

P.E.R.C. NO. 99-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HOPATCONG,

Respondent,

-and-

Docket No. CO-H-97-268

POLICEMAN'S BENEVOLENT ASSOCIATION,
LOCAL 149,

Charging Party.

BOROUGH OF HOPATCONG,

Charging Party,

-and-

Docket No. CE-H-97-13

POLICEMAN'S BENEVOLENT ASSOCIATION,
LOCAL 149,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Hopatcong's motion for reconsideration of P.E.R.C. No. 99-22. In that case the Commission dismissed allegations that Policeman's Benevolent Association, Local 149 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by refusing to sign a successor agreement. That decision also dismissed the PBA's allegations that the Borough violated the Act by unilaterally changing the divisor used for computing biweekly compensation. The Commission finds no extraordinary circumstances warranting reconsideration.

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 Borough, David A. Wallace, attorney

For the PBA, Loccke & Correia P.A., attorneys
(Joseph Licata, of counsel)

DECISION

On October 14, 1998, the Borough of Hopatcong moved for reconsideration of that portion of P.E.R.C. No. 99-22, 24 NJPER 473 (¶29220 1998) that dismissed allegations that Policeman's Benevolent Association, Local 149 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by refusing to sign a successor agreement. That decision also

dismissed the PBA's allegations that the Borough violated the Act by unilaterally changing the divisor used for computing biweekly compensation. The PBA opposes reconsideration.

In its initial submission, the Borough notes that N.J.S.A. 34:13A-5.3 requires that:

When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representative of the public employer and the majority representative.

The Borough argues that the parties reached agreement to revise Step 2 of their grievance procedure and that the PBA failed to properly engage in the "embodiment" process. It further argues that the PBA therefore violated N.J.S.A. 34:13A-5.4b(4)^{1/} and that it was unnecessary for the Borough to allege separately that the PBA refused to negotiate in good faith in violation of 5.4b(3).^{2/}

On October 22, 1998, the PBA filed a response opposing reconsideration. The PBA argues that the Borough has not demonstrated the requisite extraordinary circumstances to justify reconsideration.

^{1/} This provision prohibits employee organizations, their representatives or agents from "refusing to reduce a negotiated agreement to writing and to sign such agreement."

^{2/} This provision prohibits employee organizations, their representatives or agents from "refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

On November 5, 1998, the Borough requested oral argument. On November 10, the Borough filed an additional submission presenting an alternative argument. The Borough contends that if we disagree with its legal contentions concerning 5.4b(4), since the conduct in question was fully litigated, the pleadings should be amended to conform to the evidence and the charge should be treated as if a refusal to negotiate in good faith had been included.

On November 9, 1998, the PBA filed an additional response opposing reconsideration and oral argument.

On November 12, 1998, the Borough filed another submission. The Borough contends that, in its November 9 submission, the PBA raised issues outside the record and that if oral argument is not granted, the Borough should be permitted to file a supplemental submission.

We deny oral argument. The issues have been fully addressed in the parties' submissions. We will not consider any of the PBA's comments about what has transpired since we issued P.E.R.C. No. 98-22. Therefore there is no need for an additional response from the Borough.

The Hearing Examiner found that the parties agreed to a change in the grievance procedure in principle, but that they had not agreed on specific language. Thus there was no negotiated agreement to reduce to writing and sign. We adopted those findings and dismissed the Borough's allegations. Under our

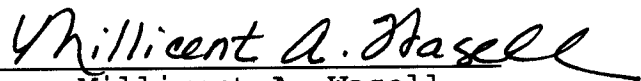
holding, the parties must return to the collective negotiations and/or interest arbitration process to resolve their negotiations dispute. Even if we were to find that the PBA's alleged refusal to engage in meaningful negotiations over specific language changes to the grievance procedure was fully and fairly litigated, at most, we would order the PBA to negotiate and we would place the parties exactly where they are today.

Finding no extraordinary circumstances warranting reconsideration, we deny the Borough's motion.

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998