

I.R. NO. 2022-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT BEACH

Petitioner,

-and-

Docket No. SN-2022-016

TEAMSTERS LOCAL 469,

Respondent.

SYNOPSIS

A Commission Designee denies the Borough's request for an interim restraint of binding arbitration pending the outcome of a scope of negotiations petition before the Commission. The grievance alleges that the Borough violated the parties' collective negotiations agreement (CNA) and Civil Service rules when it terminated the Grievant, and that it violated state family leave laws when it failed to provide the Grievant with requested family leave. The Borough alleges that the Grievant's termination is preempted. The Designee finds that N.J.A.C. 4A:4-1.5(b) does not "expressly, specifically, and comprehensively" preempt arbitration over the Grievant's termination because it permitted the Borough to continue the Grievant's employment until the resolution of her Civil Service appeal. The Designee finds that the family leave issue is also arbitrable because it is a statutory claim concerning a negotiable issue that is not preempted. Accordingly, the Designee concludes that the Borough failed to demonstrate a substantial likelihood of prevailing in a final Commission decision.

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Ryan S. Carey, of counsel and on the brief; Christopher M. Kurek, on the brief)

For the Respondent, Kroll Heineman Ptasiewicz & Parsons, attorneys (Raymond G. Heineman, of counsel)

INTERLOCUTORY DECISION

On November 30, 2021, the Borough of Point Pleasant Beach (Borough) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Teamsters Local 469 (Local 469). The grievance alleges that the Borough violated the parties' collective negotiations agreement (CNA) and Civil Service rules when it terminated the Grievant, that it violated the CNA when it failed to pay the Grievant scheduled raises, and that it violated state family leave laws when it failed to provide the Grievant with requested family leave. On January 11, 2022, the Borough filed the instant application for interim relief seeking a restraint of a binding

arbitration scheduled for February 14, 2022 pending final disposition of the underlying scope of negotiations petition.^{1/}

PROCEDURAL HISTORY

The Borough's January 11, 2022 application for interim relief was supported by exhibits A through J and the certification of Borough Administrator Christine Riehl. On January 12, I signed an Order to Show Cause directing Local 469 to file any opposition by January 19, the Borough to file a reply brief by January 24, and setting January 26 as the return date for oral argument. At the request of the parties, I revised the return date to January 25. On January 19, Local 469 filed its opposition to the application for interim relief, supported by exhibits A through O. On January 24, the Borough filed its reply brief, supported by exhibits 1 through 2. On January 25, counsel for the Borough and Local 469 engaged in oral argument during a telephone conference call with me.

FINDINGS OF FACT

Local 469 represents a unit of blue-collar and white-collar supervisory professionals employed by the Borough. The Borough and Local 469 are parties to 2019-2021 CNA that they extended through 2023. The parties' grievance procedure ends in binding arbitration, but states that "[m]atters for which an appeal

^{1/} The Borough's scope petition and interim relief application do not seek to restrain arbitration of the aspect of Local 469's that alleges failure to pay scheduled raises.

mechanism is available to the New Jersey Civil Service Commission shall not be submitted to arbitration . . .” (Article 6.3).

On December 2, 2019, the Grievant was hired by the Borough to the position of Code Enforcement Officer/Zoning Officer. The appointment was provisional “pending open competitive examination by the New Jersey Civil Service Commission.” On February 15, 2020, the New Jersey Department of Personnel issued a job announcement for the title of Code Enforcement Officer/Zoning Officer with the Borough. The announcement required “[t]hree (3) years of experience in the preparation and revision of building construction plans and specifications or in the inspection and enforcement of zoning and/or building construction laws and regulations.” On March 2, 2020, the Grievant timely filed her “Application for Open Competitive Examination” for the Code Enforcement Officer/Zoning Officer position. The Grievant’s application relied on her more than six years of combined experience as a Code Enforcement Officer for the Borough of Seaside Park and the City of Asbury Park, as well her four months of experience at the time in her position of Code Enforcement Officer/Zoning Officer with the Borough. The application did not require a test, but was for “examination” by the CSC to determine the applicants’ eligibility for the position.

On February 24, 2021, the Grievant received a “Notification of Ineligibility” from the Civil Service Commission (CSC) for the

position of Code Enforcement Officer/Zoning Officer. The CSC notice stated that the reason for ineligibility was "below minimum requirements in experience" and stated "[w]e are sorry to inform you that you will not be examined further for this symbol." That same day, the Grievant forwarded her CSC Notification of Ineligibility to Administrator Riehl asking that she please advise on how to proceed. The February 24, 2021 CSC Eligibles List for the Code Enforcement Officer/Zoning Officer position included one name (referred to herein as R.G.) and was to become effective on March 4, 2021 and expire on March 3, 2024. The Eligibles List also stated: "Please note that this information only reflects results known at the time the list is issued. It does not reflect subsequent changes to a list resulting from individual make-up examinations, appeal decisions, etc." On March 4, 2021, the Grievant filed a timely letter of appeal with the CSC challenging the ineligibility notice and restating the experience she had detailed in her application.

On March 5, 2021, the Borough sent the Grievant a "Rice Notice" advising her that, during its March 16, 2021 meeting, the Borough's "Governing Body will be discussing the Eligibility List from Civil Service for the Code Enforcement/Zoning Officer position you now hold." On March 8, 2021, the CSC issued a Certification of Eligibles for Appointment, which included only R.G. On March 10, 2021, Local 469 e-mailed Administrator Riehl

requesting that the Borough table the discussion of the Grievant's position that was scheduled for its March Governing Body (Council) meeting. Local 469's e-mail to Riehl expressed its position that the CSC's determination of the Grievant's ineligibility was incorrect and noted that the Grievant had already filed an appeal of the experience issue. The Borough did not respond to Local 469's request that the matter be tabled pending CSC's reply to the Grievant's appeal.

During the Borough's March 16, 2021 Council meeting, Riehl explained that the CSC certified only one eligible individual for appointment to the Code Enforcement Officer/Zoning Officer position (R.G.), and that the Borough's provisionally-appointed employee (Grievant) was deemed ineligible. (Borough Exhibit 1, "March 16, 2021 Council Meeting Minutes"). Riehl recommended that the Council authorize the hiring of R.G. to the position. Borough Special Counsel Carey (Borough's counsel in this matter) advised that because the provisional employee was deemed ineligible, Civil Service rules require that the Borough separate that employee within 30 days. Carey confirmed that the Council was still within the 30 day period for separating the provisional employee. Neither Riehl nor Carey advised the Council that the Grievant had appealed the CSC determination of her ineligibility. A Local 469 representative attempted to raise "relevant facts Council should know before taking a vote," but the Mayor advised

that would be brought up in public participation. The Council voted 4-1 to add authorization to hire R.G. as Code Enforcement Officer/Zoning Officer to the consent resolution agenda.

During the public participation portion of the March 16, 2021 Council meeting, Local 469 President Potter notified the Council that the Grievant has the years of experience and is qualified for the Code Enforcement Officer/Zoning Officer position and had appealed her February 24, 2021 Notification of Ineligibility on March 4, 2021. President Potter noted that the CSC list does not expire until March 3, 2024 and that the Grievant is already in the position provisionally so the Borough has plenty of time to wait for the results of the CSC appeal. President Potter requested that the Borough table the decision on the position pending the Grievant's CSC appeal. The Council's motion to table the issue pending the CSC appeal was defeated 3-2. In further discussion, Counsel Carey stated he had not seen an appeal or documentation of an appeal filed by the Grievant and that the Borough needed to take action within 30 days to comply with Civil Service rules. President Potter responded that the Grievant's CSC appeal was filed on March 4 and was provided in writing to the Borough. The Council voted 3-2 to authorize the hiring of R.G. as Code Enforcement Officer/Zoning Officer.

On March 17, 2021, the Borough sent the Grievant a letter terminating her employment based on its appointment of R.G. to

the Code Enforcement Officer/Zoning Officer position during the March 16 Council meeting. The letter stated that the CSC had deemed the Grievant ineligible and stated, in pertinent part:

"Also consistent with Civil Service regulations, your provisional employment in the title of Code Enforcement Officer/Zoning Officer shall conclude effective today, March 17, 2021."

On March 19, 2021, Local 469 filed a grievance with the Borough alleging that: it terminated the Grievant in violation of Civil Service rules and Article 17 of the CNA; failed to pay scheduled raises to the Grievant in violation of Article 18 of the CNA; and failed to provide the Grievant with family that she requested in violation of New Jersey state law.

On March 23, 2021, the CSC granted the Grievant's Code Enforcement Officer/Zoning Officer eligibility appeal, stating: "Based upon review of the materials presented on appeal, you will be admitted to the examination." That same day, Local 469 Business Agent Montorio e-mailed Administrator Riehl to notify her that the Grievant's CSC appeal was successful. Montorio attached the CSC notice and requested that the Borough return the Grievant to work immediately and pay any lost wages and benefits. On March 24, 2021, the CSC notified the Grievant that she was ranked number 1 on the CSC's eligibility list for the Borough's Code Enforcement Officer/Zoning Officer position. On March 26, 2021, the Borough denied Local 469's grievance, stating that she

was separated on March 17 because the CSC deemed her ineligible for the position. On March 30, 2021, Local 469 filed a Step 2 grievance which notified the Borough and attached CSC documentation that the Grievant had won her CSC appeal, was deemed eligible for the Code Enforcement Officer/Zoning Officer position, and was ranked number 1 on the eligibility list.

On April 17, 2021, the Grievant e-mailed the Borough to again inform them of her eligibility for the Code Enforcement Officer/Zoning Officer position and her number 1 rank on the list. The Grievant also requested that the Borough advise her on when she will be returning to work and reply to her previous request for bonding leave. On April 28, 2021, the CSC's updated Certification of Eligibles was amended to include the Grievant in position 1A below R.G. (Borough Exhibit 2). On May 6, 2021, following a May 5 hearing, the Borough denied Local 469's Step 2 grievance. On May 7, 2021, Local 469 filed a request for binding arbitration concerning the issues of the Grievant's termination, salary, and family leave. (Docket No. AR-2021-515). This scope petition and interim relief request ensued.

During oral argument, the parties agreed that R.G. has since resigned from the position of Code Enforcement Officer/Zoning Officer and that the Borough has filled those positions with two provisional employees. The Borough has neither re-hired the

Grievant to the provisional position nor permanently appointed her based on her rank on the eligibility list.

STANDARD OF REVIEW

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

In a scope of negotiations determination, the Commission's jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, the Commission does not consider the contractual merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

[Id. at 404-405.]

Scope of negotiations determinations must be decided on a case-by-case basis. See Troy v. Rutgers, 168 N.J. 354, 383 (2000) (citing City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998)). Where a restraint of binding arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Park, 78 N.J. at 154; Bd. of Ed. of Englewood v. Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975).

ARGUMENTS

The Borough asserts that it has a substantial likelihood of success on the merits of its scope petition because the issue of the Grievant's termination from her provisional position was preempted by the Civil Service regulation N.J.A.C. 4A:4-1.5(b). It argues that N.J.A.C. 4A:4-1.5(b) required the Borough to separate the Grievant from her provisional appointment once she was found ineligible to take the CSC exam for the Code Enforcement Officer/Zoning Officer position. The Borough argues that it was required by the regulation to separate the Grievant within 30 days of her February 24, 2021 ineligibility notice. As for the aspect of the grievance concerning alleged denial of family leave, the Borough asserts that it did not violate her rights under NJFLA, and that Local 469 failed to reference any contract violation. The Borough argues that because Local 469 only alleges violation of state law, "it is essentially a discrimination claim" which is not subject to arbitration.

Local 469 asserts that the grievance is arbitrable because N.J.A.C. 4A:4-1.5(b) does not preempt the issue of terminating the Grievant on May 17, 2021. It argues that the regulation provides the Borough with the discretion to await the results of a CSC appeal prior to removing a provisional employee who was improperly removed from the list of eligibles. Local 469 contends that the Grievant timely appealed her February 24, 2021

ineligibility notice and that under N.J.A.C. 4A:4-1.5(b) the Borough was allowed to wait at least 30 days before separating her, as well as seek an extension for good cause pending the appeal. Local 469 asserts that although the CSC reinstated the Grievant's eligibility, the CSC does not regulate the employment of provisional employees, so the issue is not preempted and is arbitrable. As for the family leave aspect of the grievance, Local 469 argues that family leave is mandatorily negotiable and arbitrable. Local 469 argues that the grievance is not a discrimination claim, but that even a discrimination claim over the denial of family leave would be arbitrable where it is based on mandatory terms and conditions of employment.

ANALYSIS

Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

Our Supreme Court has also held that "statutes and regulations are effectively incorporated by reference as terms of any collective agreement covering employees to which they apply" and "[a]s such, disputes concerning their interpretation,

application or claimed violation would be cognizable as grievances subject to the negotiated grievance procedure contained in the agreement." West Windsor Twp. v. PERC, 78 N.J. 98, 116 (1978). Thus, "grievances involving the application of controlling statutes or regulations . . . may be subjected to resolution by binding arbitration" as long as the award does not have the effect of establishing a provision of a negotiated agreement inconsistent with the law. Old Bridge Bd. of Education v. Old Bridge Education Assoc., 98 N.J. 523, 527-528 (1985).

N.J.A.C. 4A:4-1.5 provides:

§ 4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointing authority certifies that the appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination that has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Chairperson or designee and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Chairperson or designee for good cause.

Although the Grievant filed for CSC "examination" for the position, I concur with the Borough's interpretation that she did not completely "take" the examination for the Code Enforcement Officer/Zoning Officer position due to her February 24, 2021 Notification of Ineligibility that stated she would "not be examined further" for the announcement. Thus, N.J.A.C. 4A:4-1.5(b) required the Borough, once it was notified that the Grievant was deemed ineligible, to "take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Chairperson or designee for good cause." The Borough's actions to terminate the Grievant on March 17, 2021, 21 days after receipt of her February 24 Notification of Ineligibility, did not violate what is permitted by N.J.A.C. 4A:4-1.5(b) because it did not yet have the results of the Grievant's CSC appeal which found her eligible. However, under the Supreme Court's preemption test, the question is not just whether the Borough's action complied with the regulation. The salient question is whether the regulation mandated that the Borough take the specific action that it did when it did, or whether the Borough could legally have waited the full 30 days to separate the Grievant or extended that period for good cause as permitted by N.J.A.C. 4A:4-1.5(b).

Here, the facts indicate that the Borough could have sought a good cause extension of the Grievant's employment beyond the

regular 30-day period, or at least allowed for the full 30 days, while awaiting the Grievant's CSC appeal of her ineligibility notice. The Grievant immediately questioned the CSC's February 24 determination of her relevant experience, sending Riehl an e-mail that day. The Grievant then filed a letter of appeal to the CSC on March 4 (day 8). The Borough was aware of the Grievant's CSC appeal and the disputed experience issue at least as early as March 10 (day 14), when Local 469 e-mailed Riehl asking that the Code Enforcement Officer/Zoning Officer issue not be considered at the March 16 Council meeting. Despite its knowledge of the Grievant's CSC appeal, the Borough considered the position at its March 16 meeting (day 20). During the Council meeting, the Borough was again notified of the Grievant's pending CSC appeal and the basis for it, and was advised that the 30-day period for separating the Grievant under N.J.A.C. 4A:4-1.5(b) had not yet elapsed.^{2/} The Borough formally terminated the Grievant the next day (day 21). The Borough thus chose not to exercise its discretion under the regulation to wait until day 30 (March 26, 2021) and/or to seek an extension with the CSC for good cause. Significantly, the Grievant's CSC appeal decision and eligibility notice was issued on March 23 (day 27), so an extension would not even have been necessary.

^{2/} The meeting minutes do not include discussion of an extension for "good cause" under N.J.A.C. 4A:4-1.5(b).

Again, while the Borough's termination of the Grievant on March 17 was permitted by N.J.A.C. 4A:4-1.5(b), it was not the Borough's exclusive option under the regulation. The Borough did not need to separate the Grievant on day 21, but, given the Grievant's pending CSC appeal and her dispute on the experience issue, could have waited the full 30 days and also sought an extension. In the abstract, could a union negotiate for a public employer in a Civil Service jurisdiction to wait the full 30 days under N.J.A.C. 4A:4-1.5(b) and, if necessary, to seek an extension, before separating a provisional employee pending the CSC's decision on that employee's challenge to an ineligibility notice? I find that N.J.A.C. 4A:4-1.5(b) does not "expressly, specifically, and comprehensively" preempt negotiations over such an issue, but that N.J.A.C. 4A:4-1.5(b) allows for such a range of discretion. Accordingly, under the specific facts of this case, I find that arbitration over the Borough's termination of the Grievant's provisional employment is not preempted by N.J.A.C. 4A:4-1.5(b) and is legally arbitrable.

I note that this case does not involve an effort by Local 469 to arbitrate over the Borough's decision not to permanently appoint her to the Code Enforcement Officer/Zoning Officer position, as that would be within the CSC's jurisdiction and preempted by its alternate statutory appeal mechanism. But the Commission has allowed arbitration over the termination of

provisional employees so long as the arbitral remedy does not conflict with Civil Service laws. See, e.g., Hudson Cty., P.E.R.C. No. 2009-38, 35 NJPER 6 (¶4 2009); Passaic Cty., P.E.R.C. No. 2008-9, 33 NJPER 214 (¶79 2007); and City of Jersey City, P.E.R.C. No. 2003-31, 28 NJPER 454 (¶33167 2002). I also find that Passaic Cty., raised by the Borough, is distinguishable from the unique circumstances presented in this case. Passaic Cty. noted the general requirements and preemptive effect of N.J.A.C. 4A:4-1.5(b) for a termination of a provisional employee who did not sit for and take the CSC exam for that title. That case did not involve an employee who was erroneously deemed ineligible and subsequently found eligible for the CSC title, and did not present any facts implicating the 30-day period or the extension for good cause provisions of N.J.A.C. 4A:4-1.5(b).

I next consider the Borough's assertion that the family leave portion of the grievance is not arbitrable. Paid sick leave and other leaves of absence are ordinarily mandatorily negotiable terms and conditions of employment because they intimately and directly affect employee work and welfare and do not significantly interfere with the determination of governmental policy. See, e.g., Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243-44 (1977); Hoboken Bd.

of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd, NJPER Supp.2d 113 (¶95 App. Div. 1982); and Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 372 (¶32136 2001), aff'd, 28 NJPER 427 (¶33156 App. Div. 2002).

Local 469 has asserted a violation of state family leave law and the Borough has raised no preemption argument concerning the disputed family leave issue. The Borough's assertion that the claim does not cite a contractual clause concerns the merits of the grievance and is appropriate for the arbitrator. Ridgefield Park, supra. The arbitrator is empowered to consider and apply any relevant statutes and regulations as necessary. See West Windsor and Old Bridge, supra; see also Union Cty., P.E.R.C. No. 2021-57, 48 NJPER 46 (¶12 2021) (where Civil Service regulation did not preempt paid leave issue, union was not restrained from relying on it in arbitration); Ocean Cty. Util. Auth., P.E.R.C. No. 2021-56, 48 NJPER 43 (¶11 2021) (where union did not seek to arbitrate over issues that conflicted with federal regulations, the arbitrator could determine applicability of regulations); and City of East Orange, P.E.R.C. No. 2022-15, 48 NJPER 213 (¶47 2021) (where COVID-19 statute did not preempt restoration of paid sick leave for COVID-19 related absence, the arbitrator could consider union's argument that the statute bolstered its contractual claim). Accordingly, I find no basis for restraint of arbitration of the family leave aspect of the grievance.

Furthermore, to the extent Local 469's family leave grievance may involve a state law discrimination claim, a union may utilize binding arbitration to enforce a statutory claim of discrimination that does not challenge a managerial prerogative. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 14-16 (1983); New Jersey Turnpike Auth. v. New Jersey Turnpike Supervisors Ass'n, 143 N.J. 185, 202-205 (1996) (sex discrimination claim in disciplinary dispute may be arbitrated because it "does not involve any issue implicating the employer's basic managerial authority over personnel.")

Here, Local 469's claim remains arbitrable because it concerns only the mandatorily negotiable issue of family leave and an allegation that family leave was improperly denied the Grievant under state law. See, e.g., Red Bank Bor., P.E.R.C. No. 2021-44, 47 NJPER 470 (¶111 2021) (discrimination claim concerning negotiable notice and impact issues could be considered by arbitrator); Sussex Cty. Sheriff's Office, P.E.R.C. No. 2019-55, 46 NJPER 20 (¶7 2019) (sex discrimination claim not precluded from arbitration because case involves negotiable issues of seniority-based shift and schedule bidding); City of Hackensack, P.E.R.C. No. 2018-54, 45 NJPER 18 (¶5 2018) (case concerning negotiable compensation issue did not require restraint of binding arbitration under Teaneck); and Washington Tp. Bd. of Ed., P.E.R.C. No. 2004-68, 30 NJPER 135 (¶53 2004)

(claim before state Division on Civil Rights did not preclude arbitration of negotiable mid-year contract termination).

Given the legal precepts set forth above, I find that the Borough has failed to demonstrate a substantial likelihood of prevailing in a final Commission decision on its legal allegations, a requisite element to obtain interim relief under the Crowe factors.^{3/} I accordingly deny the application for interim relief. This case will be referred to the Commission for final disposition.

ORDER

The request of the Borough of Point Pleasant Beach for an interim restraint of binding arbitration is denied pending the final decision or further order of the Commission.

/s/ Frank C. Kanther
Frank C. Kanther
Commission Designee

DATED: January 31, 2022

Trenton, New Jersey

^{3/} As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.