

P.E.R.C. NO. 2008-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FORT LEE,

Petitioner,

-and-

Docket No. SN-2008-056

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION, INC.
PBA LOCAL NO. 245,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition as untimely. The petition filed by the Borough of Fort Lee seeks a determination that a proposal to include holiday pay in base pay made by the New Jersey State Policemen's Benevolent Association, Inc., PBA Local No. 245, during an interest arbitration proceeding is an illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract. The Commission holds that both parties recognize that the placement of holiday pay into base pay is mandatorily negotiable and that only the Division of pensions may determine whether that form of holiday pay is creditable for pension purposes.

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, DeCotiis, Fitzpatrick, Cole &
Wisler, LLP, attorneys (J. Sheldon Cohen, on the brief)

For the Respondent, Loccke, Correia, Schlager, Linsky &
Bukosky, attorneys (Marcia J. Tapia, on the brief)

DECISION

On February 8, 2008, the Borough of Fort Lee petitioned for a scope of negotiations determination. The Borough seeks a determination that a proposal to include holiday pay in base pay made by the New Jersey State Policemen's Benevolent Association, Inc., PBA Local No. 245, during an interest arbitration proceeding is an illegal subject and may not be considered by an interest arbitrator for inclusion in a successor contract.

The parties have filed briefs and exhibits. The Borough's counsel has submitted two certifications. These facts appear.

The PBA represents all sworn police officers. The parties' collective negotiations agreement expired on December 31, 2006.

On April 10, 2007, the PBA petitioned for interest arbitration. Article VIII-Holidays was listed as an economic issue.

On April 16, 2007, the Commission notified the Borough of the filing of the interest arbitration petition and the Borough filed a timely response. An interest arbitrator was assigned on May 17. This scope petition was filed ten months later.

The PBA asserts that the petition should be dismissed as untimely under N.J.A.C. 19:16-5.5(c). That regulation requires scope petitions to be filed within 14 days of the receipt of the filing of an interest arbitration petition and specifies that the failure to file a timely petition will constitute an agreement to arbitrate all unresolved issues. The PBA also asserts that its proposal to include holiday pay in base pay makes no mention of whether or not holiday pay will be creditable for pension purposes.

The Borough argues that the petition must be accepted because it was not until a mediation, conducted by the interest arbitrator, that the PBA explained its proposal for holidays.^{1/} The Borough states that: "As the mediation process progressed the PBA further clarified that it meant to demand that the holiday pay be folded into the regular payroll process in order to be considered for pension actuarial purposes." In support of its position, the Borough has submitted a September 20, 2007 letter

^{1/} No written contract proposal has been submitted.

it wrote to the interest arbitrator and the PBA concerning the cost of adding holiday pay to base pay for pension purposes. The Borough does not dispute the arbitrator's ability to make determinations concerning fold-in of holiday pay for other than pension purposes such as overtime. The Borough disputes the PBA's assertion that it never presented the issue as one dealing with pensions. The Borough argues that the time period should be relaxed because this issue affects the "interest and welfare of the public and actuarial assumptions of the police and fire pension fund."

The timeline set forth in N.J.A.C. 19:16-5.5(c) structures the interest arbitration process; ensures that the parties and the arbitrator know the nature and extent of the controversy at the outset; and fosters the statutory goal of providing for an expeditious, effective and binding procedure for resolution of disputes between employers and police. Lower Tp., P.E.R.C. No. 2005-30, 30 NJPER 449 (¶150 2004); Wyckoff Tp., P.E.R.C. No. 2004-63, 30 NJPER 107 (¶43 2004). Scope petitions filed after the 14-day time period set forth in N.J.A.C. 19:16-5.5(c) are presumptively time-barred, although we will consider, on a case-by-case basis, arguments that the rule should be relaxed. Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999); N.J.A.C. 19:10-3.1.

We dismiss the Borough's petition. Holidays were listed on the petition to initiate interest arbitration on April 10, 2007. While the Borough may not have known the particulars of the PBA's holiday pay fold-in proposal when the interest arbitration petition was filed, it was aware of the proposal in September 2007 when its attorney acknowledged the potential pension issues of accepting the holiday pay fold-in proposal in a letter to the arbitrator and PBA counsel. The scope petition was filed four months after that letter. In any event, it is clear from their submissions that both parties recognize that the placement of holiday pay into base pay is mandatorily negotiable and that only the Division on Pensions may determine whether that form of holiday pay is creditable for pensions purposes. See, e.g., Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999).

ORDER

The scope of negotiations petition is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: June 26, 2008

Trenton, New Jersey