

P.E.R.C. NO. 2004-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEQUANNOCK PBA LOCAL NO. 172,

Appellant,

-and-

Docket No. IA-2002-033

TOWNSHIP OF PEQUANNOCK,

Respondent.

SYNOPSIS

The Commission denies the request of Pequannock PBA Local No. 72 to file an appeal nunc pro tunc from a February 20, 2003 interest arbitration award involving the Township of Pequannock's police officers. If leave to appeal is granted, the PBA asks that the case be remanded to the arbitrator to resolve the parties' dispute over a senior officer differential provision that he awarded. In the alternative, the PBA asks that a new interest arbitrator be appointed to resolve the parties' impasse on this point. The Commission concludes that the PBA has not explained why it did not move to file a late appeal until more than one year after the issuance of the award and over five months after the dispute over the senior officer differential emerged. The Commission also declines to refer the matter to the Director of Arbitration for the appointment of a new arbitrator.

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 Appellant, Loccke & Correia, P.A. (Michael A. Bukosky, of counsel)

For the Respondent, Laufer, Knapp, Torzewski & Dalena, L.L.C. (Fredric M. Knapp, of counsel)

DECISION

On March 16, 2004, Pequannock PBA Local No. 172 requested leave to file an appeal nunc pro tunc from a February 20, 2003 interest arbitration award involving the Township's police officers. If leave to appeal is granted, the PBA will ask that the case be remanded to the arbitrator to resolve the parties' dispute over a senior officer differential provision that he awarded. In the alternative, the PBA asks that a new interest arbitrator be appointed to resolve the parties' impasse on this point.<sup>1/</sup>

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<sup>1/</sup> On October 3, 2003, the PBA filed an unfair practice charge against the Township, alleging that it had refused to fully implement the interest arbitration award and sign the contract arising out of it. This motion was filed after an  
(continued...)

On March 19, 2004, the Township opposed the request to file a late appeal, contending that we have no authority to relax the 14-day statutory deadline for appealing an award. N.J.S.A. 34:13A-16f(5)(a).

N.J.S.A. 34:13A-16f(5) states that an interest arbitration award shall be final, binding and irreversible except where, within 14 days of receiving an award, a party files a notice of appeal with the Commission. See also N.J.A.C. 19:16-8.1(a). This award was received by the parties on February 26, 2003. Thus any appeal should have been filed by March 12, 2003.

In Borough of Cliffside Park, P.E.R.C. No. 98-71, 24 NJPER 15 (¶29010 1997), we noted that statutory time limits for appeals to administrative agencies have been held to be mandatory, jurisdictional and not capable of enlargement by the agency or the courts. At the same time, our Supreme Court has held that time restrictions on an administrative agency's authority to hear a claim may be tolled in particular circumstances, if consistent with the underlying legislative scheme. See White v. Violent Crimes Compensation Bd., 76 N.J. 368, 379, 387 (1978); see also Cavallaro 556 Valley St. Corp., 351 N.J. Super. 33 (App. Div. 2002).

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1/ (...continued)  
exploratory conference did not produce a settlement agreement.

Cliffside Park did not decide whether we could ever entertain an appeal from an interest arbitration award filed after the time period specified in N.J.S.A. 34:13A-16f(5)(a). The appellant in Cliffside Park did not explain why its appeal was filed 18 days late. Absent such a particularized description of the reasons for the delay, Cliffside Park stated that we would not consider whether the 14-day period could be tolled. We reach the same conclusion here. The PBA has not explained why it did not move to file a late appeal until more than one year after the award was issued and more than five months after the dispute over the senior officer differential emerged and it filed its unfair practice charge. Therefore, we deny the motion to file an appeal nunc pro tunc.

We also decline to refer this matter to the Director of Arbitration for appointment of a new interest arbitrator. This post-award interpretation question does not trigger the right to invoke a new compulsory interest arbitration proceeding. See N.J.A.C. 19:16-2.1 (setting forth the procedures for commencement of negotiations, and subsequent interest arbitration, within the context of negotiations for a new or successor agreement or an agreed-upon reopener); N.J.A.C. 19:16-5.1 (interest arbitration petition may be filed on or after date on which agreement expires). The PBA may seek its remedies through the pending unfair practice proceeding. It may also grieve any disputes

arising under an awarded contract. See North Hudson Reg. Fire & Rescue, P.E.R.C. No. 2004-17, 29 NJPER 428, 451 (¶146 2003).

ORDER

The motion for leave to file an appeal nunc pro tunc is denied. The motion to refer the case to the Director of Arbitration for appointment of a new interest arbitrator is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz and Mastriani voted in favor of this decision. Commissioner Sandman abstained from consideration. None opposed.

DATED: April 29, 2004  
Trenton, New Jersey  
ISSUED: April 30, 2004