

D.U.P. NO. 2002-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

TOWNSHIP OF PEMBERTON,

Respondent,

-and-

Docket No. CO-2001-310

PBA LOCAL NO. 260,

Charging Party.

SYNOPSIS

The Director of Unfair Practices **refuses** to issue a complaint on a charge which alleges that the draft successor agreement prepared by the employer **did not** accurately reflect the holiday pay provision contained in an interest arbitration award. The Director found that the holiday pay provision of the draft successor agreement comported with the plain language of the interest arbitration **award and** that, in any event, the proper avenue to clarify **an interest** arbitration award is to timely appeal that **award** under N.J.S.A. 34:13A-16f(5)(a).

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Appearances:

For the Respondent,
Parker, McCay & Criscuolo, attorneys
(Joan Kane Josephson, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 25, 2001, Pemberton PBA Local No. 260 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) against the Township of Pemberton (Township). PBA alleges that the Township violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-5.4a(1), (5) and (7)^{1/} when it prepared a draft of the successor collective

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of

agreement that does not comport with an interest arbitration award issued on December 8, 2000. Specifically, PBA claims that Article VIII, Section F, of the draft agreement concerning holiday pay does not reflect the terms of the arbitration award.^{2/} Consequently, PBA alleges that the Township has unilaterally changed a term and condition of employment by eliminating holiday pay for officers that work on holidays. PBA asks that the Commission order the Township to prepare a successor agreement which comports with the language and intent of the interest arbitration award.

The Township asserts that the draft successor agreement forwarded to the PBA comports with the plain language of the interest arbitration award, especially the language contained in Article VIII, Section F, regarding the elimination of holiday pay. Furthermore, the Township contends that if the PBA was dissatisfied with the arbitrator's award it should have appealed the award in a timely manner. The Township maintains that the PBA is really seeking to renegotiate the provisions of a binding interest arbitration award. The Township argues that it has no duty to engage in further negotiations, and, hence, the charge should be dismissed.

^{1/} Footnote Continued From Previous Page

employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

^{2/} A second issue concerning salary scales contained in Article XII of the draft agreement has been resolved.

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. In correspondence dated April 4, 2002, I advised the parties that I was not inclined to issue a complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find that the complaint issuance standard has not been met.

The PBA is the exclusive collective negotiations representative for all patrolmen and sergeants employed by the Township's police department. The PBA and the Township are parties to a series of written collective agreements, the last one covering the period January 1, 1995 through December 31, 1998. Negotiations for a successor agreement were not successful and the matter was moved to the interest arbitration process. On December 8, 2000, the arbitrator issued his award. The award covers the period of January 1, 1999 through December 31, 2002.

Article VIII of the predecessor agreement contains Sections A through E. The Article lists fourteen holidays and provides holiday pay for certain employees that work on the pre-defined holidays.

The Interest Arbitration Award dated December 8, 2000 states:

4. Holiday Leave, Clothing Allowance and Weapons Allowance

The PBA would support the elimination of Holiday Leave, Clothing Allowance and Weapons Allowance. (page 2 of the Award).

AWARD

5. Holidays

Article VIII is eliminated. (page 39 of the Award).

Sometime after the interest arbitration award was issued, counsel for the Township forwarded a draft successor agreement to the PBA's counsel for his review.^{3/} It contains Article VIII, Holidays, and has Sections A through F. Section F terminates holiday pay by providing, "On January 1, 2001, this Article will cease to be effective."

ANALYSIS

PBA contends that it was never the intention of the parties or the arbitrator to eliminate Article VIII in its entirety. All that was ever discussed by the parties or presented to the arbitrator was the elimination of Section A of Article VIII, which if eliminated, would leave intact premium pay for officers who

^{3/} It is unclear from the submissions exactly when the draft contract was forwarded to the PBA's counsel. However, it is clear that on February 16, 2001 counsel for the PBA sent correspondence to the Township's attorney noting two discrepancies in the draft agreement.

worked on holidays. PBA maintains that it did not file a timely appeal of the interest arbitration award because it did not know there was a problem until after the first paychecks of 2001 were issued and premium compensation was not paid to the officers who worked on New Year's Day. Even then, the PBA presumed the Township only made a correctable error until it received the draft agreement which clearly eliminated holiday pay.

The Township counters that it did nothing more than memorialize the plain language of the interest arbitration award when it prepared the draft agreement. The Township argues that its action cannot constitute an unfair practice because the draft contract accurately reflects the arbitrator's award. If the PBA was dissatisfied with the award, it should have timely appealed the arbitrator's decision pursuant to N.J.S.A. 34:13A-16f(5) (a).

N.J.S.A. 13A-5.4a(5) provides:

a. Public employers, their representatives or agents are prohibited from:

(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

Should the parties reach impasse during collective negotiations, they can invoke the dispute resolution procedures provided for in the Act. In the case of police and fire, the Act provides for compulsory arbitration which results in a final decision which is binding on the parties, unless successfully

appealed. N.J.S.A. 34:13A-16f(5). An aggrieved party may file an appeal of an award with the Commission within 14 days of receiving such award. N.J.S.A. 34:13A-16f(5)(a). An award that is not appealed to the Commission shall be implemented immediately. N.J.S.A. 34:13A-16f(5)(b). Once an award is issued, the parties no longer have a duty to negotiate over a term and condition of employment addressed in the award, for the duration of the award.

Here, the parties negotiated to impasse and then invoked the interest arbitration process which resulted in a final and binding award. The award specifically stated that Article VIII, Holidays, be eliminated. It did not state that only Section A of Article VIII be eliminated as the PBA suggests. The award was not appealed; thus, the Township implemented it and drafted an Article VIII which comports with the plain reading of the arbitrator's decision. As a result, holiday pay has been eliminated. The Township has no further duty to negotiate over this issue.

Based on the foregoing, the Commission's complaint issuance standard has not been met on the 5.4a(5) allegations and I decline to issue a complaint on those allegations.^{4/} Additionally, I do not find any factual support for the alleged violations of 5.4a(1)

^{4/} The parties are free to request that the arbitrator clarify his award, or in the alternative, charging party may file a grievance challenging the employer's action. Alternatively, the parties may jointly agree to reopen negotiations on this issue.

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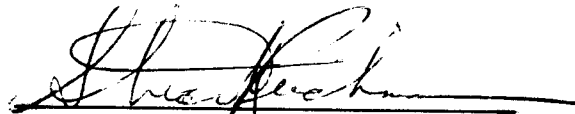
7.

or (7) and am also not inclined to issue a complaint on those allegations of the charge.^{5/}

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: April 23, 2002
Trenton, New Jersey

^{5/} N.J.A.C. 19:14-2.3.