

P.E.R.C. NO. 2015-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Petitioner,

-and-

Docket No. SN-2014-004

PBA LOCAL 174,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Bridgewater for a restraint of binding arbitration of a grievance filed by PBA Local 174. The grievance asserts that the Borough violated the parties' collective negotiations agreement (CNA) and past practice when it refused to pay annual salary increments following the expiration of the CNA. Finding that automatic movement on a salary guide after the expiration of a contract does not continue to be a term and condition of employment, and that the Commission recently adopted a "static" status quo doctrine not requiring continued salary advancement after a contract expires, the Commission holds that the issue is not mandatorily negotiable.

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, Eric M. Bernstein & Associates, LLC
(Eric M. Bernstein, of counsel)

For the Respondent, Mets Schiro McGovern LLP (James M.
Mets, of counsel; Jeffrey P. Catalano, on the brief)

DECISION

On July 22, 2013 the Township of Bridgewater filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 174. The grievance alleges the Township violated the parties' expired collective negotiations agreement and past practice when it refused to pay annual salary increments. We grant the Township's request for a restraint of arbitration.

The following facts appear. The Township has filed briefs and exhibits. The PBA has filed a brief and exhibit. Neither party filed a certification. See N.J.A.C. 19:13-3.6(f)1.

The parties were signatory to a series of collective negotiations agreements, the last of which expired on December

31, 2012. On December 20, 2012, Township Administrator James T. Naples issued a memorandum to PBA President Robert Reilly informing him that the Township would not be paying "step increases" (salary increments) in 2013 unless a successor agreement is in place, despite the Township's previous practice of paying salary increments based on the prior agreement's rates while no new agreement was in place.

Article XV. of the expired agreement, entitled "Compensation" provides, in pertinent part:

1. Salary Guide. Effective January 1, 2009, 2010, 2011 and 2012, the wage rates shall be those set forth in Appendix A and will be paid on the 15th and second to last day of the month or immediately preceding work day.

Article XIX. of the expired agreement, entitled "Duration of Agreement" provides, in pertinent part:

2. This agreement shall remain in full force and effect during collective negotiations between the parties beyond the date of expiration set forth herein until the parties have mutually agreed on a new agreement.

On January 4, 2013, the PBA initiated a grievance alleging that the Township's failure to pay salary increments violates the collective negotiations agreement and past practice. The Township denied the grievance through the steps of the procedure. On January 28, the PBA demanded binding arbitration. This petition ensued.

In the interim, the parties continued to negotiate for a successor collective negotiations agreement. Following three negotiations sessions and three mediation sessions, the parties ultimately proceeded to Interest Arbitration through the Township's June 6, 2014 Petition to Initiate Compulsory Interest Arbitration.^{1/} Dkt. No. IA-2015-090.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public

^{1/} To date, no interest arbitration award has been issued.

employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

Arbitration is permitted if the subject of the grievance is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

The Township asserts that based on the Commission's interim relief decision in County of Atlantic, I.R. No. 2011-35, 37 NJPER 79 (¶29 2011), and the provisions of the Property Tax Levy Cap law, P.L. 2010, c. 44, and the Interest Arbitration law's 2% cap, N.J.S.A. 34:13A-16.7, the Township would be subject to an undue fiscal hardship if required to immediately pay the salary increments. It argues that payment of the salary increments will likely result in increases that exceed the amounts that can legally be granted under the Interest Arbitration law, which

could result in an administrative burden if PBA members are later required to remit excess payments to the Township.

The PBA asserts that the Township's brief did not apply a scope of negotiations analysis to the issue of salary increments. The PBA argues that advancement on an automatic salary guide is a mandatorily negotiable compensation issue that is not controlled by a specific statute or regulation. The PBA notes that the Interest Arbitration law's 2% cap on base salary increases is applicable only to interest arbitrators, whereas no such statutory restriction applies to a grievance arbitrator.

The Township responds that there is no express or implied language in the collective negotiations agreement which requires continued/automatic increments upon the expiration of the agreement. It argues that to the extent the PBA relies on the dynamic status quo and related outdated case law to support automatic increment payments, the dynamic status quo doctrine is untenable and outdated in light of property tax cap and the cap on interest arbitration awards and should therefore be inapplicable to the dispute herein.

In applying the well-settled test for negotiability for police and fire employees set forth in Paterson, we find that the issue of automatic movement on a salary guide after a contract has expired is not a term and condition of employment and therefore not mandatorily negotiable and legally arbitrable. We

acknowledge that the issues of compensation and advancement on a salary guide are generally mandatorily negotiable and legally arbitrable issues. Essex County and Essex Cty. Local Unit of JNESO, P.E.R.C. No. 87-48, 12 NJPER 835 (¶17321 1986) aff'd NJPER Supp.2d 182 (¶158 App. Div. 1987). However, in this case, our inquiry extends beyond those issues. The precise issue herein concerns automatic advancement on a salary guide after the expiration of a contract, and whether such advancement continues to be a term and condition of employment. We find that the answer to this question is no. The distinction stems from the fact that here we are not dealing with movement on a salary guide during the term of a collective negotiations agreement, but rather automatic movement on a salary guide resulting from an expired contract. We also note that in Atlantic County, P.E.R.C. No. 2014-40, 40 NJPER 285 (¶109 2013)^{2/}, app. pending, we set forth a policy change in which we determined that public employers would no longer be required, as a matter of law, to fund automatic advancement on a salary guide after a contract has expired. Given that the issue herein fails to qualify as a term and condition of employment it is not mandatorily negotiable and legally arbitrable and we grant the Township's request for a restraint of arbitration.

^{2/} The PBA relies on Morris County, P.E.R.C. No. 2013-19, 39 NJPER 181 (¶56 2012). However, we note that Atlantic County was decided after Morris County.

ORDER

The request of the City of Bridgewater for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioner Wall was not present.

ISSUED: August 14, 2014

Trenton, New Jersey