

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Public Employer,

-and-

Docket No. ID-81-6

P.B.A. LOCAL 108, INC.,

Employee Organization.

SYNOPSIS

In an issue definition determination matter, the Chairman of the Commission dismisses a petition filed by P.B.A. Local 108, Inc., as untimely pursuant to N.J.A.C. 19:16-5.5(d). The Chairman concluded that the P.B.A. was aware of a dispute concerning issue definition during the arbitration proceeding, but did not petition the Commission until after the arbitrator had issued his award. Notwithstanding the timeliness holding, the Chairman also indicated the Commission's position on the merits of this case in an effort to finally resolve this matter inasmuch as the arbitrator's award is the subject of judicial review. The Chairman concluded, in accordance with prior Commission decisions, that the issues of car allowance, uniform maintenance allowance and uniform purchase allowance are economic items in that they bear a direct relation to employee income and other economic fringe benefits.

P.E.R.C. NO. 81-130

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Appearances:

For the Public Employer, Weinberg & Manoff, P.A.
(Richard J. Kaplow, of Counsel)

For the Employee Organization, Craner & Nelson, P.A.
(Leslie F. Schwartz, of Counsel)

DECISION AND ORDER

A Petition for Issue Definition Determination was filed by P.B.A. Local No. 108, Inc. (the "P.B.A.") on January 28, 1981 seeking a determination as to whether certain issues are economic or non-economic as defined in N.J.S.A. 34:13A-16(f)(2). The County of Union (the "County") filed a brief on February 11, 1981 and the P.B.A. filed a reply brief on February 24, 1981.

The parties were engaged in compulsory interest arbitration pursuant to the Public Laws of 1977, Chapter 85. The arbitration proceeding culminated in the issuance of an award dated December 1, 1980. After the issuance of that award, the instant petition was filed during the pendency of an action in the Chancery Division of the Superior Court in Union County filed by the "P.B.A." seeking to vacate the interest arbitration award. The P.B.A. disputes the arbitrator's inclusion of certain disputed issues as being within the economic proposal of the P.B.A. (see N.J.S.A.

34:13A-6(f)(2)).

In its Rules adopted to implement the Police and Fire Arbitration Act (Chapter 85), the Commission established a procedure to resolve disputes as to whether issues are economic or non-economic in a timely fashion. N.J.A.C. 19:16-5.5(d) provides:

"Where a dispute exists regarding the identification of an issue as economic or non-economic, the party contesting the identification of the issue shall file with the commission a petition for issue definition determination. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for issue definition determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration."

Although the parties may resolve issue definition disputes themselves, this procedure is available for resolving disputes concerning the economic or non-economic nature of issues to be submitted to an arbitrator. Further, the above cited rule clearly anticipates the filing of an issue definition petition prior to the formal interest arbitration proceeding to permit an orderly resolution of such disputes.

The specific issues which are submitted in the instant petition are car allowance, uniform maintenance allowance and uniform purchase allowance. The facts do not specifically establish the precise point at which the dispute over issue definition arose. The P.B.A.'s brief indicates that there was no clear understanding between the parties as to whether the issues were economic or non-economic. It asserts that the County had no right

to believe that the P.B.A. was characterizing the issues as economic anymore than the P.B.A. could have concluded that the County had agreed to a characterization of these issues as non-economic. The P.B.A. therefore asserts that the dispute was not evident until the close of the arbitration proceeding.

However, even the limited record in the proceeding establishes that the P.B.A. was aware of the dispute prior to the issuance of the award. A November 20, 1980 letter from P.B.A.'s counsel to the arbitrator (attached to the P.B.A.'s reply brief in this matter) argues the P.B.A.'s position on the issue definition question before the arbitrator. That letter further notes the relevance of N.J.S.A. 34:13A-16(f)(2) by pointing out that in the event of a dispute, P.E.R.C. shall have the power to decide which issues are economic issues (emphasis added). However, the P.B.A. did not petition P.E.R.C. at that time to seek a determination and now argues that the arbitrator should have referred the matter to us at that time rather than proceeding to issue an award.

The P.B.A. argues that its petition should not be found untimely since the parties had not engaged in negotiations prior to the compulsory arbitration and therefore it could not identify any issues as economic or non-economic in its petition seeking compulsory arbitration. This argument is found to be without merit. N.J.A.C. 19:16-5.4(a) provides (inter alia) that that petition shall contain,

"A statement indicating which issues are in dispute, identifying the issues as economic or non-economic within the meaning of N.J.S.A. 34:13A-16(f)(2)."

The P.B.A. was under an obligation, as the petitioner seeking

compulsory arbitration, to set out its issues as economic or non-economic at that point.

The record indicates that in its final position, submitted at the end of the arbitration hearing, the P.B.A. submitted a position with three categories: (1) Wage and Fringe Benefit Items, (2) Reimbursement Items, and (3) Non-Monetary Items. It is significant to note that N.J.S.A. 34:13A-16 and N.J.A.C. 19:16-5.4 contemplates only a two-fold differentiation as to issues; they are to be identified as either economic or non-economic. The P.B.A. now seeks to have the Commission rule that items which the P.B.A. itself chose to categorize as "reimbursement items" now be found "non-economic".

It is clear that the instant petition was not filed within the time limits set forth in N.J.A.C. 19:16-5.5(d), nor was it filed at the time when it became evident that a dispute as to issue definition had arisen. Therefore, the instant petition must be dismissed as not being timely filed. (See In re Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER ____ (¶11218 1980).)

The Petitioner seeks to distinguish the instant case from the Kearny matter on the basis of the fact that Kearny dealt with the failure to file a scope of negotiations petition in a timely fashion. However, the basic concept of the Kearny decision is just as relevant to the case at hand. In both situations the petitioners failed to seek a determination from the Commission in a timely fashion and thereafter sought a determination after the issuance of an adverse arbitrator's award; the Kearny decision is therefore very relevant to the instant matter.

Notwithstanding the timeliness holding, the Commission, as it did in Kearny, will also indicate its position on the merits of the instant matter in an effort to ask the Court and the parties to finally resolve this matter. The test for such a determination is set forth in N.J.S.A. 34:13A-16(f)(2) which states (inter alia),

"Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees."

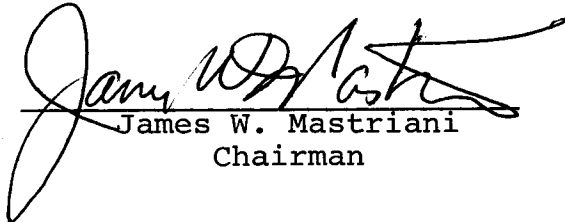
In In re Township of Saddle Brook, P.E.R.C. No. 78-73 (1978), the Commission held that the above-quoted statutory definition was by no means an exhaustive list of economic issues but was intended to give direction to the parties, arbitrators and the Commission. In In re County of Essex, P.E.R.C. No. 80-101, 6 NJPER 94 (¶11048 1980), it was found that a proposal for an increase in car allowance reimbursement is an economic issue. In In re Township of Springfield, P.E.R.C. No. 80-86, 6 NJPER 35 (¶11018 1980), the reimbursement for certain educational costs was found to be an economic provision. Likewise, a determination as to the nature of a proposal for an increase in clothing purchase and maintenance allowances would be found to bear a direct relation to employee income and other economic fringe benefits and therefore be categorized as an economic item. Thus, all three issues would be categorized as economic, which is consistent with the arbitrator's result.

Petitioner seeks to distinguish the Essex and Springfield decisions from the case at hand. Petitioner suggests that the car allowance found to be an economic item in the Essex decision was a "travel allowance" and not a "reimbursement" item. The facts of the Essex case indicate that the issue presented there, as with the issue here, dealt with "increase...allowance for reimbursement for use of personal automobiles and thus was found to be a form of compensation. The cases are certainly analogous if not directly on point.

ORDER

It is HEREBY ORDERED that the instant petition be dismissed in its entirety.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 29, 1981