IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FRATERNAL ORDER OF POLICE LODGE NO. 4,	)	
Appellant,	)	
v.	)	C. A. No. 20136
CITY OF NEWARK and PUBLIC EMPLOYMENT RELATIONS BOARD,	)	
Appellees.	)	

MEMORANDUM OPINION AND ORDER

Submitted: July 24, 2003
Decided: September 29, 2003

Perry F. Goldlust, Esquire, Joanne A. Shallcross, Esquire, ABER, GOLDLUST, BAKER & OVER, Wilmington, Delaware, *Attorneys for Appellant*.

Sheldon N. Sandler, Esquire, YOUNG CONAWAY STARGATT & TAYLOR, LLP, Wilmington, Delaware, *Attorney for Appellee City of Newark*.

LAMB, Vice Chancellor

I.

This is an appeal filed under 19 *Del. C.* § 1609 by the Fraternal Order of Police, Lodge No. 4 ("FOP") from a decision by the Public Employees Relations Board ("PERB"), a state administrative agency, affirming the decision of a binding interest arbitrator.[1] The parties briefed and argued the matter on the record of the proceeding below. The court concludes that the decision of the agency must be affirmed.

II.

In December 2000, collective bargaining negotiations began between the City of Newark ("City") and the FOP for a new contract to succeed the one that expired on March 31, 2001. On February 9, 2001, the parties requested the assistance of a PERB mediator to help bring the parties to settlement.[2] Because the parties were unable to reach complete agreement, the mediator referred the dispute to binding interest arbitration.[3] It should be noted that binding interest arbitration is invoked only after there has been an unsuccessful attempt at direct and mediated

---

[1] Charles D. Long, Jr., executive director of the PERB, was appointed as arbitrator pursuant to a recently enacted provision of the Police Officers' and Firefighters' Employment Relations Act. 19 *Del. C.* § 1601, *et seq.*

[2] 19 *Del. C.* § 1614.

[3] 19 *Del. C.* § 1615.

negotiations.[4] The interest arbitrator is charged with making "written findings of fact and a decision for the resolution of the dispute."[5] That decision "shall be limited to a determination of which of the parties' last, best, final offers should be accepted in its entirety."[6]

The "parties' last, best, final offers" differed in regard to the following six issues: salary increase and the addition of the rank of Police Officer First Class ("PFC"); the workers' compensation program; new retiree healthcare insurance; changes to the Flex Plan;[7] shift differential premiums; and the contract duration.[8] After a hearing, the interest arbitrator issued a written decision on January 7, 2002, in favor of the City.[9]

The FOP filed a timely Request for Review of the Decision of the Binding Arbitrator to the full PERB. The PERB issued a remand order on May 1, 2002,

---

[4] *See* 19 *Del. C.* §§ 1602(b) and (e) (defining "binding interest arbitration" and "collective bargaining," respectively).

[5] 19 *Del. C.* § 1615(d).

[6] *Id.*

[7] Under the Flex Plan, employees are awarded a certain number of Flex Points each month, which are used to purchase health, dental, and life insurance. Unused Flex Points may be used to purchase time off or they may be cashed out at $1 per point. Decision of Binding Interest Arbitrator (Jan. 7, 2002) at App. to FOP's Op. Br., ("Decision I") at 000249.

[8] *See* Decision I at 000247-50.

[9] *See id.* at 000261 ("Based on the record created by the parties, consideration of the statutory factors, and weighing of the last, best and final offers in their totality, the FOP has not carried its burden to support its proposal as the more reasonable and necessary ...").

after a public hearing on April 10, 2002, requiring the interest arbitrator to hold an additional hearing to supplement the record in certain respects.[10]

The interest arbitrator convened the remand hearing on August 22, 2002, and issued a second decision on November 12, 2002, that again adopted the City's final offer. The FOP appealed the second arbitration decision to the PERB, who held a hearing on December 16, 2002, and again voted in favor the City.[11] Pursuant to 19 *Del. C.* § 1609, the FOP appealed the PERB's decision to this court.

III.

The role of the court in reviewing the final decision of the PERB is limited to an examination of whether the agency's decision is supported by substantial evidence and free from legal error; moreover, "[a]bsent an abuse of discretion, the decision of the agency must be affirmed."[12] Substantial evidence is defined as

---

[10] Remand on Review of the Decision of the Binding Interest Arbitrator (May 1, 2002), at App. To FOP's Op. Br., at 000311. The PERB remanded for more evidence on two points specifically: (1) the basis for the respective salary proposals of the parties, including the FOP's proposal to include the additional rank of the Patrolman's First Class; and (2) the basis and cost of the City's Flexible Benefit Plan proposal, including the rationale for the reduction in points from 126 to 89.

[11] *See* Transcript of PERB Hearing (Dec. 16, 2002), at App. to FOP's Op. Br., ("PERB Hearing IV") at 000459-77.

[12] *Stoltz Management Co. v. Consumer Affairs Bd.*, 616 A.2d 1205, 1208 (Del. 1992) (citing, *State Dept. of Labor v. Medical Placement Services, Inc.*, 457 A.2d 382, 383 (Del. Super. 1982), *aff'd*, 467 A.2d 454 (Del. 1983)). *See also* 29 *Del. C.* § 10142(d) ("... the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency").

"such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[13]

IV.

The question presented for resolution on appeal to the PERB was whether the decision by the arbitrator is arbitrary, capricious, or otherwise contrary to law.[14] The full PERB issued a remand order on the first time around (May 1, 2002), and later on a second appeal (January 17, 2003) issued a decision following a review of the complete record, including the Decision of the Binding Interest Arbitrator on Remand. The PERB concluded that the interest arbitrator's decision was "neither arbitrary, capricious, nor contrary to law;" and voted 2 to 1 to affirm the decision of the interest arbitrator. [15]

A. The Role Of The Interest Arbitrator

The role of the arbitrator is narrow in scope. It is limited to a choice between the last, best, and final offers of the parties, in their entirety.[16] The record

---

[13] *Wilmington Firefighters Ass'n, Local 1590 v. City of Wilmington,* 2002 WL 418032, at *6 (Del. Ch.) (citing *Delaware State Univ. v. Delaware State Univ. Chapter of Am. Ass'n of Univ. Professors,* 2000 WL 33521111, at *3 (Del.Ch.)).

[14] PERB Review of the Arbitrator's Remand, at App. To Ans. Br. of Appellee City of Newark, ("PERB Review") at B376.

[15] *Id.* at B377.

[16] 19 *Del. C.* § 1615(d) ("The binding interest arbitrator shall make written findings of fact and a decision for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which of the parties' last, best, final offers shall be accepted in their entirety").

shows that the interest arbitrator complied with his statutory duties.[17] The interest arbitrator held hearings, both in making his initial decision and on remand, in which each party presented evidence. The interest arbitrator made his decision in the form of a written opinion that included his findings of fact. Although the interest arbitrator did not provide written findings of fact for each of the seven factors required to be considered in 19 *Del. C.* § 1615(d), he stated that his findings were based upon the record and "consideration of the statutory factors."[18]

The FOP argues that the interest arbitrator is required to provide written findings of fact for each statutory factor. This argument, however, is contrary to the plain text of the statute, which only requires the interest arbitrator to "*tak[e] into consideration*" the statutory factors.[19] Thus, written findings of fact are not

---

[17] 19 *Del. C.* § 1615(d) (requires that the binding interest arbitrator consider the following seven factors, listed here in brief, in addition to any other relevant factors: (1) public interest and welfare; (2) comparison of conditions and status of employment of employees affected by the binding interest arbitration to other employees in similar fields or skill level in the same community and comparable communities; (3) overall compensation, including benefits, currently received by the employees; (4) stipulations of the parties; (5) lawful authority of the public employer; (6) financial ability of the public employer; and, (7) other relevant factors).

[18] Binding Interest Arbitrator's Decision on Remand, (Nov. 12, 2002), at App. to FOP's Op. Br., ("Decision II") at 000436. In addition to the interest arbitrator's statement, he provided written findings of fact regarding comparable communities, present compensation, and the City's ability to pay. It is apparent from the interest arbitrator's written opinion that he did in fact consider all seven statutory factors.

[19] 19 *Del. C.* § 1615(d) (emphasis added).

required for each of the factors so long as each factor is considered.[20] In this case, the interest arbitrator, as is demonstrated by his written findings and by his statement in his opinion, met his statutory duties by considering all of the statutory factors.

B. The PERB's Review

The PERB concluded that the arbitrator "used reasonable judgment in evaluating the evidence presented based on criteria which are normally considered in binding interest arbitration proceedings in other jurisdictions."[21] The PERB was satisfied with the arbitrator's findings of fact and holdings on the disputed issues.[22]

The FOP attacks the PERB's decision, and consequently that of the interest arbitrator's, on several grounds. The FOP first contends that the interest arbitrator's selection of only a single city as comparable to the City is contrary to law and not supported by the facts. The FOP claims that because the interest arbitrator must consider "comparable communities,"[23] the interest arbitrator is

---

[20] *See, e.g.*, *Cleveland Police Patrolmen's Ass'n v. City of Cleveland*, 2001 WL 1654768 at *7 (Oh. Ct. App. 2001) (holding that "[a]lthough the panel's opinion focused on the second and third factors listed in the collective bargaining agreement, the panel touched on all of the factors listed"); *Moravia Community School District v. Moravia Education Ass'n & Public Employment Relations Board*, 460 N.W.2d 172, 181 (Iowa Ct. App. 1990) (holding that although the arbitrator's written decision did not discuss each factor in detail, the record demonstrated that all of the relevant factors had been considered, thus satisfying the statutory requirement).

[21] PERB Review at B377.

[22] *Id.* at B376-7.

[23] 19 *Del. C.* § 1615(d)(2).

required by law to use more than one comparable community. Based on its proposed comparables, the FOP further argues that the interest arbitrator's decision to accept the City's offer regarding salary increases and to accept the City's rejection of the addition of the rank of Patrolman First Class ("PFC") are not supported by the evidence. Additionally, the FOP argues that the decision to reject its proposed retiree healthcare plan and proposed changes to the workers' compensation plan as well as the interest arbitrator's conclusion regarding the one-year cost of proposals are not based on substantial evidence.

The City contends that the interest arbitrator's decision to consider the City of Dover as the only comparable was correct because the City of Dover is the only true comparable and the statute does not *require* the use of multiple comparables. The City also argues that the interest arbitrator's acceptance of the City's final offer was supported by substantial evidence because there was no need to alter the workers' compensation policy, the addition of a retiree healthcare plan justified the reduction in Flex Points, a three-year contract was more reasonable than a two-year contract, and there was no need for a shift differential.

1. Comparable Communities

Although the PERB clearly accepted the interest arbitrator's reasoning for allowing only the use of one other jurisdiction as a truly comparable police force, a major point of contention in this appeal is the interest arbitrator's determination that

only the City of Dover was "comparable" to the City of Newark. The statute requires the interest arbitrator to consider comparable jobs within the same community and similar jobs in comparable communities.[24] The FOP makes two arguments regarding the interest arbitrator's selection of Dover as the only comparable. First, the FOP argues that because the statute requires consideration of "comparable communities," in the plural, the interest arbitrator must use more than one comparable. Second, the FOP argues that the interest arbitrator's decision to use Dover as the only comparable is not supported by substantial evidence and the interest arbitrator should have also considered the City of Wilmington Police, New Castle County Police, and the Delaware State Police.

a. One Comparable Is Statutorily Acceptable

The statute does not require that the interest arbitrator consider more than one comparable in his analysis. The mere fact that the word "communities" is plural does not obligate the interest arbitrator to use more than one comparable in every situation. The arbitrator conceded that it was "unusual that a party would present only one other jurisdiction as a comparable," but noted that "it is also unusual that the other party would present only larger jurisdictions and then compare itself to the

---

[24] 19 *Del. C.* § 1615(d)(2).

average for that group."[25] Thus, the interest arbitrator's decision to use only one comparable community complies with the statutory mandate and is not contrary to law.

2. The City Of Dover As The Only Comparable Is Supported By Substantial Evidence

The interest arbitrator's decision to use the City of Dover as the only comparable community to the City of Newark is supported by substantial evidence. Information that is typically considered when determining what communities are comparable includes the population being served, the size of the police force, budget of the police department, and other geographic and demographic information.[26] Among these characteristics, Aitchison has noted in his treatise that "[t]he most frequently used characteristic is that of population of the city or county under study."[27]

---

[25] Decision II at 000446.

[26] *See* Frank Elkouri & Edna Elkouri, *How Arbitration Works* 1109 (5th ed. 1997) ("Determining which cities are 'comparable' for purposes of arbitrable resolution of a dispute between a city and its police officers has been made on the basis of the following factors: (1) proximity to a large city, (2) population, (3) size of the police force, and (4) size of the police department budget"). *See also,* Will Aitchison, *Interest Arbitration* 32 (2d ed. 2000) (stating that "the resolution of the question of which jurisdictions are comparable will result in geographically, economically, and demographically similar employers being studied").

[27] Aitchison, *supra* note 26, at 38.

The court is satisfied with the PERB's conclusion that the City of Dover is the only truly comparable police force in the State of Delaware.[28] The FOP argued that the City of Wilmington Police, New Castle County Police, and Delaware State Police were also comparable.[29] These police departments, however, serve populations that are much greater than the City of Newark and have vastly bigger police forces. Although the larger jurisdictions have many more crimes reported annually, the crime per officer is similar between all jurisdictions.[30] As previously discussed, however, when determining comparables, one single factor is not dispositive.[31] The evidence shows as follows: [32]

Department	Number of Sworn Personnel	Population Served	Area Served (square mi.)	Police Budget (Millions)	2000 Reported "More Serious" Crimes	2000 Reported "Less Serious" Crimes
State Police	555	783,600	1,954	$79.7	12,240	49,538
New Castle County	346	500,265	426	$58.4	7,715	37,065
Wilmington	289	72,664	10.8	$31.1	6,882	24,661
Dover	81	32,135	22.4	$9.1	2,343	7,800
Newark	56	28,547	8.9	$5.8	1,454	5,736

[28] PERB Review at B375.

[29] FOP Op. Br., at 14-15.

[30] Decision II at 000441.

[31] *See supra* notes 26-27 and accompanying text.

[32] Decision II at 000445.

The FOP argued that these police departments were also comparable to the City of Newark Police because they are five of the only departments in the State that are accredited by the Commission on Accreditation for Law Enforcement Agencies ("CALEA"). As was shown during the remand hearing, however, there is no size limitation for accreditation.[33] Departments earn accreditation by applying to CALEA and meeting certain criteria such as policing activities and career development.[34] Factors tending to show comparability, such as demographics or size of the department, are simply not part of the accreditation application. Accreditation of a police department, absent other similar factors, provides no basis for considering departments as comparable to one another.

When considering all of the factors, the City of Dover is similar to the City of Newark in nearly every category. Additionally, Newark and Dover are the only two cities in Delaware that have sizeable university populations. For the aforementioned reasons, substantial evidence supports the decision that, of the

---

[33] Excerpts from the Remand Hearing Tr. (Aug. 22, 2002) at App. to Ans. Br. of Appellee City of Newark, ("Remand Hearing Tr.") at B242-45 (According to CALEA, there are six accredited departments in Maryland that are smaller than Newark and four accredited departments in Pennsylvania smaller than Newark. Notably, several large cities, such as Baltimore, Pittsburgh, and Philadelphia are not accredited).

[34] FOP Op. Br., at 15-16.

jurisdictions proposed by the FOP and the City, the City is correct that Dover is the only jurisdiction that is truly comparable to Newark.[35]

V.

The interest arbitrator's decision evaluated the last, best, and final offers of the FOP and the City against the statutory framework of 19 *Del. C.* § 1915. The interest arbitrator concluded and the PERB affirmed the decision that the City of Newark's offer should be accepted in its entirety. Both the arbitrator and the PERB are limited to deciding on the parties' offers in their entirety, and the court is positioned as a check to guarantee that there is substantial evidence and no abuse of discretion in deciding whose offer should be accepted.[36] The FOP and the City were unable to come to agreement over the six issues that are delineated below. The court concludes that the decision by the PERB to affirm the interest arbitrator's choice of the City's offer is supported by substantial evidence.

---

[35] The City also proposed that, if the court used the larger jurisdictions proposed by the FOP, then it should also consider smaller cities within the State of Delaware and Maryland. Because the court agrees that substantial evidence supports the finding of the interest arbitrator that Dover is the only comparable community, it need not reach the issue of which, if any, smaller communities should be included in the sample. If, however, the Court did use the larger jurisdictions proposed by the FOP as comparables, then it would also be appropriate to consider the smaller jurisdictions proposed by the City.

[36] PERB Review at B377 ("Requiring that the decision thus reached must be the complete final offer of one party or the other assures there will be both a 'winner' and a 'loser' at the completion of this process").

A. Salary And The Addition Of A Paid PFC Rank

The FOP's salary proposal had two main facets: a 4% increase in pay and the creation of a separate and higher salary progression for officers who attain the PFC level.[37] The PERB affirmed the interest arbitrator's choice of the City's more moderate proposal on a progressive salary increase over three years.[38]

The interest arbitrator compared the proposed salary increase to comparables[39] and determined that, because the City could afford either proposed increase, the ability to pay[40] did not affect the decision of which proposal to adopt.[41] The interest arbitrator also considered the public welfare[42] by analyzing the competitiveness of the FOP's salaries relative to other jurisdictions in Delaware[43]

---

[37] FOP Op. Br., at 25.

[38] PERB Review at B375. *See* Decision II at 000446-47 (The interest arbitrator determined that the City's proposed pay increase of 3.25% in year one and year two and 3.5% in year three is more appropriate than the FOP's proposed 4.0% per year for both years of its proposed two-year contract).

[39] Decision II at 000446. The City has two other organized bargaining units, which serve as comparables within the City of Newark: IUE Local 317—representing white-collar employees, and AFSCME Local 1670—representing blue-collar employees. Both of the unions agreed to the same salary increase proposed by the City, albeit in a 5-year contract as compared to the 3-year contract between the FOP and the City.

[40] 19 *Del. C.* § 1615(d)(6).

[41] Decision I at 000258.

[42] 19 *Del. C.* § 1615(d)(1).

[43] *See* Remand Hearing Tr. at B198; City Exhibit 5 from Remand Hearing, App. To Ans. Br. Of Appellee City of Newark, at B265-74. The Dover Police Department, which already receives less compensation than the FOP, agreed to a salary increase of 3.0% in both years of its two-year agreement. Under both plans, the FOP's salary advantage over the Dover Police Department will increase between 2001 and 2003 as both plans provide higher annual increases than the Dover Police Department is receiving.

and the attrition rates of the department.[44] Competitiveness and attrition are related to the public welfare because they offer an assessment of the likelihood that the salary structure will hurt the department's ability to recruit and retain officers. The evidence indicates that the FOP's attrition rate is not unusual and most losses do not appear to be related to compensation.[45] Consideration of the remaining factors, the lawful authority of the City, any stipulations of the parties, and other factors traditionally considered in interest arbitration,[46] did not lend support to either side of the arbitration.

The PERB affirmed the interest arbitrator's decision that the addition of a PFC salary rank after two years as proposed by the FOP is not necessary to retain police officers.[47] The rank of PFC is currently achieved after the third anniversary of an officer's employment with the department. The move is essentially automatic and the officer does not receive a pay raise, beyond the step increase for another year of service, for the promotion in rank.[48] The FOP proposed moving the

---

[44] Decision I at 000259.

[45] Decision II at 000443 (Of the FOP's 37 officers who have left the department since 1996, 19 retired or went on disability, 5 were terminated for conduct or poor performance, 5 left law enforcement entirely, 2 left for federal agencies, and 6 went to the State Police). In addition to those losses, the FOP has experienced a decrease in the applicant pool in recent years, but the FOP concedes that all major Delaware police forces have experienced a similar decline. Transcript of Hearing (Sept. 14, 2001), App. To FOP's Op. Br., at 000142, 000219.

[46] 19 *Del. C.* §§ 1615(d)(4-5), (7).

[47] PERB Review at B375.

[48] Remand Hearing Tr. at B203-4, B246.

promotion in rank up to the officer's second anniversary and providing a pay increase to match the promotion. The promotion and pay increase would come as early as six months after a new employee becomes a full fledged police officer, i.e., after the officer graduates from the police academy and completes a year of probation. The effect of the pay increase would be to increase the salary of every officer with over two years of service by another 3.68%.[49]

The FOP claims that the comparable community, Dover, has a paid rank analogous to the proposed PFC rank. Dover's purported analogous rank, Police Officer II ("POL OFF II"), is achieved after three years of service,[50] the same number of years that it takes an officer in the Newark Police Department takes to achieve the rank of PFC under the current system. In addition, Newark has the rank of Corporal, which includes a pay increase and for which officers are eligible after four years.[51] Newark's police officers are also more highly compensated than Dover's across the board.[52] Based on these comparables, the FOP's proposal was not adopted.

---

[49] *Id.* at B205.

[50] App. To FOP's Op. Br., at 000527.

[51] *See* Decision II at 000440.

[52] City Exhibit 5 from Remand Hearing, App. to Ans. Br. of Appellee City of Newark, at B265-74.

B. Workers' Compensation

The PERB affirmed the interest arbitrator's conclusion that the workers' compensation program should not be changed.[53] Rather than opt into the state's workers' compensation, the City has, for the past 15 years, provided coverage through a private insurance and self-insurance program.[54] The FOP argues that Newark is the only municipality in the state that does not use the state's program and that Newark's program is unfair because it leaves the City as the final decision-maker regarding disputed claims.[55]

The FOP was not persuasive in arguing that that the City should be required to adopt a policy paralleling the state statute.[56] The only finding of fact that the interest arbitrator included in his opinion was that no witnesses could recall any claims not being resolved in favor of the police officer filing the claim.[57] In fact, the City has generated cost savings by maintaining its own plan.[58] In addition, there has never been a problem relating to workers' compensation among the FOP's

---

[53] PERB Hearing IV at 000468, 000476

[54] Excerpts from the Arbitration Hearing Tr. (Sept. 14, 2001), App. to Ans. Br. of Appellee City of Newark, ("Arbitration Hearing Tr.") at B177-79.

[55] The interest arbitrator noted that neither party introduced into evidence the City's current policy. Decision I at 000255.

[56] *Id.*

[57] *Id.*

[58] Arbitration Hearing Tr. at B177-80.

members.[59] The FOP asserted that the City of Newark is the only municipality in the State that does provide public employees with statutory workers' compensation coverage. No evidence has been presented to support or refute this claim.

C. Retiree Healthcare Insurance And Flexible Benefit Plan

The interest arbitrator determined that the City's proposed retiree health insurance plan and its proposal to reduce the monthly Flex Points given to each officer in order to offset some of the costs of retiree health insurance was the more appropriate option. The City does not currently provide health insurance to retirees. Both the City's proposal and the FOP's proposal provide the FOP's members with an entirely new benefit, and the PERB affirmed the FOP's conclusion that the City's plan was more reasonable.[60]

The City proposed two alternatives for retirees.[61] Option A provides health insurance for up to 15 years after an officer retires with the City paying 100% of the retiree's premiums.[62] Under Option B, the City would pay a flat amount toward health insurance for the life of the retiree, beginning at a time selected by the retiree following the retiree's 55th birthday and 25th anniversary of the retiree's date of hire

---

[59] *Id.*

[60] PERB Review at B376.

[61] The City's offer to contribute towards spousal coverage was accepted by the FOP and was not in dispute at the interest arbitration.

[62] Decision II at 000439.

as a police officer.[63] The City also proposed a reduction in the Flex Points from 126 monthly points to 91 monthly to help pay for the new benefit.[64]

The FOP proposed that retiree health insurance be a continuation of an employee's healthcare coverage until the retiree is eligible for Medicare. Under the FOP's proposal, the City would pay 100% of the premiums for retirees.[65] The FOP did not propose any reduction in Flex Points.

The Newark Police Department is the only represented police department in the State of Delaware in which officers do not contribute for health, dental, and life insurance premiums.[66] In fact, the City currently provides between $27,770 and $32,682 per year to officers to cash-in excess Flex Points that are not used to purchase health, dental, or life insurance.[67] In addition, there are no other public sector employers in the State of Delaware that provide retiree health benefits at no cost to the retiree, including the other two collective bargaining units in the City of Newark that both accepted a new retiree healthcare benefit consistent with the one offered to the FOP.[68]

---

[63] *Id.*

[64] *Id.* at 000443.

[65] *Id.* at 000453.

[66] *Id.* at 000451-53.

[67] *See id.* The actual dollar amount is in dispute. The $27,770 is the number submitted by the FOP, while the $32,682 is the amount provided by the City.

[68] *Id.* at 000451; Decision I at 000256-57.

The interest arbitrator also considered the expected costs of the new retiree health insurance. The City anticipates the total cost of retiree and spousal health benefits over the next ten years to be $690,619.[69] The City expects to save $25,000 per year from the reduction in Flex Points, which will cover about 36% of the expected costs of the retiree health benefit.[70] The interest arbitrator expressed uncertainty about the exact dollar amounts of the City's cost estimates, but determined that the evidence supported the City's proposal that the retirees pay a portion of the health insurance premium.[71]

The interest arbitrator also noted that the City's proposal had some drawbacks. Because coverage under Option A is only for 15 years beyond retirement, retirees may have a gap between their retiree health insurance and the time at which they become Medicare eligible.[72] In addition, Option B leaves open what the premium contribution will be for retirees who do not elect to begin coverage until age 55 and whether retirees might be medically excluded from re-entering the plan at that time.[73]

---

[69] Decision II at 000452.

[70] *Id.* at 000452-53.

[71] *Id.* at 000453 (stating the "[e]ven if the City's projections are overstated," the FOP members are getting a new benefit for which the City is paying the majority of the costs, which is a better alternative than the FOP's proposition that requires the City to pay all costs).

[72] Decision I at 000256.

[73] *Id.*

D. Shift Differential

The FOP proposed an increase in the shift differential paid to officers who work non-standard hours. The interest arbitrator determined that the FOP's proposal was more reasonable that the City's proposal to maintain the *status quo*.[74] The interest arbitrator, however, stated that "the issue of shift differential is of relatively insufficient weight to affect the decision reached below."[75] The FOP offered no argument regarding the issue of shift differential and the City conceded that interest arbitrator's decision was supported by substantial evidence.

E. Contract Term

The interest arbitrator decided that the City's proposal regarding the length of the contract was more reasonable than the FOP's proposal. Because the City is entitled to a period of labor peace after the current negotiations, the City's proposal for a three-year contract is more reasonable than the FOP's proposal for a two-year contract. Both of the other two bargaining units agreed to five-year contracts. Thus, the evidence supports the City's proposal.

---

[74] *See id.* at 000260.

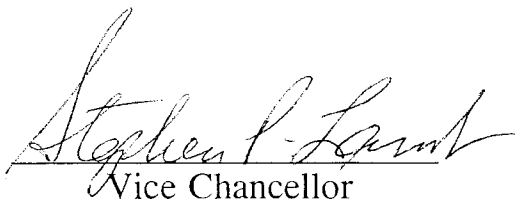
[75] *Id.*

F. One-Year Cost Of The Proposals

The interest arbitrator adopted the City's estimate of the one-year cost of the proposals. The FOP argues that, because the interest arbitrator did not state why he chose the City's projections rather than the FOP's, the decision was not supported by the evidence. The interest arbitrator should have discussed his reasons for choosing one cost estimate over the other. However, because the evidence supports the City's proposal on the other issues, it follows that the evidence supports using the City's cost estimate as well.

VI.

After reviewing the evidence discussed above, the court finds that the PERB's decision to affirm the interest arbitrator was legally correct and supported by substantial evidence; moreover, that decision did not involve an abuse of discretion. For those reasons, the decision of the PERB is AFFIRMED. IT IS SO ORDERED.



Vice Chancellor