

P.E.R.C. NO. 2012-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Petitioner,

-and-

Docket No. SN-2011-060

PBA LOCAL 215,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Teaneck for a restraint of binding arbitration of a grievance filed by PBA Local 215. The grievance challenges the application of P.L. 2010, c. 2 and the Township's commencing effective May 22, 2010, payroll deductions of an amount equal to 1.5% of base salary towards the cost of health insurance benefits. The Commission holds that by operation of law, there was no collective agreement in force on the effective date of P.L. 2010, c. 2.

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, Genova, Burns & Giantomasi,
attorneys (Brian W. Kronick of counsel and on the
brief; Kristina E. Chubenko, on the brief)

For the Respondent, Loccke, Correia, Limsky & Bukosky,
attorneys (Marcia J. Tapia, of counsel and on the
brief)

DECISION

On February 11, 2011, the Township of Teaneck petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Teaneck Policemen's Benevolent Association Local No. 215. The grievance challenges the application of P.L. 2010, c. 2 and the Township's commencing, effective May 22, 2010, payroll deductions of an amount equal to 1.5% of base salary towards the cost of health insurance benefits. We grant the restraint of arbitration because, by operation of law, there was no collective negotiations agreement in force on the effective date of P.L.

2010, c. 2.^{1/} Additionally, and subsequent to the filing of the petition, an interest arbitrator issued an award establishing the terms of a successor agreement, providing that beginning on the effective date of P.L. 2010, c. 2, active employees would be required to make the 1.5% contributions.

The parties have filed briefs, exhibits and certifications. These facts appear.

The PBA represents the Township's police holding ranks below Sergeant. The parties entered into a collective negotiations agreement covering the period from January 1, 2004 through December 31, 2007 with a grievance procedure that ends in binding arbitration. Article XXXIX, "Term and Renewal," provides:

This Agreement shall have a term from January 1, 2004 through December 31, 2007. If the parties have not executed a successor agreement by December 31, 2007, then this

1/ This statute provides:

Commencing on the effective date of P.L.2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer other than the State shall pay 1.5 percent of base salary, through the withholding of the contribution, for health benefits coverage provided under P.L. 1961, c.49 (C.52:14-17.25 et seq.), notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement or the modification of payment obligations.

Agreement shall continue in full force until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

On or about January 4, 2008, the PBA filed a petition to initiate compulsory interest arbitration to resolve a negotiations impasse over the terms of a successor agreement. On June 6, 2011, an interest arbitrator issued a conventional award setting the terms of a new agreement having a duration of January 1, 2008 through December 31, 2012. On the issue of employee contributions toward the cost of health benefits the arbitrator awarded the following:

The level of employee contribution of 1.5% of base salary shall be as set forth in P.L. 2010, Ch.2 effective may 22, 2010. . . This level of employee contribution shall be inclusive of, rather than in addition to, any statutory obligation towards an employee's requirement to make contributions toward the payment of health benefits.^{2/}

N.J.S.A. 34:13A-16(b) (2) provides:

Notwithstanding the provisions of paragraph (2) of subsection a. of this section or paragraph (1) of this subsection, either party may petition the commission for arbitration on or after the date on which their collective negotiation agreement expires. The petition shall be filed in a manner and form prescribed by the commission. The party filing the petition shall notify

^{2/} The award provides that no contributions will be required of employees for any period covered by the agreement that precedes May 22, 2010.

the other party of its action. The notice shall be given in a manner and form prescribed by the commission.

[emphasis supplied].

Construing this statute, Superior Court Judge Linda R. Feinberg wrote:

The court notes its agreement with the State's position that P.L. 2010 and the interest arbitration laws are actually compatible with one another, as the 1.5% contribution to health care costs is triggered only upon the expiration of current collective bargaining agreements as of May 21, 2010. This is similar to the EERA provisions, as interest arbitration may only be invoked on or after the expiration of a collective bargaining agreement. N.J.S.A. 34:13A-16(b) (2)

New Jersey State F.M.B.A. v. State of New Jersey, 2010 N.J. Super. Unpub. LEXIS 2312 at 37-38, n.12

In Edison Tp. and International Association of Fire Fighters, Local No. 1197, P.E.R.C. No. 2011-60, 37 NJPER 16 (¶7 2011), we issued a stay pending appeal of our prior decision, P.E.R.C. No. 2011-49, 36 NJPER 462 (¶180 2010), that would have allowed a grievance arbitrator to determine if a contract that had expired prior to May 22, 2010, continued in full force and effect and barred Edison from starting deductions of 1.5 per cent of base salary to defray the cost of health care premiums.^{3/}

^{3/} The Duration clause of the Edison agreement provided:

Section 1. This agreement shall be in effect as of January 1, 2005 and shall remain in full force and
(continued...)

We noted and reasoned that because N.J.S.A. 34:13A-16(b) (2) provides that an interest arbitration petition can only be filed on or after the expiration date of the parties' most recent agreement, the filing of an interest arbitration petition prior to the effective date of P.L. 2010, c. 2 preempted any claim that an expired agreement remained in force on that day and precluded a public employer from beginning the 1.5% deductions for health insurance. We followed that reasoning in County of Essex, P.E.R.C. No. 2012-009, 38 NJPER _____ (¶39 2011), 2011 NJ PERC LEXIS 119.

That analysis also applies here. The petition to initiate compulsory interest arbitration was filed prior to May 22, 2010, the date on which, absent an existing agreement, public employers were to commence deductions of 1.5% of base pay to be used toward the cost of health insurance premiums. Thus, the PBA may not

3/ (...continued)
effect until December 31, 2009. It shall automatically be renewed from year to year thereafter, unless either party to this agreement shall have notified the other in writing at least one hundred and thirty five (135) days prior to the anniversary date of this agreement, that it wishes to renegotiate the agreement or parts thereof.

In the event that such notices are given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. If the present agreement expires before a new agreement is reached, the terms of this agreement shall remain in full force and effect until the employees are covered by a subsequent agreement.

arbitrate a contractual claim that the Township was barred from commencing deductions. There was no existing agreement in effect on the effective date of the "1.5%" law. That enactment preempts arbitration of any claim that the Township violated its agreement with the PBA by commencing the payroll deductions on or after the law's effective date.

ORDER

The request of the Township of Teaneck for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Eskilson voted in favor of this decision. Commissioner Krengel voted against this decision. Commissioner Voos abstained. Commissioners Jones and Wall recused themselves.

ISSUED: February 29, 2012

Trenton, New Jersey