

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LEONIA,

Respondent,

-and-

Docket No. CO-2006-211

LEONIA PBA LOCAL NO. 381,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Leonia violated the New Jersey Employer-Employee Relations Act and orders the Borough to sign a successor agreement with Leonia PBA Local No. 381. The PBA filed an unfair practice charge alleging that the Borough violated the Act when it did not sign an agreement that accurately reflected the parties' prior agreement as modified by an interest arbitration award. The Commission holds that an interest arbitration award is final and binding unless vacated or modified on appeal and an award that is not appealed must be implemented immediately. Consistent with the obligation to implement the award is the obligation to reduce the award to writing and sign it. There is no duty to negotiate further after an award issues. The Commission therefore orders the Borough to sign the agreement presented to it by the PBA. If the PBA seeks to enforce a provision in a way that the Borough believes would substantially limit its governmental policymaking powers, it may file a scope petition seeking a restraint of binding arbitration.

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.

P.E.R.C. NO. 2008-3

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BOROUGH OF LEONIA,

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-and-

Docket No. CO-2006-211

LEONIA PBA LOCAL NO. 381,

Charging Party.

Appearances:

For the Respondent, Lane J. Biviano, Esq., LLC,
attorney

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Marcia J. Tapia, of
counsel)

DECISION

Section 5.4a(6) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., prohibits public employers from refusing to reduce collective negotiations agreements to writing and to sign such agreements. Leonia PBA Local No. 381 filed an unfair practice charge alleging that the Borough of Leonia violated that prohibition when it did not sign an agreement that accurately reflected the parties' prior agreement as modified by an interest arbitration award. We agree and order the Borough to sign the successor agreement.

On February 17, 2006, the PBA filed the unfair practice charge that began this case. After a Complaint issued, the

Borough filed an Answer and Amended Answer. The Borough asserted that there cannot be a draft contract because the arbitrator did not provide exact contract language and the parties must still negotiate over that language.

On April 11, 2007, Hearing Examiner Jonathan Roth conducted a hearing. Absent any material disputed facts, the parties waived a Hearing Examiner's report and recommended decision and filed simultaneous briefs. Neither party filed a reply brief.

Here are the material facts.

The parties most recent contract expired on December 31, 2003 (CP-6). They did not reach a voluntary agreement and the PBA filed an interest arbitration petition (IA-2004-053). On August 15, 2005, the arbitrator issued an award (CP-1) that contains this provision now in dispute:

Effective September 1, 2005, the following language shall be added to the collective bargaining agreement:

When a police officer is assigned by the Chief or his designee to perform the duties of a Sergeant for ten (10) consecutive days or more, the officer shall receive the pay of a Sergeant commencing with the first day of such assignment. The Borough shall not defeat the intent of this clause by shifting two or more employees to cover the assignment. [CP-1]

The Borough filed an appeal with the Commission, but later withdrew it. On November 15, the Borough Council approved a resolution accepting the award (CP-5).

On March 30, 2007, the Borough filed a scope of negotiations petition seeking a declaration that the language in the arbitrator's award involved the Borough's managerial prerogative to make assignments (SN-2007-060). The Commission Chairman dismissed the petition because it was filed after negotiations and interest arbitration. N.J.A.C. 19:13-2.2(a)(4). He informed the Borough that it could file a new petition if the PBA sought to enforce the provision through binding arbitration.

The PBA's attorney then prepared a draft contract based on the prior contract as modified by the arbitrator's award (CP-6). To date, the Borough has not signed the draft contract.

The employer's defenses to the allegation that it violated 5.4a(6) are as follows:

The arbitrator inadvertently selected the words "Police Chief" to issue the assignments.

It is solely within the Borough's purview to determine the individuals who can approve such assignments.

The determination of who will make an assignment is not mandatorily negotiable.

Contract language authorizing the Police Chief to make this decision is ultra vires.

If the PBA would agree to substitute the words "appointing authority" or "the Borough" for the words "Police Chief," the Borough would sign the contract.

None of these defenses justifies refusing to sign the contract. Interest arbitration is a binding procedure for settling contracts involving police officers and firefighters. N.J.S.A. 34:13A-14a. An arbitrator's award is final and binding unless vacated or modified on appeal. N.J.S.A. 34:13A-16f(5). An award that is not appealed must be implemented immediately. Consistent with the obligation to implement the award is the obligation to reduce the award to writing and sign it. There is no duty to negotiate further after an award issues.

The arbitrator's award is unambiguous and there is no evidence that his choice of words was inadvertent. The Borough could have appealed the award and raised all of its concerns, but chose not to do so. Under these circumstances, we will order the Borough to sign the agreement presented to it by the PBA. As the Commission Chairman stated in dismissing the Borough's scope petition, should the PBA seek to enforce the provision in a way that the Borough believes would substantially limit its governmental policymaking powers, it may file a scope petition seeking a restraint of binding arbitration.

ORDER

The Borough of Leonia is ordered to:

A. Cease and desist from refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by

refusing to sign the draft agreement submitted to it by Leonia PBA Local No. 381.

B. Take this action:

1. Immediately sign the draft agreement submitted to it by Leonia PBA Local No. 381 that implements the interest arbitration award issued on August 15, 2005.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

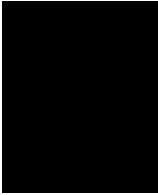
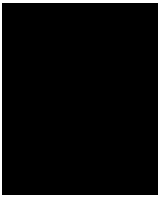
3. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

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

ISSUED: August 9, 2007

Trenton, New Jersey



NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to sign the draft agreement submitted to us by Leonia PBA Local No. 381 that implements the interest arbitration award issued on August 15, 2005.

WE WILL immediately sign the draft agreement submitted to us by Leonia PBA Local No. 381.

Docket No. CO-2006-211 BOROUGH OF LEONIA
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372