

P.E.R.C. NO. 2009-28

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Respondent,

-and-

Docket No. IA-2008-060

PBA LOCAL 186,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission denies an application for special permission to appeal an interlocutory ruling of an interest arbitrator filed by the Borough of Paramus. The arbitrator ruled that the formal arbitration proceeding with PBA Local 186 would be limited to the issues listed on the interest arbitration petition, which include wages, but not an employee contribution to medical benefits. The Chairman finds that within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the Borough's arguments and did not abuse his discretion in rejecting those arguments. The Chairman notes that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA has no objection to the Borough adjusting its wage proposal accordingly.

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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Petitioner.

Appearances:

For the Respondent, Herten, Burstein, Sheridan,  
Cevasco, Bottinelli, Litt & Harz, L.L.C., attorneys  
(Steven B. Harz and Daniel C. Ritson, on the brief)

For the Petitioner, Loccke, Correia, Schlager, Limsky &  
Bukosky, attorneys (Richard D. Loccke, on the brief)

DECISION

On December 8, 2008, the Borough of Paramus requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that the formal arbitration proceeding would be limited to the issues listed on the interest arbitration petition. On December 10, PBA Local 186 filed a response opposing the request. I deny the Borough's request.<sup>1/</sup>

The PBA filed its interest arbitration petition on February 6, 2008. The PBA listed seven issues in dispute: wages,

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<sup>1/</sup> In light of this ruling, the Borough's request for a stay of the arbitration hearing scheduled for December 15, 2008 need not be considered.

compensatory time bank, holidays, longevity, clothing, court time, and higher education.

N.J.A.C. 19:16-5.5(a) requires that a non-petitioning party, in this case the Borough, file a response to the interest arbitration petition within 14 days of receipt of a notice of filing. The response must set forth "[a]ny additional unresolved issues to be submitted to arbitration."

On February 29, the Borough filed its response. It stated that: "[t]he Borough is currently unaware of any additional unresolved issues between the parties."

N.J.A.C. 19:16-5.7(f) provides that at least ten days before the interest arbitration hearing, the parties shall submit to the arbitrator their final offers on each issue in dispute. The arbitrator may accept a revision of such offer at any time before the arbitrator takes testimony, or, if the parties agree and the arbitrator approves, before the close of the hearing.

On June 30, 2008, the Borough submitted a final offer on the seven issues listed on the PBA's petition plus an additional issue -- medical coverage. On that issue, the Borough proposed that employees contribute 1.5% of base salary yearly. That proposal was separate from the Borough's proposal for a 3.5% across-the-board wage increase.

At the commencement of the formal interest arbitration hearing on November 14, 2008, the PBA objected to consideration

of the Borough's medical coverage proposal. The PBA argued that the issue was not on the list of issues submitted by the PBA in its initial petition, nor added by the Borough in its response to the petition. The parties then filed briefs with the arbitrator on the motion.

On December 1, 2008, the arbitrator granted the PBA's motion and ruled that the issues to be submitted to formal arbitration are limited to those issues listed on the PBA's initial petition. The arbitrator stated that N.J.A.C. 19:16-5.5 is clear and unambiguous. The arbitrator considered the Borough's argument that the medical care issue is very important to the Borough and that it has been a continuous topic in the mediation phase of the arbitration. However, he concluded that it has been long established that without mutual agreement, an issue not listed in the petition or response may not be included for consideration in the formal proceeding -- to hold otherwise would violate the rules and open the door for either side to continuously propose additional issues and harm the arbitration process.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17(¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chairman authority to grant or deny special permission to appeal.

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision to exclude additional issues); see also Borough of Allendale, P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Borough of Bogota, P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions to exclude additional issues).

The Borough characterizes its "medical coverage" proposal as a "wage giveback." It asserts that this issue was raised before the interest arbitration petition was filed and has been the most significant issue in dispute. It argues that it reasonably assumed that for purposes of the petition and response, "wages" included the issue of a wage giveback. The Borough also argues that the arbitrator abused his discretion by not relaxing the rules to prevent an injustice.

The PBA argues that the arbitrator properly applied the rule and Commission precedent. It adds that:

[i]f all the Employer wants is an adjustment to its wage position then there is no

opposition from the PBA. Wages are clearly an issue in the Interest Arbitration proceeding. . . . Wages are clearly "in play" in this proceeding and certainly may be the subject of each party's submission.

I am satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the Borough's arguments and did not abuse his discretion in rejecting those arguments. I particularly note that the net economic effect of a wage giveback as a contribution toward medical benefits is the same as a lower across-the-board wage increase and that the PBA has no objection to the Borough adjusting its wage proposal accordingly. For these reasons, I deny special permission to appeal.

ORDER

The request of the Borough of Paramus for special permission to appeal the interlocutory ruling of an interest arbitrator is denied.

BY ORDER OF THE COMMISSION

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Lawrence Henderson  
Chairman

ISSUED: December 11, 2008

Trenton, New Jersey