

P.E.R.C. NO. 2011-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Appellant/Respondent,

-and-

Docket No. IA-2007-087

PBA LOCAL NO. 245,

Respondent/Movant.

SYNOPSIS

The Public Employment Relations Commission grants a motion to dismiss an appeal of additional rulings made by an interest arbitrator to complete an award originally issued on December 18, 2010. The Commission holds that it lacks jurisdiction to decide the issues the Borough appeals as they have already been addressed by the Commission or determined by the Appellate Division.

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/Respondent, DeCotiis, Fitzpatrick,
Cole & Wisler, LLP, attorneys (J. Sheldon Cohen, of
counsel)

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

DECISION ON MOTION TO DISMISS

The Borough of Fort Lee seeks to appeal additional rulings made by an interest arbitrator on December 21, 2010, to complete an interest arbitration award originally issued on December 18, 2008.^{1/} PBA Local No. 245 moves to dismiss the Borough's appeal. We grant that motion.

^{1/} The December 18, 2008 award was appealed to the Commission, and, following a remand and a supplemental award, was affirmed by the Commission and the Appellate Division of the Superior Court. See Fort Lee and PBA Local No. 245, P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009), appeal of decision on remand, P.E.R.C. No. 2010-17, 35 NJPER 352 (¶118 2009), aff'd 2011 N.J. Super. Unpub. LEXIS 931 (2011). Supreme Court review was not sought.

In his December 18, 2008 award, which established the terms of a collective negotiations agreement from January 1, 2007 through December 31, 2010, Arbitrator Robert M. Glasson directed the Borough and the PBA to meet and attempt to reach agreement on contract language with regard to his award on Health Benefits, Health Insurance Opt-Out, Legal Representation Plan, Holiday Pay. The arbitrator ruled:

I shall retain jurisdiction in the event the parties fail to agree on the final language within 30 days of receipt of the award.^{2/}

Because the parties had been unable to agree on contract language on the four topics, the arbitrator issued a "Supplemental Interest Arbitration Decision" on December 21, 2010 that established contract language on those issues.^{3/}

On January 4, 2011 the Borough submitted a "Notice of Appeal" to the Commission asserting, inter alia, that the arbitrator lacked jurisdiction to issue his December 21, 2010 decision.

2/ On Health Benefits, the arbitrator's order read:

I shall retain jurisdiction to resolve any disputes over the specific terms of the health insurance and prescription drug coverages including the language to be included in the 2007-2010 CBA in the event the parties fail to agree within thirty days of the receipt of the award.

3/ The arbitrator recites the unsuccessful efforts of the parties to obtain agreements on contract language on these four issues.

On January 11, 2011, the PBA filed a Motion to Dismiss the Notice of Appeal asserting that it sought reconsideration of issues that had already been decided and/or were pending before the Appellate Division and should not be brought before the Commission.

The Commission requested the parties to address whether the December 21, 2010 decision was an appealable interest arbitration award and whether the Commission had jurisdiction in light of the then pending appeal before the Appellate Division. On January 25 and 28, 2011, respectively, the Borough and the PBA submitted responses. After the Appellate Division's April 15 decision affirming the Commission's decisions upholding the interest arbitration award, the Borough and the PBA submitted additional statements of position.

The Borough primarily makes procedural and jurisdictional arguments asserting that the arbitrator's December 21, 2010 decision was null and void. It contends that once the arbitrator's original December 18, 2008 and supplemental award issued on July 6, 2009 following our remand, the arbitrator lacked jurisdiction to issue further rulings.

The PBA responds that the arbitrator's retention of jurisdiction was a proper exercise of his authority and was within the rules and procedures governing interest arbitration

proceedings. It asserts that the Borough's latest application is another attempt to attack an award that has been affirmed by both the Commission and the Appellate Division of Superior Court.

The arbitrator's order that the parties attempt to agree upon language on Health Benefits, Health Insurance Opt-Out, Legal Representation Plan, Holiday Pay was part of his initial award. The Borough had an opportunity to appeal that aspect of his award and did so at least with respect to the Legal Representation Plan. Our decision rejected that aspect of the appeal. See P.E.R.C. No. 2009-64 at 18-19, 35 NJPER at 153. In addition, the opinion of the Superior Court, Appellate Division, upholding our decisions affirming the arbitrator's awards also mentions the arbitrator's remand to develop language on the Legal Defense Plan. 2011 N.J. Super. Unpub. LEXIS 931 at 7, 15.^{4/}

^{4/} The Court's opinion misstates the time frame of the remand ordered by the arbitrator. It reads:

The arbitrator remanded this issue for the parties to develop procedures for implementation of the legal defense insurance program. He retained jurisdiction for thirty days in the event of a disagreement.

[2011 N.J. Super. Unpub. LEXIS 931 at 7, n.5]

As noted at page 2 of this decision the arbitrator ordered:

I shall retain jurisdiction in the event the parties fail to agree on the final language within 30 days of receipt of the award.

(continued...)

Accordingly, the Borough's arguments that the arbitrator exceeded his authority by retaining jurisdiction over the four issues addressed in his December 21, 2010 decision had already been presented to us and to the Appellate Division on the Legal Defense Plan and could have been raised with respect to the other three issue as well. In addition the points raised by the Borough's January 4, 2011 "Notice of Appeal" asserting that the award conflicts with elements of P.L. 2010, c. 2 was also addressed by the Appellate Division opinion,^{5/} and is also the subject of pending, related litigation.^{6/}

Accordingly, as the issues raised by the Borough have already been determined by, or are pending before appellate tribunals, we lack jurisdiction over the Borough's application.

^{4/} (...continued)

The parties inability to reach an agreement within a 30 day window triggered the arbitrator's authority to complete his award. His jurisdiction did not end after thirty days.

^{5/} See 2011 N.J. Super. Unpub. LEXIS 931 at 18, n.10.

^{6/} See Fort Lee Policemen's Benevolent Ass'n, Local 245 v. Borough of Fort Lee, 2010 N.J. Super. Unpub. LEXIS 3144 (Ch. Div., Oct. 12, 2010), appeal pending, Appellate Division Docket No. A-1646-10T3.

ORDER

The Borough of Fort Lee's "Notice of Appeal" filed on January 4, 2011 is hereby dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Wall was not present.

ISSUED: June 30, 2011

Trenton, New Jersey