

P.E.R.C. NO. 2011-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALDWICK,

Petitioner,

-and-

Docket No. IA-2010-058

PBA LOCAL 217,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Borough of Waldwick's request for special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that he had jurisdiction to continue formal interest arbitration proceedings between the Borough and PBA Local 217 pursuant to his appointment through mutual selection in March 2010. The Commission holds that the parties' one-year contract settlement expiring on December 31, 2010 prevented the interest arbitrator from conducting hearings for a successor contract effective January 1, 2011 as the recently amended interest arbitration statute bars mutual selection of an arbitrator. Based on the record, the Commission did not find that the parties agreed to continue the hearing in January 2011 based on the prior statutory language.

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, Ruderman & Glickman, P.C. (Vincent M. Avery, of counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky (Marcia J. Tapia, of counsel)

DECISION

On February 16, 2011, the Borough of Waldwick requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that he had jurisdiction to continue formal interest arbitration proceedings between the parties pursuant to his appointment through mutual selection on March 17, 2010. We grant special permission to appeal and vacate the arbitrator's ruling. The following facts are undisputed.

On January 19, 2010, PBA Local 217 filed a Petition to Initiate Compulsory Interest Arbitration pursuant to P.L. 1995 c. 425. The proceeding was commenced to resolve an impasse over the terms of a collective negotiations agreement that expired on

December 31, 2009. On March 17, 2010, the parties mutually selected Joseph Licata to serve as the interest arbitrator for a successor agreement. On November 29^{1/}, with the assistance of the arbitrator, the parties reached an agreement for a one-year contract with a term of January 1 through December 31, 2010. At that time, the parties scheduled an interest arbitration hearing for January 25, 2011 for a contract covering January 1, 2011 and beyond. In the interim, P.L. 2010, c. 105^{2/} was passed by the Legislature and signed by the Governor on December 21, 2010.

The recently enacted law, among other things, revises the procedures for the processing of interest arbitration petitions. Specifically, it eliminates the parties' discretion to mutually select an interest arbitrator and requires the Commission to assign an interest arbitrator for the parties by lot. N.J.S.A. 34:13A-16e(1). The new law became effective January 1, 2011. N.J.S.A. 34:13A-16.9. All interest arbitration petitions received on or after January 1 have been processed by this Commission under the procedures set forth in the new law.

On January 25, 2011, the parties appeared before the arbitrator to commence a hearing on the successor contract. The Borough objected to the arbitrator's jurisdiction, citing the

1/ Prior to the November meeting, the Borough counsel objected the parties moving forward because new legislation was proposed.

2/ Codified at N.J.S.A. 34:13A-16, 16.7, 16.8, and 16.9.

procedures set forth in the new law. After hearing argument from the parties, the arbitrator ruled that he retained jurisdiction as the one-year agreement entered into by the parties was a stipulation or interim settlement and the parties agreed at the time of the settlement that he would resume hearings under his original appointment in March 2010 pursuant to the prior interest arbitration law. The arbitrator then commenced the hearing.

N.J.S.A. 34:13A-16e(1) as amended provides:

The commission shall take measures to assure the impartial selection of an arbitrator or arbitrators from its special panel of arbitrators. On the first business day following receipt of an interest arbitration petition, the commission shall, independent of and without any participation by either of the parties, randomly select an arbitrator from its special panel of arbitrators. The selection by the commission shall be final and shall not be subject to review or appeal.

The Borough argues that because the parties entered into a one-year agreement that expired on December 31, 2010, the new law applies and the arbitrator did not have jurisdiction to conduct a hearing for the successor contract.

The PBA responds that the one-year agreement was a mediated settlement for the 2010 contract year only and that since all of the contract years were not resolved in the mediation session, the arbitrator properly retained jurisdiction to continue the hearing. The PBA points to the following colloquy in the transcript of the November 29, 2010 interest arbitration session

to support its position that the parties had an understanding that the agreement in question was an interim settlement; the interest arbitration had not ended due to the interim settlement; and the arbitrator retained jurisdiction over the proceedings:

Arbitrator: The parties were able to reach a resolution of their differences with respect to the calendar year 2010. The contract in effect is January 1, 2006 through December 31, 2009. Pursuant to N.J.S.A. 34:13A-16g(4) the Arbitrator records stipulations of the parties. I consider their settlement of the terms and conditions for 2010 to fully resolve the year 2010 while continuing this proceeding with respect to any subsequent years of successor labor agreement.

* * *

Mr. Loccke: The parties have also acknowledged your continued jurisdiction in this matter as interest arbitrator, and we have a tentative date set between the parties for January 25, 2011 as a date set for continued hearing.

* * *

Mr. Ruderman: I agree with the terms of the agreement that's been placed on the record, with the understanding that the proceeding will go forth on the date that we've tentatively agreed upon in early January with the specific understanding that obviously this proceeding may be subject to changes in the law which I argued most vociferously before you prior to us entering into this extended mediation session to reach an agreement for a one year interim decision, for which I commend both sides in their efforts to get this done.

The Borough responds that regardless of whether it is called an interim settlement or a contract, the parties had a one-year

agreement that expired on December 31, 2010 and thus the new law applies to interest arbitration proceedings for a contract beginning January 1, 2011. It further asserts that the new law vests the Commission with the sole authority to select an arbitrator to preside over the interest arbitration proceeding.

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).

The facts of this case are unique. The parties came to a voluntary resolution and could not have envisioned future statutory changes to assess the consequences of agreeing to a one-year contract. Counsel for the Borough agreed only to the terms of the 2010 contract and not to whether the proceeding would continue pursuant to the statute as it existed on that date. We are unable to find that the parties had a meeting of the minds as to the arbitrator's continued jurisdiction when they agreed to the one-year contract in November 2010. The Borough explicitly anticipated that the proceedings may be affected by changes to the interest arbitration law. Accordingly, we find that the parties most recent agreement expired December 31, 2010 and that their ability to mutually select an interest arbitrator

for a future contract expired effective January 1, 2011 with the passage of the new law.

We note that nothing in our decision prevents the parties from reaching a mediated settlement and we encourage them to use mediation to resolve their impasse. If mediation does not result in a settlement, in order to comply with the terms of the new law, a new interest arbitration petition would have to be filed. Having found that the arbitrator did not have jurisdiction to preside over the interest arbitration proceedings, we need not reach the other arguments of the Borough.

ORDER

The Borough of Waldwick's request for special permission to appeal the jurisdictional ruling of the interest arbitrator is granted. The ruling is reversed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eaton, Eskilson, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: March 31, 2011

Trenton, New Jersey