

P.E.R.C. NO. 86-127

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-84-60

HUDSON COUNTY PBA, LOCAL 51,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a complaint based on an unfair practice charge filed by Hudson County PBA, Local 51 against the County of Hudson. The charge alleged the County violated the New Jersey Employer-Employee Relations Act when it failed to pay three patrol officers their final salary increment, allegedly contrary to a long-standing practice. The Commission finds, however, that it should defer to an arbitrator's award that the PBA had not established that such a practice had existed.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-84-60

HUDSON COUNTY PBA, LOCAL 51,

Charging Party.

Appearances:

For the Respondent, Murray & Granello, Esqs. (Karen A. Bulsiewicz, Of Counsel and Stephen E. Trimboli, On the Brief)

For the Charging Party, Jerome J. LaPenna, Esq.

DECISION AND ORDER

On August 29, 1983, the Hudson County PBA, Local 51 ("PBA") filed an unfair practice charge against the County of Hudson ("County"). The charge alleges that the County violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (3) and (5)^{1/}, by unilaterally failing to pay three patrol officers their

^{1/} These subsections 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; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning

final salary increments, allegedly in violation of a long-standing practice whereby patrol officers reach top pay after three years of service.

On June 24, 1983, the PBA had filed a grievance on behalf of the three patrol officers alleging that the County had violated the same long established practice. The County denied the grievance and the PBA then filed a demand for grievance arbitration. On October 31, 1983, an arbitration hearing was held. The parties jointly requested that the charge not be processed pending the arbitrator's decision.

On March 27, April 10, July 12, October 16 and October 30, 1984, the Director of Unfair Practices sent letters asking about the matter's current status. On April 2, April 16, July 30 and November 9, the PBA's counsel requested that the charge be held open in accordance with the Commission's deferral procedures.^{2/}

On December 24, 1984, the arbitrator denied the PBA's grievance. He found that the PBA had failed to establish a clearly enunciated and unequivocal past practice. He agreed with the County

1/ Footnote Continued From Previous Page

terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The PBA's response to the Commission's October 30, 1984 letter does not indicate that a copy was sent to the County.

that a 1978 Commission decision, Hudson County, P.E.R.C. No. 78-48, 4 NJPER 87 (¶4041 1978), finding that the County unilaterally discontinued increments for unit members, is relevant only with respect to payment of a \$600 increment after the first and third years and that the Commission did not decide the issue of movement to maximum salary.

On April 26, 1985, the PBA requested that the Commission reactivate the pending unfair practice charge.

On February 6, 1986, the Director of Unfair Practices informed the County that the PBA had again requested that the matter proceed. He noted that the PBA had modified its April 26, 1985 request by asking that the Commission stay the processing of this matter in the hope of informal resolution.^{3/}

On February 10, 1986, a Complaint and Notice of Hearing issued. On March 6, 1986, the County filed its Answer, a Motion for Summary Judgment, and a supporting affidavit and brief.

In its motion, the County argues that the Commission must defer to the arbitrator's opinion and award because the arbitrator resolved the issue raised in the unfair practice charge. In addition, the County urges that the doctrine of laches bars the reactivation of this matter.

^{3/} On May 29, 1984, the Commission designated an interest arbitrator pursuant to N.J.A.C. 19:16-5.6(b). He issued his opinion and award on November 15, 1985.

On April 17, 1986, after an extension, the PBA filed a brief in opposition to the motion. It alleges that the parties did not agree to an issue to be resolved by the arbitrator; the hearing before the arbitrator was not fair because he did not consider his prior arbitration determination on essentially the same issue or the Commission's decision in Hudson County; the arbitrator did not address the unfair practice issues and the motion does not address the charges under subsections 5.4(a)(1) and (3) of the Act. Also, the PBA argues the Commission should not defer to the award of the arbitrator because the issues before the arbitrator are not identical to those raised in the Complaint, the hearing before the arbitrator was not fair and regular and the award is repugnant to the purposes and policies of the Act. Finally, the PBA asserts that the doctrine of laches is not applicable because any delay was due to the pending arbitrator's decision and a subsequent interest arbitration award which the PBA believed might have resolved the parties' dispute.^{4/}

We now consider whether to defer to the arbitrator's award denying the PBA's grievance. We hold that deferral is appropriate insofar as the Complaint alleges violations of subsections 5.4(a)(1) and (5).

^{4/} The PBA argues that we should deny the County's motion because there are disputed facts. We disagree. The parties' differing conclusions as to the fairness of the arbitration proceeding do not prevent us from deciding this motion.

State of New Jersey (Stockton State College) ("Stockton"), P.E.R.C. No. 77-31, 3 NJPER 62 (1977) establishes the criteria for determining when, in a case involving an alleged violation of subsections 5.4(a)(5) and, derivatively, (a)(1), deferral is appropriate: (1) the arbitrator must have had authority to consider the issues of contractual interpretation underlying the unfair practice charge, (2) the proceeding must have been fair and regular and (3) the award must not be repugnant to the Act. See also, Passaic County, P.E.R.C. No. 84-65, 10 NJPER 22 (¶15012 1983); Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 266 (¶14122 1983); City of Englewood, P.E.R.C. No. 82-124, 8 NJPER 375 (¶13172 1982); Town of Harrison, P.E.R.C. No. 82-73, 8 NJPER 118 (¶13051 1982). Accord, Olin Corp., 268 NLRB No. 86, 115 LRRM 1056 (1984); Spielberg Mfg. Co., 112 NLRB No. 1080, 36 LRRM 1152 (1952).^{5/} When these criteria have been satisfied, recognition of an arbitrator's award furthers the desirable objective of encouraging the voluntary settlement of labor disputes.

First, the arbitrator had the authority to, and did, consider the issues of contractual interpretation underlying the unfair practice charge. Article XV of the collective negotiations

^{5/} The Commission's deferral policies in subsection 5.4 (a)(5) cases have long paralleled those of the National Labor Relations Board. We note, however, the the NLRB has recently changed some of its policies in favor of expanded deferral. Olin Corp. These policies have in turn been questioned. Taylor v. NLRB, ___ F.2d ___, 122 LRRM 2084 (11th Cir. 1986). This case does not require us to determine whether to adopt any of the NLRB's new standards.

agreement provides for binding arbitration of disputes arising between the parties relating to the alleged violation of, interpretation or application of any provision of the agreement. The issue presented to, and resolved by the arbitrator, is identical to that raised in the Complaint. The gravamen of both the grievance and the Complaint is whether the County altered a past practice of paying increments that would put patrol officers at top pay after three years of service.

Second, the proceedings were fair and regular. The parties agreed to submit the matter to arbitration. The parties examined witnesses, presented evidence and submitted briefs. The PBA also filed a reply to the County's reply brief. The County then prevailed. An arbitrator's award does not fail this part of the test merely because the arbitrator did not weigh the evidence the way the losing party would. Stockton at 64.

Third, the arbitrator's award is not repugnant to the Act. The arbitrator determined that the Commission's decision in Hudson County merely required the County to pay its patrol officers the regular increments due under the practice as it existed prior to the respondent's unilateral alteration. He concurred with the County "that the PERC decision is relevant only with respect to payment of the \$600 increment after the first and after the third year and that movement to maximum salary is not the same issue as the increment issue decided by PERC." Opinion at 9. This conclusion, while perhaps debatable, was not palpably wrong. We therefore find that

his decision was not repugnant to the Act and dismiss the allegations concerning subsections 5.4(a)(1) and (5).

We now consider the allegations concerning subsection 5.4(a)(3). Normally, the Commission will not defer to arbitration when a violation of subsection 5.4(a)(3) has been charged. City of Englewood at 376-77, 377 n.5. Here, although the PBA alleged a violation of subsection 5.4(a)(3), the alleged unfair practice is based solely on the County's alleged breach of a past practice and not upon allegations of animus resulting from the exercise of protected rights. We therefore dismiss that portion of the Complaint alleging a violation of subsection 5.4(a)(3). See Brookdale at 270 n.8.^{6/}

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hipp, Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986

^{6/} Our decision makes it unnecessary to consider the County's laches argument.