

P.E.R.C. NO. 2012-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and-

Docket No. SN-2011-041

ESSEX COUNTY DEPARTMENT OF
CORRECTIONS AND FRATERNAL
ORDER OF POLICE LODGE 106,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the County of Essex for a restraint of binding arbitration of a grievance filed by Essex County Department of Corrections and Fraternal Order of Police Lodge 106. The grievance challenges the application of P.L. 2010, c. 2 and the County'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 negotiations 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)

For the Respondent, C. Elston & Associates, LLC,
attorneys (Mitesh M. Patel, of counsel)

DECISION

On November 15, 2010, the County of Essex (Department of Corrections) petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by the Essex County Corrections Superior Officers, Fraternal Order of Police Lodge 106. The grievance challenges the application of P.L. 2010, c. 2 and the County'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.

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

The FOP represents Superior Officers in the County's Corrections Department. The parties entered into a collective negotiations agreement with a grievance procedure that ends in binding arbitration.^{1/}

On or about February 23, 2010, the FOP filed a petition to initiate compulsory interest arbitration to resolve a negotiations impasse over the terms of a successor agreement. To date neither a settlement has been reached nor has an interest arbitration award been issued.

P.L. 2010, c. 2 took effect on May 21, 2010. It 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

^{1/} For nearly thirty years the parties have been operating under interest arbitration awards and/or memoranda of agreement that have established the terms and conditions of employment for the superior officers. On November 25, 2008 the employer approved a memorandum of agreement covering the term "January 1, 2006 to December 31, 2007." The most recent complete agreement was effective from January 1, 1978 through December 31, 1979 and provided at Article XII, "This agreement shall continue in force and effect until December 31, 1979 or until a new and substituted Agreement is negotiated and executed or impasse reached, whichever event shall occur last."

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.

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 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 Firefighters' Mutual
Benevolent Ass'n v. State of New Jersey, 2010
N.J. Super. Unpub. LEXIS 2312 at 37-38,
n.12^{2/}

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 reached its expiration date prior to May 22, 2010, continued
in full force and effect and prevented the employer from
commencing deductions of 1.5 per cent of employee base salary to
defray the cost of health care premiums.^{3/}

2/ Judge Feinberg issued a final ruling dismissing the case.
2011 N.J. Super. Unpub. LEXIS 154 (Law Div. 1/19/11).

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
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.

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.^{4/}

That analysis applies here. As 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, the FOP may not arbitrate a contractual claim that the County was barred from commencing deductions.

The FOP also contends that, even if the County was permitted to begin deductions as of the effective date of P.L. 2010, c. 2, the amounts it has been assessing employees are excessive because

^{4/} Because an appeal of our first Edison decision was pending before the Appellate Division of the Superior Court, our jurisdiction was limited to determining whether a stay of our first decision should be granted based on a showing that the Township was substantially likely to prevail on appeal. See R. 2:9-1. Subsequently, the parties' impasse over the terms of a new agreement was resolved, the IAFF withdrew its grievance and Edison withdrew its appeal.

the employer has applied the 1.5 per cent to "full base pay, holiday pay and education increments."

The County responds that any dispute over the amount on which the 1.5% is calculated is within the jurisdiction of the Division of Pensions and Benefits. It asserts that it has been calculating the deductions based on the pensionable salary for unit employees, which includes contractual base salary, holiday pay and education increments.^{5/}

We concur with the County that disputes over the statutory definition of base salary for purposes of P.L. 2010, c. 2 should be decided by the Division of Pensions rather than an arbitrator.

5/ The County quotes a May 27, 2010 memorandum from the Division of Pensions and benefits listing frequently asked questions concerning the application of P.L. 2010, c. 2 for employees covered by either the State Health Benefits Program or the School Employees Health benefits Program. FAQ 4 of that document reads:

4. Q. On what salary is the calculation of the 1.5% contribution based?

A. The calculation is based on the employee's base contractual salary. In most cases that means the salary on which pension contributions are based. However, for employees hired after July of 2007 for whom pensionable salary is limited to the salary on which Social Security contributions are based, the employee's total base salary would be used.

ORDER

The request of the County of Essex for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: August 11, 2011

Trenton, New Jersey