

P.E.R.C. NO. 2005-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERNARDSVILLE,

Petitioner,

-and-

Docket No. SN-2005-060

BERNARDSVILLE P.B.A. LOCAL NO. 365,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the Borough of Bernardsville seeking a negotiability determination concerning a directive issued by the police chief to sergeants and lieutenants represented by Bernardsville P.B.A. Local No. 365. The Commission has previously declined to exercise its scope of negotiations jurisdiction in this matter absent a demand for arbitration or a dispute during collective negotiations. Borough of Bernardsville, P.E.R.C. No. 2004-67, 30 NJPER 135 (¶52 2004), recon. den. P.E.R.C. No. 2004-82, 30 NJPER 230 (¶85 2004). The Commission now holds that while the parties are in negotiations, there is no contract proposal in dispute for it to consider in this proceeding and no basis for issuing a scope of negotiations determination. The Commission reiterates that the Borough's position that it acted pursuant to a managerial prerogative can be addressed through a pending unfair practice proceeding.

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 Petitioner, Schwartz, Simon, Edelstein, Celso & Kessler, LLP, attorneys (Stefani C. Schwartz, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys (Michael A. Bukosky, on the brief)

DECISION

On February 23, 2005, the Borough of Bernardsville petitioned for a scope of negotiations determination. The Borough seeks a negotiability determination concerning a directive issued by the police chief. Bernardsville P.B.A. Local No. 365, the majority representative of police sergeants and lieutenants, has objected to the filing of the petition and seeks its dismissal.

The parties have filed briefs. The Borough has submitted exhibits. These facts appear.

On February 6, 2004, the Borough's police chief issued Memorandum #2004-5. The directive concerned police officer

training. It required that police officers report to headquarters before attending training and return to headquarters after training to complete shifts, or take compensatory time in lieu of completing their shifts.

On February 20, 2004, the PBA filed an unfair practice charge alleging that the directive violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally altering a long-standing past practice involving release time and compensatory time before and after training. Hearings on the charge have been postponed and are scheduled for May 2005.

On March 26, 2004, the Borough petitioned for a scope of negotiations determination. The Borough sought a negotiability determination concerning the directive. On March 31, the Commission Chairman advised the Borough that we will not ordinarily decide a scope of negotiations petition unless a negotiability dispute has arisen during the course of negotiations for a successor agreement or a demand for arbitration has been filed and the petitioner is seeking to restrain binding arbitration of a grievance. See N.J.A.C. 19:13-2.2(a)(4). The Chairman noted that there was no demand to arbitrate any grievance concerning the directive and that the parties were not in negotiations for a successor agreement.

On April 30, 2004, we declined to exercise our scope of negotiations jurisdiction absent a demand for arbitration or a dispute during successor contract negotiations. See N.J.A.C. 19:13-2.2(a)(4). Borough of Bernardsville, P.E.R.C. No. 2004-67, 30 NJPER 135 (¶52 2004), recon. den. P.E.R.C. No. 2004-82, 30 NJPER 230 (¶85 2004). We held that any scope of negotiations issue can be addressed in the unfair practice proceeding based on a full record. See City of Cape May, P.E.R.C. No. 2004-22, 29 NJPER 483 (¶151 2003).

The parties' collective negotiations agreement expired on December 31, 2004. The PBA has petitioned for interest arbitration. The Borough's new scope petition asserts that since the parties have commenced negotiations, they need a determination as to whether the issues set forth in the directive are negotiable. The Borough acknowledges, however, that the PBA's interest arbitration petition addresses none of the matters discussed in the directive. The PBA responds that the initial petition and this petition are factually indistinguishable. It argues that this petition should be dismissed under the doctrine of res judicata.

While the parties are in negotiations, they are not now seeking to resolve their dispute through negotiations. There is no contract proposal for us to consider in this proceeding and no basis for issuing a scope of negotiations determination. See

City of Union City, P.E.R.C. No. 91-97, 17 NJPER 253 (¶22116 1991). The Borough is holding to its position that it acted pursuant to a managerial prerogative. That position will be addressed through the unfair practice proceeding. If there are no material facts in dispute, the unfair practice case can be resolved expeditiously through summary judgment motions or a stipulated record.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005
Trenton, New Jersey
ISSUED: April 28, 2005