior officer stipends and salary adjustments not offered to this unit.[2/]

We could construe the arbitrator's comments as finding a pattern as to wages and/or health benefits, but not a strong or precise one. Even if we were to do so, however, the arbitrator did not adequately explain his reason for deviating from it.

As the arbitrator recognized, evaluation of whether a pattern should be followed with respect to a particular unit should take into account any unique considerations pertaining to that unit. Here, the arbitrator accepted a PBA witness' recitation of the problems resulting from the closing of one jail

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2/ The County asserted that the senior officer stipends and $1486 lump sum payments agreed to for the Sheriff's Officers and Sheriff's Superiors were funded by savings in other areas; noted that this unit already had the stipend; and stressed that the stipend concept emanated from the negotiations with this unit in settling the 1998-2000 contract. It asserted that the elimination of step one on the Prosecutor's Superior Officers guide was not an economic benefit to those unit members, as the PBA had argued, because the agreement provided that newly promoted officers would be placed at step two rather than, as previously, the higher-salary step four.

building and the subsequent layoff of unit members. He characterized as "undisputed" Vincent DeLouisa's testimony that unit members' workload and stress increased when they were required to supervise more inmates and work forced overtime. However, as the County points out, DeLouisa acknowledged on cross-examination, and a County witness also testified, that after the layoff, 250 inmates were transferred to a drug rehabilitation facility (T62; T208-T209).[3/] Thus, the County's position was that the officer-inmate ratio was the same as before the layoff. There was also testimony that forced overtime, while spiking immediately after the layoff, had declined somewhat by the time of the arbitration hearing (T83).

While we make no findings and reach no conclusions about working conditions after the layoff, we cannot accept the arbitrator's basis for deviating from any settlement pattern without a fuller discussion and weighing of all of the evidence presented on post-layoff working conditions.

We have these additional comments concerning the arbitrator's analysis of the County's health benefits proposals. By acknowledging other units' acceptance of the proposals, the

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3/ There was also testimony that corrections officers transported these individuals to court appearances and medical appointments and that at times they stayed at the jail in holding cells (T63-T64; T210).

arbitrator could be said to have implicitly found a pattern with respect to health benefits. Again, however, that comment falls short of the explicit findings we required. Moreover, the arbitrator's additional analysis of why he rejected the County's health benefits proposals does not comport with the Reform Act or Union Cty.

Union Cty. directed the arbitrator to apply the principles we noted earlier in this opinion -- pattern is an important labor relations concept; the reasons for not adhering to a pattern should be specified; and pattern must be considered in evaluating the continuity and stability of employment. These concepts logically imply that an employer-wide pattern on a particular issue will be entitled to careful consideration in assessing whether a party has met its burden of justifying a proposal consistent with the pattern. However, the arbitrator did not apply these concepts. His opinion appeared to give little consideration to other units' acceptance of the health benefits proposals, and discussed that acceptance in the course of noting that it was insufficient to justify award of the proposals where the County had not shown financial difficulty or inability to pay for existing benefits. Compare PBA Local 207 v. Bor. of Hillsdale, 137 N.J. 71, 86 (1994); Town of Newton, P.E.R.C. No. 98-47, 23 NJPER 599 (¶28294 1997) (financial impact criterion,

N.J.S.A. 34:13A-16g(6), does not require a municipality to prove its inability to pay the other party's offer). The opinion also did not address either the effect of not awarding the proposals on employees in other units or the ability to reach future settlements, factors encompassed within N.J.S.A. 34:13A-16g(8). Union Cty., 28 NJPER at 461; see also Fox v. Morris Cty., 266 N.J. Super. 501, 519 (App. Div. 1993), certif. denied, 137 N.J. 311 (1994).

For these reasons, we conclude that the arbitrator's discussion of salary and health benefits proposals did not include the findings and analysis concerning the internal settlements that we had directed. Therefore, we vacate the award.

In view of our conclusion, we need not address the parties' arguments as to whether the arbitrator properly analyzed the County's operational proposals or explained how his salary award was shaped by the statutory criteria. Nor need we consider whether the arbitrator should have considered information - submitted by the County after the hearing - concerning the savings that would accrue if its health benefits proposals were awarded. Finally, we do not address the County's argument that, in his second opinion, the arbitrator improperly reversed some conclusions in the first award.

We turn now to the issue of whether the case should be remanded to a different arbitrator.

As we explained in Union Cty., we and the Courts have generally remanded interest arbitration awards to the original arbitrator presuming, unless shown to the contrary, that the arbitrator would be able to take a "fresh look" at the case. Union Cty. distinguished cases where we or the Courts had declined to follow this practice, including Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998), where we found that an arbitrator, in his second award, had not adequately considered the private sector wage evidence that we had directed him to consider when we vacated and remanded his first award.

As in Bogota, this second award does not include the findings and analysis that we had directed. Therefore, the best course is to allow a new arbitrator to consider all of the County's and PBA's proposals and issue a new opinion and award in accordance with the statutory criteria and the principles we set out in Union Cty. and this decision. We emphasize that we express no opinion on the merits of the parties' proposals and make no finding either that there is a County-wide pattern on wages and health benefits or that an arbitrator must follow the alleged pattern.

Accordingly, we remand the case to the Director of Arbitration for appointment of an arbitrator. If the parties are unable to agree on a replacement arbitrator, an arbitrator shall be appointed by lot. N.J.A.C. 19:16-8.3. The remand shall be decided on the existing record, unless the arbitrator requires additional submissions.

ORDER

The arbitrator's award is vacated and this matter is remanded to the Director of Arbitration. If the parties are unable to agree upon a replacement arbitrator, the arbitrator shall be appointed by lot.

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. Commissioner Katz was not present.

DATED: May 29, 2003
Trenton, New Jersey
ISSUED: May 30, 2003