

P.E.R.C. NO. 2013-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POINT PLEASANT,

Appellant,

-and-

Docket Nos. IA-2012-018

IA-2012-019

PBA LOCAL 158,

Respondent,

-and-

POINT PLEASANT SUPERIOR  
OFFICERS ASSOCIATION,

Co-Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award to a new arbitrator. The Borough filed an appeal of the award outside the seven-day statute of limitations relying on an Order from the Superior Court permitting it to file a late appeal with the Commission. The Commission considers the appeal in accordance with the Court Order and finds that the award was not in compliance with the 2% salary cap.

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 Appellant, Dasti, Murphy, McGuckin, Ulaky,  
Cherkos & Connors, attorneys (Jerry J. Dasti, of  
counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky,  
attorneys (Leon B. Savetsky, of counsel and on the  
brief)

DECISION

The Borough of Point Pleasant appeals from an interest arbitration award involving two units of law enforcement employees of the Borough. PBA Local 158 represents the patrolmen and sergeants employed by the Borough's Police Department, and the Point Pleasant Superior Officers Association represents the captains and lieutenants employed by the Borough. The parties engaged in joint negotiations for contracts that would commence

on January 1, 2012, and upon failure to reach agreements each filed a petition to initiate compulsory interest arbitration on or about February 16. The petitions were consolidated for interest arbitration proceedings, and a single arbitrator was appointed on or about March 12.

On May 1, 2012, the arbitrator issued his decision and award for an agreement with a duration of January 1, 2012 to December 31, 2015. The Borough appeals from two aspects of that award, both of which are at page 10 of the decision. First, they appeal from that portion of the decision which states:

"I have indicated the implementation of the 2% of salary or 10% of premiums for healthcare beginning on January 1, 2012 is awarded. I do not award further employee contributions."

And :a salary increase of 2% in 2012... 2% increase effective January 1, 2013, 2.5% to be effective on January 1, 2014... and another to be effective on January 1, 2015.

Before moving on to a discussion of the merits of the Borough's appeal, an analysis of the procedural history of this dispute must be undertaken. Under the Police and Fire Public Interest Arbitration Reform Act the Legislature has mandated that any appeal from an interest arbitrator's decision must be taken to the Commission within seven days of the parties' receipt of the award. N.J.S.A. 34:13A-16f(5)(a). In the instant matter, the appeal of the Borough was not filed with the Commission until September 18, 2012, some four months after an appeal was

statutorily mandated. Normally, the failure of the Borough to comply with the mandate of the Reform Act statutory time line would require dismissal of this appeal as untimely.

However, in this matter, based upon representations made in Superior Court, the Honorable Vincent J. Grasso, Assignment Judge of Ocean County, on September 12, 2012 entered an Order that in material part stated:

1. The Court grants the request of the Defendant Borough to permit the Borough to file an appeal of the decision of Arbitrator Frank Mason with seven (7) days of September 12, 2012 to the New Jersey Public Employees (sic) Relations Commission (PERC).
2. In conjunction therewith the Court tolls the seven (7) day statute of limitations time period within which the Borough is required to file an appeal of an arbitrator's decision with PERC.

As of the consideration of this appeal to the Commission, counsel for the PBA has represented in his brief that an appeal of this Order has been filed with the Appellate Division. It is also notable that the Commission was not advised of the proceeding in Superior Court, nor did it participate in that proceeding.

Thus, this is a case of first impression wherein the limitations period mandated by N.J.S.A. 34:13A-16f(5)(c) has been tolled on an equitable basis by a Superior Court Judge. In Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978), the Supreme Court considered the six month period of limitation for

filing an unfair practice charge before the Commission established by N.J.S.A. 34:13A-5.4c. In Kaczmarek, the Court held that because the language of the statute setting the six month limitation also stated "unless charging party... was prevented from filing said charge," the Legislature evinced a purpose to permit equitable considerations to be brought to bear." Kaczmarek at 340. To the contrary, here the limitations language in section 16f5(c) contains no such statement providing an exception to the absolute limitations period, and given that the period is but one part of a system of time constraints imposed by the Legislature to insure the stability of labor relations under the Police and Fire Public Interest Arbitration Reform Act, there is a strong reason to question the authority of the Superior Court to toll the limitations period. However, the Commission fully recognizes that only the Appellate Division has the legal authority to review a determination of the Superior court. Therefore, in accordance with that court order, we will consider the Borough's appeal.

Turning to the merits of the appeal, the Commission determines that the arguments of the Borough are well taken, and require the Commission to remand this case to a new arbitrator.

First, the arbitrator failed to comply with the requirements of the Reform Act as elucidated in our prior decision in Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53, 38 NJPER

340 (¶116 2012). There was no detailed analysis of the costs of the base year, including increments and longevity. There was no analysis as to how these costs would be calculated in any of the years of the four years awarded, nor was there a calculation demonstrating how the award met the 2% salary cap requirements of N.J.S.A. 34:13A-16.7.

Second, the arbitrator's award of health care contributions of 2% of salary or 10% of the premium cost effective January 1, 2012 violates the mandatory contributions established by P.L. 2011 c. 78. That statute mandates employee contributions based upon varying percentages of premium contributions based upon base salary, and increases the percentage of premium over a four-year period. This failure to recognize the impact of Chapter 78 is specifically violative of N.J.S.A. 34:13A-16g(5) and (9) relating to the lawful authority of the employer, and statutory restrictions imposed upon the employer. Succinctly put, the arbitrator cannot simply issue an award that is contrary to the law.

For these reasons, the award should be vacated and remanded to a new arbitrator to consider the evidence, perform an analysis consistent with the Act, and issue an award.

ORDER

The interest arbitration award is vacated and the case is remanded to the Director of Arbitration for assignment of a new arbitrator.

BY ORDER OF THE COMMISSION

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

ISSUED: October 11, 2012

Trenton, New Jersey