

P.E.R.C. NO. 2012-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HIGHLAND PARK,

Petitioner,

-and-

Docket No. SN-2011-050

PBA LOCAL 64,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Borough of Highland Park's motion for reconsideration of its request to restrain binding arbitration of a grievance filed by PBA Local 64. The Commission took a vote on the Borough's request at its November 22, 2011 meeting. Three Commission members were recused from participating. Of the remaining four members, two voted in favor of restraining arbitration and two were opposed to granting a restraint. The tie vote effectively denied the request. As all members of the Commission eligible to vote had already done so, the motion for reconsideration was denied.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (Jonathan F. Cohen, of counsel)

For the Respondent, Mets, Schiro & McGovern, LLP, attorneys (James M. Mets, of counsel and on the brief; Ryan S. Carlson, on the brief)

DECISION ON MOTION FOR RECONSIDERATION

On January 1, 2011, the Borough of Highland Park petitioned for a scope of negotiations determination and a restraint of binding arbitration of a grievance filed by PBA, Local 64. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it created a temporary administrative sergeant assignment and did not subject the assignment to the negotiated seniority bidding system provided for in the agreement.

On November 22, 2011 the Commission considered a draft decision. Three Commissioners were recused from consideration of the draft, the remaining four Commissioners were equally divided

as to whether to grant or deny the Borough's request for a restraint of arbitration.

On that same date, the Office of the General Counsel advised the attorneys for both parties via facsimile as follows:

The Commission considered a draft decision in the above referenced matter today. Three Commissioners recused themselves from consideration of the case . The final vote was two in favor and two against the draft decision. As an unbreakable tie vote was the final result, the request of the Borough of Highland Park for a restraint of arbitration is effectively denied.

On November 23, 2011, the Borough filed a motion for reconsideration. While no circumstance on all fours with the current situation has been called to the attention of the Commission, research has disclosed two matters in which the issue of a tie vote has been reviewed. In Northvale Board of Education v. Northvale Education Association 192 N.J. 510 (2007), the Board sought a restraint of binding arbitration in Superior Court which was granted. The Appellate Division affirmed the restraint in an unpublished per curiam opinion. The Supreme Court granted the Association's petition for certification, and when the Court heard the appeal only six members of the Court were present. The members of the Court were equally divided in their consideration of the case. The Court's per curiam opinion stated, "The members of the Court being equally divided, the judgement of the Appellate Division is affirmed."

In Policeman's Benevolent Association Local No.145 v. PERC, I.R. No. 83-1, 8 NJPER 424 (1982), vacated 187 N.J.Super. 202 (App. Div. 1982), certif. den. 93 N.J. 269 (1983), the Commission divided 3-3 (one member absent) in considering whether a Commission designee was correct in granting an interim restraint of arbitration. In reviewing the history of the case, the Appellate Court noted that the Commission considered the matter at its meeting of October 7, 1982. The vote of the Commission was a 3-3 tie, one member being absent, thus affirming the decision of the hearing examiner and leaving the stay of arbitration in place.

While, as noted above, neither of these cases are on all fours with the instant matter, they nevertheless demonstrate that in the case of a tie vote, the result is to deny the relief sought by the petitioner. In the instant matter, wherein the eligible voting Commissioners were equally divided on the issue, there is no likelihood that bringing the matter before the Commission at a later date will result in any break in the tie.

Under the unique circumstances of this case, the Borough of Highland Park's motion for reconsideration is denied.

ORDER

The request of the Borough of Highland Park for reconsideration and a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioners Eskilson, Kregel and Wall recused themselves.

ISSUED: January 26, 2012

Trenton, New Jersey