
Interest Arbitration Developments -- 1998

Public Employment Relations Commission

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What follows is a review of interest arbitration developments since the March 1997 Annual Conference.

Interest Arbitration Statute

P.L. 1997, c. 330, effective June 1, 1998, requires the State to pay 80% of the health insurance premiums or periodic charges for certain retirees from the Police and Firemen's Retirement System, the Consolidated Police and Firemen's Pension Fund, or the Public Employees' Retirement System. The bill also amends *N.J.S.A. 34:13A-18*, to state that an interest arbitrator cannot consider diminishing the benefits available through a negotiated agreement because the Legislature provided this statutory benefit.

Regulations

N.J.A.C. 19:16-5.17, effective May 19, 1997, sets forth procedures for seeking special permission to appeal to the Commission from an interest arbitrator's interlocutory ruling.

N.J.A.C. 19:16-5.13 states that a \$25.00 fee must accompany such a request.

An amendment to *N.J.A.C. 19:16-5.11*, adopted on February 26, 1998 and effective April 6, adjusts the fee for interest arbitrators. *N.J.A.C. 19:16-5.11* sets a per diem fee of \$800 for interest arbitrators assigned by lot. For arbitrators mutually selected by the parties, the fee shall be a per diem rate, not to exceed \$1000 per day, set by the arbitrator and filed with the Director of Arbitration.

Commission Decisions

1. Interest Arbitration Appeal Decisions

In *Cherry Hill Tp.*, P.E.R.C. No. 97-119, 23 *NJPER* 287 (¶28131 1997), the Commission established the standard of review for interest arbitration appeals. The Commission will not disturb the arbitrator's exercise of discretion in weighing the evidence and fashioning an award unless an appellant demonstrates that the arbitrator did not adhere to the standards in the Reform Act, violated

the standards in *N.J.S.A. 2A:24-8* or *-9*, or issued an award that is not supported by substantial credible evidence in the record as a whole.

Cherry Hill Tp. vacated and remanded an award involving the Township's police force because, in analyzing and denying the Township's proposal for a health benefit co-payment, the arbitrator stated that such a change should not be imposed by an interest arbitrator where it was not agreed to in negotiations. While it is appropriate for an arbitrator to require that a party requesting a contract change explain the need for it, the arbitrator's statement that a health benefit co-payment should not be imposed by an interest arbitrator was inconsistent with the obligation to resolve the unsettled issues and expressed an improper presumption. On remand, the arbitrator was also asked to comply with the statutory requirement to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria" *N.J.S.A. 34:13A-16d(2)*.

Cherry Hill Tp. also held that:

(1) The arbitrator did not improperly rely on information discussed in mediation.

* * *

(2) The arbitrator had the authority to freeze the starting salary for the term of the agreement, even though neither party proposed it. The issue of the appropriate starting salary was subsumed within the larger issue of the appropriate across-the-board salary increases, on which both parties had submitted proposals. However, the arbitrator had no authority to change the biweekly pay date when neither party had proposed it and it was not encompassed within any other proposal.

* * *

(3) Assuming, as the employer argued, that the award was 20 days late, that did not provide grounds for vacating the award given the statutory goal of providing for an expeditious, effective and binding procedure for the resolution of disputes.

In *Borough of Allendale*, P.E.R.C. No. 98-27, 23 *NJPER* 508 (¶28248 1997), the Commission held that the arbitrator acted within his discretion when he limited the arbitration proceeding to the issues listed in the filing party's petition. The arbitrator cited *N.J.A.C. 19:16-5.5(a)* and *(b)* and concluded that, because the Borough had not filed a response to the petition listing additional issues for consideration, it should not be able to submit them at the time of the formal hearing. Discussion of the additional issues during

mediation did not constitute substitute compliance with the rule and did not put the filing party on notice that they would be addressed in the formal arbitration proceeding.

However, the arbitrator erred in not ruling on the issues to be included in the proceeding until he issued his final opinion and award. If the arbitrator had ruled before the formal hearing, the Borough could have submitted a new final offer in light of his decision. The award was vacated and remanded to permit the Borough to submit a new final offer in light of the arbitrator's ruling limiting the proceeding to the issues listed in the filing party's petition. The Commission did not address the Borough's contentions that the arbitrator had not properly applied the statutory criteria.

In *Middlesex Cty.*, P.E.R.C. No. 98-46, 23 *NJPER* 595 (¶28293 1997), the Commission affirmed an arbitrator's award involving a county police force. The County had argued that the arbitrator had disregarded the public interest and improperly applied the criteria in the Reform Act.

The award was not necessarily inconsistent with the public interest because the award exceeded the amounts the County had budgeted for wage increases. The Reform

Act does not require that the arbitrator award the amount the employer has budgeted for wage increases, automatically equate the employer's offer with the public interest, or specify a formula for arriving at an award.

The Commission also rejected arguments that the arbitrator did not properly analyze the statutory criteria. The award represented a reasonable determination of the issues and was supported by substantial credible evidence in the record as a whole, including data on the cost of living, private sector wage increases, average interest arbitration awards and settlements, and evidence that the officers were less well paid than comparable municipal and county police forces. The arbitrator considered, but was not required to give dispositive weight to, the dollar amount increases included in an internal settlement where, based on his analysis and weighing of all the evidence, he concluded that a different award was warranted.

The record also supported the arbitrator's conclusion that the award would not materially jeopardize the County's financial goals, including its goal of building surplus. The arbitrator was not required to consider the impact on the County should other law enforcement units receive similar awards,

where the County had not presented projections of how various levels of potential awards, if applied to other units, would affect the County financially.

Middlesex Cty. also affirmed an arbitrator's interim ruling that the County could not, four months after the petition to initiate interest arbitration was filed, submit additional issues to be considered in the proceeding. *N.J.A.C.* 19:16-5.5(a) and (b) may be relaxed, or its time periods extended, where good cause is shown or where strict compliance would result in unfairness or interfere with the proper effectuation of the Act. *See N.J.A.C.* 19:10-3.1(a) and (b). The Commission will defer to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. In *Middlesex*, the County did not show that the arbitrator abused his discretion. The County had a statutory obligation, once the petition was filed, to engage in interest arbitration within the parameters of the Act and Commission rules. The County was not entitled to delay its response to the petition in order to coordinate negotiations with its other negotiations units. *See also Middlesex Cty.*, P.E.R.C. No. 97-63, 23 *NJPER* 17 (¶28016 1996) (denying County's request for

permission to appeal arbitrator's interim ruling).

In *Town of Newton*, P.E.R.C. No. 98-47, 23 *NJPER* 599 (¶28294 1997), the Commission affirmed an arbitrator's award, appealed by the SOA, involving a police superior officer unit. The arbitrator did not err in citing U.S. Department of Labor statistics concerning "working supervisors" in the private sector. Although the private sector employees did not have the same responsibilities as the superior officers, the Commission noted that *N.J.S.A.* 34:13A-16g(2)(a) calls for a comparison of the employees involved in the proceeding with employees "in private employment in general." The arbitrator considered all the SOA's evidence. However, that evidence did not require him to award higher salary increases where, based on a weighing and analysis of all the evidence, he concluded that other financial factors, along with the comparability and cost of living evidence, supported his award.

In *Borough of Cliffside Park*, P.E.R.C. No. 98-71, 24 *NJPER* 15 (¶29010 1997), the Commission denied the Borough's motion to file a notice of appeal nunc pro tunc. The Borough filed the notice 18 days after the deadline in *N.J.S.A.* 34:13A-16f(5)(a) and

argued that the union would not be prejudiced by the late filing. Statutory time limits for appeals to administrative agencies are generally considered mandatory and jurisdictional, and may be tolled in particular circumstances only if consistent with the underlying statute. In order to consider whether the 14-day time period should be tolled in a given case, a more particularized description of the reasons for the delay would be needed than was presented by the appellant.

In *Hudson Cty. Prosecutor, P.E.R.C. No. 98-88, 24 NJPER 78* (¶29043 1997), the Commission affirmed an arbitrator's award involving investigators in a prosecutor's office. The award was appealed by both the Prosecutor and the PBA.

The arbitrator did not err in awarding an across-the-board increase for 1997 lower than that proposed by the County, and no such increase for 1998, even though each party had included an across-the-board increase for each year included in its final offer. Where there are several points of disagreement between the parties, an arbitrator may evaluate the relationship among, or the combined effect of, the different proposals in arriving at an award. In *Hudson*, the PBA and the County had each proposed across-the-board increases. The

PBA had also sought an automatic step system in which all employees below the maximum salary would move one step annually on the salary guide. Therefore, the arbitrator could decide to award some step advancement and some across-the-board salary increases. In fixing across-the-board increases, the arbitrator could take into account the award of step advancement in the third year of the contract. The Commission did not decide whether, if confronted only with competing proposals for across-the-board salary increases, an arbitrator would be prohibited from awarding increases lower (or higher) than proposed by either party.

The arbitrator also properly analyzed the statutory criteria and did not err in giving some weight to the potential impact that awarding the PBA proposal for a step system would have on other County and Prosecutor units, none of which had a step system.

With respect to the County's appeal, a remand was not necessary to correct an alleged inconsistency between the arbitrator's statement as to the actual cost of the award and what the arbitrator stated he was awarding. The Commission found that the arbitrator's conclusion as to the cost of the award was accurate.

In *Borough of Bogota*, P.E.R.C. No. 98-104, 24 *NJPER* 130 (¶29066 1998), the Commission vacated and remanded an award involving the Borough's police force because, in analyzing the Borough's evidence concerning private sector employment, the arbitrator stated that he seriously doubted whether he should give any real consideration to a survey of private sector wage changes. The survey was prepared by the New Jersey Department of Labor pursuant to *N.J.S.A.* 34:13A-16.6 (Commission shall perform or cause to be performed a survey of private-sector wage increases for use in public sector wage negotiations). In discussing the survey, the arbitrator stated that there was no attempt to equate the work performed by the police officers with any other public or private employment.

By directing a comparison with private-sector employees "in general," *N.J.S.A.* 34:13A-16g(2)(a) deems that information concerning private-sector employees should be considered even though their work may not be similar to that of police or fire officers. Therefore, the arbitrator should have given the survey real consideration.

It was also inappropriate for the arbitrator to stress the small cost differential

between his award and the Borough's "alternate" 4% wage increase proposal. Because the Borough had intended the 4% proposal to be considered only if the arbitrator granted a non-salary proposal which the arbitrator had already excluded as untimely, the arbitrator should not have stressed the small cost differential between his award and the 4% wage increase proposal.

However, the arbitrator did not abuse his discretion in excluding, as untimely, a proposal first raised ten months after the interest arbitration petition was filed. *See N.J.A.C.* 19:16-5.5(a) and (b) and the *Middlesex Cty.* and *Allendale* cases discussed at pages 2-4 of this outline.

In *Salem Cty.*, P.E.R.C. No. 98-107, 24 *NJPER* ___ (¶___ 1998), the Commission vacated and remanded an award involving sheriff's officers employed by the County. The arbitrator denied the Association's proposal to implement a step salary guide but did not explain his reasons for doing so in the context of the statutory criteria.

2. Other Decisions of Note

In *Morris Cty. Sheriff*, P.E.R.C. No. 98-5, 23 *NJPER* 452 (¶28212 1997), recon. den., P.E.R.C. No. 98-34, 23 *NJPER* 545

(¶28270 1997), the Commission dismissed a petition for issue definition determination. Noting that conventional arbitration is the terminal procedure under the Reform Act unless the parties agree otherwise, the Commission held that issue identification will normally be necessary only in those circumstances where the parties have mutually agreed to use final offer arbitration as the terminal procedure. Since the parties had informed the Commission that conventional arbitration was the terminal procedure in the case, the Commission held that it was not necessary or appropriate for it to decide the petition. The Commission delegated to its Chair, or her designee, the discretion to dismiss petitions for issue definition determinations where conventional arbitration is the terminal procedure. *See also Morris Tp.*, P.E.R.C. No. 98-12, 23 *NJPER* 474 (¶28223 1997); *Lyndhurst Tp.*, P.E.R.C. No. 98-13, 23 *NJPER* 475 (¶28224 1997).

Private Sector Wage Survey

N.J.S.A. 34:13A-16.6 requires the Commission to make available annually, by September 1, a survey of private sector wage increases. As it did in 1996, the New Jersey

Department of Labor compiled a report identifying changes in the average wage of private sector jobs on a county-by-county and statewide basis. The private sector jobs are those covered under the state's unemployment insurance system. The 1997 document also shows changes in average wages for such major industry groups as construction, manufacturing, transportation, wholesale and retail trade, services and finance, insurance and real estate. Copies may be requested from the Director of Arbitration.

Continuing Education for Special Panel Members

In November 1997, the Commission held its annual continuing education program for its special panel of interest arbitrators. The program reviewed the Commission's interest arbitration appeal decisions and included panel discussions on mediation, hearing and opinion-writing issues. The mediation panel was composed of special panel members who are particularly successful in helping parties settle disputes. They emphasized that the Reform Act, like the predecessor statute, encourages arbitrators to assist parties in resolving disputes and they shared their approaches for helping parties reach

agreement. The panel on hearing and opinion-writing issues was composed of two special panel members who excel in writing opinions. They shared their ideas and suggestions on such topics as approaches to writing opinions in conventional as opposed to final offer proceedings, how to evaluate evidence on the various statutory criteria, and how to comply with the statutory requirement of determining "net annual economic change."

Biennial Report to the Governor and the Legislature

N.J.S.A. 34:13A-16.4 requires the Commission to submit to the Governor and Legislature a biennial report on the Police and Fire Public Interest Arbitration Reform Act. The first report was submitted in January 1998. It provided information concerning interest arbitration petitions, settlements, awards and appeals during the first two years under the Act.