

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Appellant,

-and-

Docket No. IA-98-1

PBA LOCAL NO. 11,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission denies the request of the City of Trenton for special permission to appeal an interest arbitrator's interlocutory order. That order granted PBA Local No. 11's motion to limit the arbitration proceeding to the issues listed in the PBA's petition to initiate interest arbitration, thus barring the City from submitting its work schedule proposal. The Chair is satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the City's arguments and did not abuse his discretion in rejecting those arguments.

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 Chair.

P.E.R.C. NO. 98-165

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Respondent.

Appearances:

For the Appellant, Courter, Kobert, Laufer & Cohen, P.C.
(Stephen E. Trimboli, of counsel)

For the Respondent, Loccke & Correia, P.A.
(Leon B. Savetsky, of counsel)

DECISION

During interest arbitration proceedings with PBA Local No. 11, which represents the City's rank-and-file police officers, the City of Trenton has requested special permission to appeal an arbitrator's interlocutory ruling. That ruling granted the PBA's motion to limit the arbitration proceeding to the issues listed in the PBA's petition to initiate interest arbitration. The ruling therefore bars the City from submitting its work schedule proposal.

The parties have filed briefs, exhibits and certifications. These facts appear.

The parties' last contract expired on June 30, 1997. Before the contract expired, the PBA filed an unfair practice charge alleging that the City had refused to negotiate over a successor contract. A consent order was entered directing the City to negotiate with the PBA. Pursuant to that order,

negotiations sessions were held on May 24 and June 11. The parties also met on May 28, but they disagree as to whether this was a negotiations or grievance meeting.

On July 7, 1997, the PBA filed a petition to initiate interest arbitration. On July 10, the Director of Arbitration notified the City's attorney that the petition had been filed and that, pursuant to N.J.A.C. 19:16-5.5, the City had until July 21 to file a response. See N.J.A.C. 19:16-5.5(a) (response may include any additional unresolved issues to be submitted to arbitration). The Director's letter also stated that, under N.J.A.C. 19:16-5.5(b), a party that fails to submit a timely response, "shall be deemed to have agreed to the request for the initiation of compulsory interest arbitration as submitted by the filing party."

On July 21, 1997, the City informed the Director that it objected to the initiation of interest arbitration because the parties allegedly had not held three negotiations sessions, as required by N.J.S.A. 34:13A-16a(1). It contended that the petition was premature in light of a scheduled August meeting to discuss the "true cost" and "financial history" of the current contract.

The parties held a negotiations session on August 26, 1997 and, on the same date, advised the Director that they had mutually agreed on an arbitrator. The Director appointed that arbitrator on September 4.

On March 24, 1998, the parties met with the arbitrator for the first time.^{1/} The PBA moved to limit the proceeding to the issues listed in its petition and objected to consideration of the City's work schedule proposal. After arguments and submissions from the parties, the arbitrator granted the PBA's motion in a May 28 letter and June 4 opinion.

The City requests special permission to appeal. It maintains that the arbitrator should have exercised his discretion to relax N.J.A.C. 19:16-5.5 because the PBA filed for interest arbitration before the City had an opportunity to present its proposals; the work schedule proposal was discussed at the August 26 negotiations session; and the parties agreed at that time to submit the proposal to mediation before an interest arbitrator. The City also urges reversal of the arbitrator's ruling on the grounds that the PBA did not object to its failure to file a response to the petition until the first day of hearing.

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17(¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chair authority to grant or deny special permission to appeal.

^{1/} The parties were unable to meet on several earlier dates suggested by the arbitrator. While the City initially expected that the March 24 meeting would be a mediation session, the PBA informed the City just prior to March 24 that it wanted to proceed to a hearing.

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision to exclude additional issues); see also Allendale Bor., P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Bogota Bor., P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions to exclude additional issues).

I turn first to the City's contention that because it objected to processing the interest arbitration petition, the arbitrator should have relaxed N.J.A.C. 19:16-5.5. Assuming the July 21 letter tolled the time for filing a response to the PBA petition, I note that the City did not identify additional issues after it agreed, on August 26, to proceed to interest arbitration -- despite the Director's July 10 letter stating the consequence of failing to do so.

The City also maintains that it complied with the spirit of Commission rules because, at the August 26 negotiations session, the parties discussed the proposal and allegedly agreed to submit it to mediation before an interest arbitrator. But

discussion of a proposal during negotiations does not constitute compliance with N.J.A.C. 19:16-5.5 or necessarily warrant relaxation of the rule. See Allendale Bor. (affirming arbitrator decision excluding proposals discussed during negotiations). Further, an agreement to submit the proposal to mediation before an interest arbitrator would not entitle the City to have the proposal considered at the formal arbitration hearing. See Allendale Bor. (mediation is distinct from the formal arbitration hearing and discussion of proposals during mediation cannot substitute for compliance with N.J.A.C. 19:16-5.5).^{2/} Moreover, the arbitrator was not required to relax the rule because the PBA did not tell the City earlier that it reserved its right to invoke N.J.A.C. 19:16-5.5. See Allendale (filing party had no obligation to alert the respondent that it would rely on N.J.A.C. 19:16-5.5 until the respondent attempted to include the disputed proposals in its final offer).^{3/}

^{2/} The parties disagree as to whether there was such an agreement. In view of Allendale, I need not resolve that dispute and therefore do not address the City's objections to the PBA's submissions on the point.

^{3/} The City correctly notes that, prior to the formal arbitration hearing, the filing party in Allendale advised its adversary that it would rely on N.J.A.C. 19:16-5.5 and object to the submission of certain proposals. But that notice came after the parties had already discussed the disputed proposals in negotiations and mediation. Allendale rejected the argument that the proposals should be considered in the formal arbitration because of those discussions and held that, absent a response to a petition or a request for an extension of time, the filing party could assume that the disputed proposals would not be considered at the formal hearing.

Finally, I am satisfied that, within the framework of the interest arbitration statute and regulations, the arbitrator carefully considered the City's arguments that the public interest warranted consideration of the work schedule proposal and did not abuse his discretion in rejecting those arguments. He also properly noted that the City could modify its final economic offer in light of his ruling. Cf. Allendale Bor. (Borough disadvantaged because arbitrator did not rule on union objection to submission of certain proposals until he issued his final award).

For these reasons, I deny special permission to appeal. See Middlesex Cty., P.E.R.C. No. 97-63 (no basis for granting special permission to appeal arbitrator's exclusion of additional issues).

ORDER

The request for special permission to appeal the arbitrator's interlocutory order is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

DATED: June 30, 1998
Trenton, New Jersey