

P.E.R.C. NO. 2011-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Petitioner,

-and-

Docket No. SN-2011-014

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL NO. 1197,

Respondent.

SYNOPSIS

The Public Employment Relations Commission issues a stay of its decision of P.E.R.C. No. 2011-49 pending appeal. In that decision, the Commission held that an arbitrator may decide whether the parties collective negotiations agreement was in effect or whether it had expired prior to the effective date of P.L. 2010, Ch. 2 obligating the employer to deduct 1.5% of the employees' salary for health benefits. The Commission stays its decision finding a likelihood of success on the merits of the appeal because the International Association of Fire Fighters Local 1197 had filed for interest arbitration which is only available upon expiration of the parties' agreement pursuant to N.J.S.A. 34:13A-16(b) (2).

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, DeCotiis, Fitzpatrick and Cole,
LLP, attorneys (Louis N. Rainone, of counsel)

For the Respondent, Kroll Heineman, LLC, attorneys
(Raymond G. Heineman, of counsel)

DECISION ON MOTION FOR A STAY

The Township of Edison has filed a Notice of Appeal with the Appellate Division of the Superior Court seeking review of our decision in Edison Tp. and International Association of Fire Fighters, Local No. 1197, P.E.R.C. No. 2011-49, ___ NJPER ___ (¶ ___ 2010), app. pending App. Div. Dkt. No. A-1959-10T4. In that case, we declined to restrain arbitration of a grievance filed by the International Association of Fire Fighters, Local No. 1197, challenging the application of P.L. 2010, Ch. 2 and the Township's deduction of an amount equal to 1.5% of base salary towards the cost of medical insurance benefits. The IAFF asserted that its most recent agreement with the Township was

still in force on the effective date of the new statute and prevented the collection of the 1.5% assessment until that contract expired. We held that an arbitrator could determine whether the agreement was still in force on May 21, 2010, the effective date of the new law.

The Township has sought a stay of our decision pending appeal. See R. 2:9-7.^{1/} The IAFF responded to the Township's application.

On January 14, 2011, the Commission Chair advised the parties that the Township's request would be referred to the Commission. The IAFF was asked to respond to a specific argument made by the employer that is based on a provision of the interest arbitration law that was construed in a Superior Court decision issued the day before P.L. 2010, Ch. 2 took effect.^{2/} On January 19, IAFF filed a supplemental letter brief.

We grant the application for a stay of our order allowing arbitration as we conclude that the Township is substantially

1/ The standards for granting a stay pending appeal are analogous to those applied by the courts and the Commission in ruling on applications for preliminary injunctions or interim relief. The moving party must demonstrate that it has a substantial likelihood of prevailing on the merits, that irreparable harm will occur if the requested relief is not granted and that a stay is needed to protect the public interest. In addition, relative hardship to the parties in granting or denying a stay pending appeal must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982).

2/ As it applies to municipal employers, the pertinent section of this law has been codified as N.J.S.A. 40A:10-21.

likely to prevail on its claim that the grievance is not legally arbitrable.

N.J.S.A. 34:13A-16(b) (2) provides:

Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

[emphasis supplied].

Construing this statute, Superior Court Judge Linda R.

Feinberg wrote:

The court notes its agreement with the State's position that P.L. 2010 and the interest arbitration laws are actually compatible with one another, as the 1.5% contribution to health care costs is triggered only upon the expiration of current collective bargaining agreements as of May 21, 2010. This is similar to the EERA provisions, as interest arbitration may only be invoked on or after the expiration of a collective bargaining agreement. N.J.S.A. 34:13A-16(b) (2)

New Jersey State Firefighters' Mutual Benevolent Ass'n v. State of New Jersey,
2010 N.J. Super. Unpub. LEXIS 2312 at 37-38, n.12

In its reply brief in support of its scope of negotiations petition, the Township had argued that because IAFF's interest arbitration petition, filed May 23, 2010, had listed December 31, 2009 as the expiration date of the parties' most recent contract, it was barred from maintaining that the agreement was

still in effect on May 21, 2010 when P.L. 2010, c. 2 took effect. The Township has supplemented its argument in support of its application for a stay pending appeal, focusing on the above-quoted passage from Judge Feinberg's opinion.^{3/}

The Township argues that, by filing an interest arbitration petition conceding that the parties' most recent contract had expired on December 31, 2009, there was no agreement in force on May 21, 2010 and IAFF cannot pursue a grievance to arbitration seeking a ruling to the contrary.

We agree that there was no successor agreement in force covering the IAFF when P.L. 2010, Ch. 2 took effect.^{4/} Thus, we find that the Township is substantially likely to prevail on its claim that the grievance is not legally arbitrable and the granting of a stay pending appeal is warranted.

^{3/} Judge Feinberg's May 21, 2010 opinion denying injunctive relief was submitted to us in support of the Township's scope of negotiations petition. On January 20, 2011, Judge Feinberg issued a final decision dismissing the complaint.

^{4/} Where an appeal has been filed an agency may rule on a request for a stay, but cannot modify the rulings that are under review. See R. 2:9-1; Gordon v. Rozenwald, 380 N.J. Super. 55, 64, n.2 (App. Div. 2005). We limit our action today to granting a stay. But, as we conclude that our prior ruling was erroneous, we note that an application can be made to the Appellate Division to remand the agency's decision for reconsideration. See Kiernan v. Kiernan, 355 N.J. Super. 89, 92 (App. Div. 2002); Gregory v. Borough of Avalon, 391 N.J. Super. 181, 192, n.2 (App. Div. 2007).

ORDER

The motion for a stay of P.E.R.C. No. 2011-49 denying the Township's request for a restraint of arbitration is granted.^{5/}

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Eskilson voted in favor of this decision. Commissioners Eaton and Voos voted against this decision. Commissioner Colligan recused himself. Commissioner Krengel was not present.

ISSUED: February 3, 2011

Trenton, New Jersey

^{5/} A companion case involving the identical issue, Tp. of South Orange Village, P.E.R.C. No. 2011-47, ___ NJPER ___ (¶___ 2010), was resolved prior to our consideration of that employer's application for a stay pending appeal.