

I.R. No. 2010-21

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NEPTUNE,

Respondent,

-and-

Docket No. CO-2010-405

PBA LOCAL 74,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the submission of certain evidence to an interest arbitrator. The Designee found that pursuant to N.J.A.C. 19:16-5.7(a) and (k), an interest arbitrator has exclusive jurisdiction to initially determine the admissibility of such evidence in an interest arbitration proceeding. Appeals of the interest arbitrator's decision are to the full Commission. N.J.A.C. 19:16-5.7; 19:16-8.1.

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Appearances:

For the Respondent, Apruzzese, McDermott, Mastro & Murphy, P.C. (Neha Patel, of counsel)

For the Charging Party, Loccke, Correia, Schlager, Linsky & Bukosky, attorneys (Marcia J. Tapia, of counsel)

INTERLOCUTORY DECISION

On April 27, 2010, Neptune Township PBA Local No. 74 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Neptune (Township) violated 5.4a(1), (2), (3), (5) and (7)<sup>1/</sup> of

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The PBA alleges that the Township has submitted to the Township's/PBA's interest arbitrator in IA-2009-048, and relied upon a Township/FOP document which, the PBA argues, is and/or contains an illegal parity clause which adversely impacts the PBA during the negotiations process.

The unfair practice charge was accompanied by an application for interim relief. An Order to Respond was executed on April 30, 2010. The Township responded by letter of May 14, 2010.

The PBA argues that the Township/FOP document interferes with its (the PBA's) right to negotiate fairly with the Township. The PBA's application seeks to restrain the Township from submitting the FOP document to the interest arbitrator, and seeks to restrain the Township from refusing to strike the alleged parity clause from the FOP document.

The pertinent facts show:

On or about March 8, 2010, the PBA submitted a motion to strike to the interest arbitrator, objecting to his considering documents sent to the arbitrator as a package after the close of hearing. That package included the Township/FOP document referred to above. The PBA alleged to the arbitrator that the FOP document contained an illegal parity clause.

On or about March 17, 2010, the Township responded to the PBA's motion, arguing to the interest arbitrator he should consider the information provided.

The Township's response to the application here argued that only the interest arbitrator has jurisdiction to determine the admissibility of evidence after the close of the hearing and that the arbitrator has not yet ruled upon the PBA's motion to strike.

#### ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Township cited N.J.A.C. 19:16-5.7(a) and (k) to support its position. Those provisions provide:

(a) The conduct of the arbitration proceeding by an arbitrator or panel of arbitrators shall be under the exclusive jurisdiction and control of the arbitrator or arbitrators.

(k) The parties, at the discretion of the arbitrator, may file post-hearing briefs.

The arbitrator, after consultation with the parties, shall have the authority to set a time period for the submission of briefs, but that period shall not exceed 30 days from the close of the hearing. Briefs shall be submitted to the arbitrator along with submission of proof of service on all parties. The parties shall not be permitted to introduce any new factual material in the post-hearing briefs, except upon special permission of the arbitrator.

Interlocutory rulings of an interest arbitrator may be appealed to the Commission by special permission, N.J.A.C. 19:16-5.17, and final awards of an interest arbitrator may be appealed to the Commission pursuant to N.J.A.C. 19:16-8.1.

The Township also relied upon several decisions to support its argument that the arbitrator has the jurisdiction to determine the initial admissibility of the disputed information. Borough of Fort Lee, P.E.R.C. No. 2009-64, 35 NJPER 149 (¶55 2009); Borough of Bogota, P.E.R.C. No. 99-20, 24 NJPER 453 (¶29210 1998); Borough of Fanwood, D.U.P. No. 85-15, 10 NJPER 651, 652 (¶15314 1989).

With respect to its request that the Township be restrained from presenting the FOP document to the arbitrator for consideration, the application is denied. The PBA has not demonstrated a substantial likelihood of success that a restraint from a Commission Designee regarding evidence submitted in an interest arbitration case is an appropriate procedure. The Commission rules provide that the arbitrator has the exclusive jurisdiction over the arbitration proceeding and that appeals of

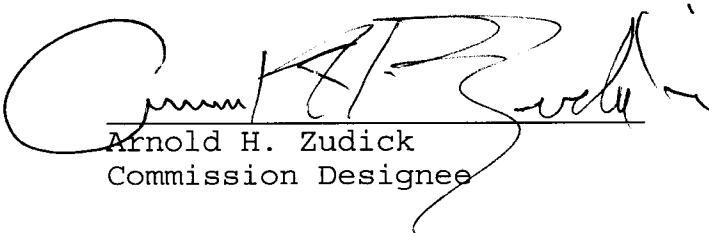
the arbitrator's decision are to the full Commission. Here, the PBA properly placed before the arbitrator the issue of whether to allow the Township to present the FOP document. The arbitrator must decide that issue. A Commission Designee does not have the authority to restrain such consideration.

With respect to its request that the Township be required to strike an alleged parity clause from the FOP document, neither the due process nor interim relief standards have been met. The charge did not allege the FOP violated the Act, nor was the charge or application served on the FOP in this matter. Obviously, the FOP would have an interest in its own document and no proceeding could advance without providing it notice and an opportunity to participate. Nevertheless, to the extent there is a nexus between the FOP clause and the PBA negotiations, the issue of whether the alleged clause can be considered in interest arbitration is before the arbitrator and can eventually be raised, if need be, on appeal to the full Commission.

Based upon the above facts and analysis, I issue the following:

ORDER

The application for interim relief is denied.<sup>2/</sup>

  
Arnold H. Zudick  
Commission Designee

DATED: May 26, 2010  
Trenton, New Jersey

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<sup>2/</sup> The charge will be processed in the normal coarse.