

P.E.R.C. NO. 2011-70

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 Chair of the Public Employment Relations Commission denies the request of the Borough of Bloomingdale for special permission to appeal an interest arbitrator's interlocutory ruling. The arbitrator ruled that the parties' last agreement expired December 31, 2010 and therefore N.J.S.A. 34:13A-16.7 did not apply to the current interest arbitration proceeding between the parties. The Chair finds the Borough's request to be untimely and the arbitrator's ruling is in conformance with the interest arbitration law.

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, Limsy & Bukosky,
attorneys (Marcia J. Tapia, of counsel)

DECISION

On March 24, 2011, the Borough of Bloomingdale requested special permission to appeal an interlocutory ruling of an interest arbitrator. The arbitrator ruled that the parties' contract expired December 31, 2010 and therefore N.J.S.A. 34:13A-16.7^{1/} did not apply to the current interest arbitration

1/ 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

(continued...)

proceeding between the parties. For the foregoing reasons, I deny special permission to appeal. The following facts are undisputed.

The parties' agreement provides "This Agreement shall be deemed to have been in full force and effect from January 1, 2006 through and including December 31, 2010." On February 16, 2011, the PBA filed a Petition to Initiate Compulsory Interest Arbitration. On February 23, pursuant to P.L. 2010 c. 105, codified as N.J.S.A. 34:13A-16e(1), Arbitrator James W. Mastriani was appointed by lot to serve as the interest arbitrator. On March 16, an interest arbitration hearing was held. The Borough has not provided the date of the arbitrator's ruling it seeks to appeal. The PBA states that any oral ruling on the 2% salary cap issue had to be made at the March 16 hearing. Nonetheless, I take notice that on February 25, Arbitrator Mastriani issued a letter to the parties advising them that the 2% cap on base salary set forth in N.J.S.A. 34:13A-16.7(a) and (b) did not apply

1/ (...continued)

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.

to the proceeding because the parties' last contract expired December 31, 2010 and the 2% cap is effective January 1, 2011.

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 Commission Chair the authority to grant or deny special permission to appeal.

The Borough argues that the arbitrator erred in finding that the contract expired on December 31, 2010 because the agreement specifically included the full day December 31 and therefore it must expire on January 1, 2011.

The PBA counters that the Borough's appeal is late as N.J.S.A. 19:16-5.7 provides that requests for special permission to appeal must be made within five days of service of an arbitrator's written ruling or within five days of an oral ruling. The PBA states that if the arbitrator ruled on March 16, 2011, the Borough's appeal was due on or before March 21, 2011. The PBA further asserts that the parties' agreement clearly expired on December 31, 2010 and therefore is not subject to the 2% cap because the contract began and ended before the January 1, 2011 effective date of the new interest arbitration law. The PBA cites to the Commission's "Frequently Asked Questions" regarding the new interest arbitration statute wherein the Commission

advises that the 2% base salary cap does not apply to contracts that expired December 31, 2010 and the interest arbitration petition was filed after January 1, 2011.^{2/}

I deny special permission to appeal because the Borough's application is untimely. The parties were put on written notice from the arbitrator on February 25, 2011 that the 2% cap on base salary did not apply to their contract as it expired on December 31, 2010. Special permission to appeal that ruling would have to be filed on or before March 4, 2011.^{3/}

Even if the Borough's application was timely, there is no good cause or interest of justice warranting the granting of special permission to appeal. Middlesex Cty. 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.

^{2/} See www.state.nj.us/perc

^{3/} Commission rules require that weekends and holidays are not counted when calculating filing deadlines under seven days. N.J.A.C. 19:10-2.1(a).

ORDER

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

BY ORDER OF THE COMMISSION

P. Kelly Hatfield, Chair

ISSUED: March 31, 2011

Trenton, New Jersey