

P.E.R.C. NO. 2006-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. IA-2006-036

NEWARK IDENTIFICATION
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission grants the City of Newark's motion to dismiss a Petition to Initiate Compulsory Interest Arbitration filed by the Newark Identification Officers Association. The City asserts that the Association is not entitled to interest arbitration because the current agreement will not expire until December 31, 2008; because the identification officers are not police officers entitled to interest arbitration under the statute, and because the parties' contract acknowledges that the Association is not entitled to interest arbitration. The Commission finds that in 2004 both parties executed a Memorandum of Agreement effective through December 31, 2008. The Commission concludes that the Memorandum of Agreement covers the economic issues raised in the interest arbitration petition and that agreement cannot be set aside by the petition. With respect to the non-economic issues in the petition, the Commission concludes that the Memorandum specified that the previous contract would be amended to substitute the Association as the majority representative and that all terms of the contract would remain in effect.

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, Oxfeld Cohen, P.C., attorneys
(Sanford R. Oxfeld and Sasha A. Wolf, on the brief)

For the Respondent, JoAnne Y. Watson, Corporation
Counsel (David N. Gambert, on the brief)

DECISION

The Newark Identification Officers Association represents identification officers employed by the City of Newark in its police department. On January 11, 2006, the Association^{1/} petitioned the Commission to initiate interest arbitration, and on January 26, the Association amended that petition. The petition, as amended, asserts that the previous agreement covering identification officers expired on December 31, 2000. The petition lists these economic issues as being in dispute:

1/ The petitioner calls itself the Newark Police Crime Scene Identification Officers Association in its papers, but we will use the name on its certification as majority representative.

"All salary and benefit issues including, but not limited to sick leave and longevity pay." It lists these non-economic issues as being in dispute: "All non-economic issues including not but limited to shift preferences, maintenance of union office and union business leave."

On February 10, 2006, the City of Newark moved to dismiss the petition. It asserts that the Association is not entitled to interest arbitration because the current agreement will not expire until December 31, 2008; because the identification officers are not police officers entitled to interest arbitration under N.J.S.A. 34:13A-14 et seq.; and because the parties' contract acknowledges that the Association is not entitled to interest arbitration.

On March 7, 2006, the Association filed a response. It asserts that the agreement relied upon by the City is invalid because the parties did not have a meeting of the minds concerning its terms and because the Association's members never ratified it. It contends that the decision of the Director of Representation in City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980), establishes that identification officers are covered by the interest arbitration statute and further contends that their right to invoke arbitration cannot be waived.

On March 24, 2006, the City filed a reply. It asserts that the current contract was fairly and fully negotiated by the

parties, signed by the Association's President, ratified by the Association and the City, and complied with thereafter.

Factual Presentations

The parties have filed certifications and exhibits. The following facts and factual allegations appear.

The City and the Policemen's Benevolent Association, Local No. 3 entered a contract effective from January 1, 1995 through December 31, 2000. This contract covers the identification officers represented by the PBA until January 10, 2003, and now represented by the Association. It sets forth a full range of employment conditions. Article XIX, entitled Negotiations Impasse Procedure, states:

Effective January 1, 1999, the [PBA] acknowledges that it is not entitled to the provisions of N.J.A.C. 19:16-5.1 et seq. [i.e., the interest arbitration regulations]. The parties hereby agree that this subject will not be negotiable or arbitrable.

Negotiations over a successor contract occurred in the spring and summer of 2004. The Association's President and the City's then Labor Relations and Compensation Officer (and now Director of Personnel) have filed certifications setting forth their roles in those negotiations.

The City proposed changes in health benefits, longevity schedule, and sick leave entitlements and also proposed that the Association adopt the PBA-City agreement and change all PBA references to the Association in the new agreement. The

Association's President asserts that she repeatedly asked the City to give her a copy of the PBA contract, but it never did. The City's then Labor Relations and Compensation Officer asserts that the President was fully aware of what issues were the subject of negotiations.

On May 27, 2004, the Association's attorney asked the City's then Labor Relations and Compensation Officer to review and approve a seven-page document entitled "Contract Negotiations - Memorandum of Agreement." The memorandum set forth what the parties had discussed and the terms of a proposed agreement based on those negotiations. Several exhibits were included as part of this document.

The first two pages of the May 27 document discussed advancement on the salary guide and calculation of raises and described an error in step nine of the employer's salary guide proposal. The Association accepted the employer's proposed salary guide, provided the error was corrected. The second and third pages had a "General Provisions" section. Paragraphs 1 through 4 described changes in health benefits, longevity payments, and sick leave entitlements. Paragraph 5 stated that the Preamble and the first two articles would be changed to reflect that the Association had replaced the PBA as majority representative. Paragraph 6 stated as follows: "All other terms of prior contract remain in effect including disability

retirement provisions. Exception: for the duration of this contract, Article XIX regarding compulsory interest arbitration is waived by the Union." Paragraph 8 stated that the employer would give a \$950 uniform allowance effective January 1, 2005. The third page also had signature lines for City and Association officials. The Association's President signed this page before the memorandum was forwarded to the City.

On July 9, 2004, the Association's Secretary sent a letter to the City's then Labor Relations and Compensation Officer. The letter advised the City that the Association had "gone through the Memorandum and it has been ratified." Nine identification officers have certified that they each received a telephone call from the Secretary in June 2004 asking whether he or she would vote in favor of a new salary guide and a change in medical benefits; they received no other communications from the Association regarding the City's proposals; and the Association conducted no other vote. The Association's President asserts that she had asked the Secretary to get the membership's feedback regarding the City's salary and health benefit proposals; the Secretary informed her that the membership had approved the City's offer but did not specify which offer had been approved; she did not seek to clarify which offer had been approved nor did she conduct a membership vote; and without knowing which offer

was approved, she determined that the Association had approved the salary, health, sick leave and longevity agreement.

On July 9, 2004, the parties signed a document entitled Newark Identification Officers' Association Negotiations (2001-2008). This document consists of what had been the last two pages of the May 27 document - that is, the negotiated changes in salaries, health benefits, longevity, and sick leave entitlements. The only difference between those pages in the May 27 document and the July 9 agreement is the salary guide correction requested by the Association. This agreement was signed by the City's then Personnel Director, its then Labor Relations and Compensation Officer, and a Labor Relations Specialist and by the Association's President. This document does not refer to other provisions in the PBA contract or the May 27 memorandum. The Association's President asserts that when she signed the July 9 memorandum, she understood that she was agreeing to only the changes memorialized in that document.

The Association's President also signed a one-page document that was included with the other documents for salary/healthcare changes. This document is an undated signature page. The President asserts that it was presented to her without any other documents or pages attached. The page had signature lines for five City representatives (the City Clerk, Mayor, Personnel Director, Business Administrator and Corporate Counsel), but none

of the lines was signed at that time. It also had signature lines for two Association representatives (President and Vice-President), and both lines have signatures above them. While the President admits signing this line, the Vice-President asserts that she did not.

According to the then Labor Relations and Compensation Officer, the parties drafted the contract inclusive of the new terms after the Association ratified it and the Association then provided the City with the contract signed by the President and Vice-President. The City's Law Department then reviewed the contract and prepared a resolution of approval to be considered by the City Council.

On October 6, 2004, the City Council adopted a resolution authorizing execution of a document entitled "Agreement between the City of Newark and the Newark Identification Officers Association." That document contains essentially the same provisions as the previous PBA contract, including Article XIX, but states in the Preamble that all references to the PBA in the contract will now be recognized as referring to the Association and includes the uniform allowance increase specified in the General Provisions section of the May 27 document. The July 9, 2004 memorandum is attached at the end of the document. The cover page of this document and an article entitled Duration state that this agreement is effective from January 1, 2001

through December 31, 2008. Every page of the agreement has this header -7RBG100604- and every page is numbered except the last one, the signature page that was described in the previous paragraph and signed by the Association President.

After the City Council adopted its resolution, the contract was forwarded to the City's Personnel Department for execution. These signatures were then added to the signature page in this order: Personnel Director, Corporation Counsel, Business Administrator, Mayor and City Clerk. The City Clerk dated and sealed the document on December 1, 2004.

According to the City's Director of Personnel, the City has acted in accordance with that agreement since then; and until the instant petition was filed, no Association member or attorney had questioned the legitimacy of the negotiations process or the ratification or adoption of the new contract. The record does not indicate that the Association attempted to pursue negotiations on any matters between July 9, 2004 and the filing of its petition in January 2006. The petition itself does not list the dates of any negotiations sessions and states that this box is "not applicable."

Analysis

A petition to initiate interest arbitration proceedings may be filed on or after the date on which the parties' collective negotiations agreement expires. N.J.S.A. 34:13A-16b(2); N.J.A.C. 19:16-5.2(a)2. The parties are required to engage in at least three negotiation sessions before a petition is filed. N.J.S.A. 34:13A-16a(1). Under the circumstances presented, we will dismiss the petition.

The petition seeks arbitration of economic issues as well as non-economic issues. With respect to the economic issues, the Association seeks arbitration of the issues resolved by the July 9, 2004 memorandum. The parties agree that the memorandum was signed, dated, and ratified so we will not permit that agreement to be set aside by virtue of this petition.

With respect to the non-economic issues, we believe the preponderance of evidence in this record supports the City's position that the parties agreed to carry over the terms of the PBA contract. The May 27 memorandum specified that the PBA contract would be amended to substitute the Association as majority representative and that (with one exception) all terms of that contract would remain in effect.^{2/} That memorandum was

^{2/} While we believe the parties reached an agreement on both economic and non-economic issues, it is unclear what they agreed to with respect to retaining or eliminating the provision in the prior contract allegedly waiving any right
(continued...)

signed by the Association's President and forwarded for the City's approval by the Association's attorney. Thereafter, the Association's Secretary informed the City that the Association had ratified the memorandum. Based on that letter, the City presented the entire contract to the City Council for ratification. If the Association had believed that any issues remained open after it ratified the proposed changes in July 2004, surely it would have pursued negotiations promptly rather than remaining mute until it filed this petition in January 2006. It is immaterial whether the Association President or Vice-President had received or reviewed the PBA contract since it is apparent that the Association's attorney had done so and had prepared the memorandum agreeing to continue its terms, a memorandum signed by the President. It is also immaterial whether the Association membership was asked to approve the continuing terms of the previous contract as well as changes in salaries and other economic benefits; we do not normally police internal union affairs or supervise ratification proceedings and our Act has no counterpart to the federal Labor Management Reporting and Disclosure Act, 29 U.S.C. §401 et seq. The key point is that the Association informed the City that it had

2/ (...continued)

to invoke interest arbitration (Article XIX). The May 27 memorandum is ambiguous on that point. For purposes of this decision, we do not need to resolve that ambiguity or any of the other issues raised by the parties.

ratified the memorandum and the City had no reason to believe that the Association had instead ratified only the last two pages of the memorandum.

Finally, we regret that both parties were not more careful about signing pertinent documents. The Association's President states that she signed a signature page without the attachments needed to make it clear what she was signing while the City did not have any representatives sign and date the signature page at the same time the president did. The uncertainty that triggered this litigation could have been avoided if the parties had been more careful and we expect they will be in the future.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: May 25, 2006

Trenton, New Jersey