

P.E.R.C. NO. 2011-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BLOOMINGDALE,

Petitioner,

-and-

Docket No. IA-2011-045

PBA LOCAL 354,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies an interest arbitration appeal filed by the Borough of Bloomingdale. The Commission holds that the most recent agreement between the parties expired December 31, 2010 and not January 1, 2011 thus, the arbitrator was not required to apply the 2% salary cap set forth in N.J.S.A. 34:13A-16.7(b) in issuing the interest arbitration award.

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, McManimon & Scotland, L.L.C.,
attorneys (Cecilia I. Lassiter, of counsel)

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

DECISION

On February 16, 2011, PBA Local 354 filed a Petition to Initiate Compulsory Interest Arbitration. The PBA and the Borough of Bloomingdale are parties to a collective negotiations agreement with an expiration date of December 31, 2010.

On February 23, 2011, pursuant to P.L. 2010 c. 105, codified as N.J.S.A. 34:13A-16e(1), James W. Mastriani was appointed by lot to serve as the interest arbitrator. On March 16, an interest arbitration hearing was held. On April 11, Arbitrator Mastriani issued his award setting the terms of a successor agreement covering the period from January 1, 2011 through December 31, 2014.

On April 20, 2011, the Borough filed a "Notice of Appeal of Interest Arbitration Award," supported by a brief, certifications and exhibits. On April 27, the PBA filed a brief urging that the award be affirmed. Where an interest arbitration award is appealed, N.J.S.A. 34:13A-16f(5) (a), as amended by P.L. 2010, c. 105, requires that the Commission issue a decision within 30 days after an appeal is filed.

The arbitrator issued a conventional arbitration award as he was required to do in accordance with amendments to the interest arbitration law contained in P.L. 2010 c. 105. N.J.S.A. 34:13A-16d(2).^{1/} A conventional award is crafted by an arbitrator after considering the parties' final offers in light of nine statutory factors. We affirm the award.

The Borough seeks to vacate the award due to the arbitrator's:

[F]ailure to apply the law as written and to consider evidence pertinent to this controversy, . . . Specifically, Arbitrator Mastriani failed to apply the 2% cap on base salary increases pursuant to N.J.S.A. 34:13A-16.7(b) in the issuing of the interest arbitration award.

During the interest arbitration proceedings, the Borough argued to the interest arbitrator that the parties most recent agreement did not expire until January 1, 2011 because it read:

^{1/} Effective January 1, 2001, P.L. 2010, c. 105 eliminated all other methods of interest arbitration and only provides for conventional arbitration.

"This Agreement shall be deemed to have been in full force and effect from January 1, 2006 through and including December 31, 2010."

After Arbitrator Mastriani rejected the Borough's contention, it sought special permission to appeal that ruling to the Commission. The Commission Chair denied that application because it was untimely, but also expressed her agreement with the arbitrator's reasoning. Borough of Bloomingdale, P.E.R.C. No. 2011-70, ___ NJPER ___ (¶____ 3/31/11).^{2/}

The only issue raised by the Borough in this appeal is whether the parties' most recent agreement expired on December 31, 2010 or January 1, 2011, the same issue it raised in its unsuccessful application for special permission to appeal. In response, the PBA asserts that because the Commission Chair, in addition to holding the Borough's application was untimely, also rejected the Borough's arguments, it is barred from raising the issue again before the Commission and should have sought relief from the Appellate Division of Superior Court.

Because the Chair denied special permission to appeal on a procedural ground, we will entertain the merits of the Borough's arguments about the expiration date in this appeal. However, we

^{2/} We deny the Borough's request for oral argument before the Commission as this appeal is the second time it has presented its arguments. No further exposition of the parties' positions is necessary.

affirm the award because the Borough has not presented any new arguments or information that casts doubt on the arbitrator's ruling on the expiration date of the parties' prior agreement.

The expiration date of the parties' last agreement becomes significant in light of two new statutes added to the interest arbitration law by P.L. 2010, c. 105.

N.J.S.A. 34:13A-16.7(b) provides:

An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an annual basis, 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; provided, however, 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 percentages. 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.

N.J.S.A. 34:13A-16.9 governs the 2% cap on base salary:

This act shall take effect January 1, 2011; provided however, section 2 [C.34:13A-16.7] shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to a negotiated agreement expiring on that effective date or any date thereafter until April 1, 2014, whereupon the provisions of section 2 shall become inoperative for all parties except those whose collective negotiations agreements expired prior to

April 1, 2014 but for whom a final settlement has not been reached. When final settlement between the parties in all such negotiations is reached, the provisions of section 2 of this act shall expire. In the case of a party that entered into a contract that expires on the effective date of this act or any date thereafter until April 1, 2014, and where the terms of that contract otherwise meet the criteria set forth in section 2 of this act, that party shall not be subject to the provisions of section 2 when negotiating a future contract.^{3/}

P.E.R.C. No. 2011-70 notes at page 4:

N.J.S.A. 34:13A-16.9 sets forth that the 2% base salary cap applies to contracts expiring on or after January 1, 2011 only. The arbitrator's ruling that the contract, which expired December 31, 2010, was not subject to the 2% base salary cap is in conformance with the clear directive of the new law. The Borough's argument that the contract expired on January 1, 2011 is contrary to the plain meaning of the contract language.

Because the parties' prior agreement expired before January 1, 2011, and the duration of the new agreement as set by the arbitration award extends beyond April 1, 2014, the arbitrator was not bound to cap base salary items at 2% annually. The Borough's argument lacks merit.

3/ The Commission has established a set of Frequently Asked Questions on its web site pertaining to the amendments to the interest arbitration law made by P.L. 2010, c. 105. FAQ 16 addresses the import of the 2% cap.
http://www.state.nj.us/perc/FAQ_New_Interest_Arbitration_Procedures_2011.03.14.pdf

ORDER

The arbitrator's award is affirmed.

BY ORDER OF THE COMMISSION

ISSUED: May 13, 2011

Trenton, New Jersey