

P.E.R.C. NO. 2013-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTCLAIR,

Petitioner,

-and-

Docket No. SN-2012-074

PBA LOCAL 53,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses the request of the Township of Montclair for a restraint of binding arbitration of a grievance filed by PBA Local 53. The Township sought restraint of further arbitration proceedings on a grievance that was sustained by the arbitrator, but later vacated by the Appellate Division and remanded to the arbitrator. Because the Court's opinion does not raise any issue as to whether the subject of the grievance is legally arbitrable, and did not order that the case be transferred to the Commission, the Commission dismisses the Township's petition because it was not filed before an arbitration award was issued.

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.

P.E.R.C. NO. 2013-85

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTCLAIR,

Petitioner,

-and-

Docket No. SN-2012-074

PBA LOCAL 53,

Respondent.

Appearances:

For the Petitioner, Ira Karasick, Township Attorney

For the Respondent, Klatsky, Sciarrabone & De Fillippo,  
attorneys (David J. De Fillippo, of counsel)

DECISION

On June 6, 2012, the Township of Montclair (Township) filed a scope of negotiations determination. The Township seeks a restraint of further arbitration proceedings on a grievance that was sustained by the arbitrator, but later vacated by the Appellate Division of the Superior Court pursuant to N.J.S.A. 2A:24-8(c) and(d). Twp. of Montclair v. Montclair PBA Local No. 53, 2012 N.J. Super Unpub LEXIS 1122.<sup>1/</sup> The Court remanded the dispute to the arbitrator.

Because the Court's opinion does not raise or discuss any issue as to whether the subject of the grievance is legally

---

<sup>1/</sup> The award was first confirmed by the Superior Court, Chancery Division. The Township appealed that ruling.

arbitrable, and it did not order that the case be transferred to the Commission, we dismiss the Board's petition because it was not filed before an arbitration award was issued.

In Ocean Tp. Bd. of Ed., P.E.R.C. 83-164, 9 NJPER 397 (¶14181 1983), we held that challenges to the negotiability of a grievance should be filed before arbitration and that absent an order from a court, we would dismiss any petition filed after an arbitration award had been rendered. See also Keansburg Bd. of Ed., P.E.R.C. 87-77, 13 NJPER 70 (¶18030 1986). Compare Town of West New York and PBA Local 88, P.E.R.C. No. 91-52, 17 NJPER 5, (¶22003 1990), aff'd NJPER Supp.2d 262 (¶217 App. Div. 1991) (Post-arbitration scope decision issued where Superior Court order specifically directed that Commission address negotiability of the issue decided by the arbitrator).

The Courts have sustained our refusal to exercise jurisdiction over belated negotiability challenges. In Prof. Fire Officers Ass'n of Local 1860, IAFF v. City of Newark, NJPER Supp.2d 204, 206 (¶180 App. Div. 1989), certif. den. 117 N.J. 87 (1989), the appellate court held:

Without addressing the merits of the issue, we agree that it was a proper question for a scope of negotiations determination and should have been raised by Newark before PERC. . . As such Newark is now estopped from challenging the provision since it failed to raise the issue in a proper forum and is now essentially belatedly trying to undermine the authority of the arbitrator and the interests of the entire arbitration system. Ridgefield

Park Ed. Ass'n v. Ridgefield Park Bd. of Ed.,  
78 N.J. 144, 154 (1978).

Similarly, in E. Brunswick Principals & Supervisors Ass'n and E. Brunswick Bd. of Ed., P.E.R.C. No. 91-12, 16 NJPER 448 (¶21193 1990), aff'd NJPER Supp.2d 285, 286 (¶229 App. Div. 1992) the Appellate Division ruled that the Board should have filed a timely appeal from the Commission's negotiability ruling as a final agency decision instead of attacking it as part of a proceeding to vacate the subsequent arbitration award sustaining the grievance.

Until it filed this petition, the Township's attack on the arbitration award focused solely on an allegation that the arbitrator improperly relied on an issue that had not been framed by the parties and had exceeded his authority. The opinion of the appellate court deals entirely with contract interpretation arguments. It held that the award should be vacated and remanded to the arbitrator, reasoning:

We remedy this flaw by vacating the arbitration award and remanding the matter to the arbitrator. We do not address the arbitrator's analysis of the impact of Article I and we do not preclude the arbitrator from again considering Article I in an opinion and award. We direct that the arbitrator confer with the parties about the need to present additional evidence, if any, that may affect any consideration of Article I, and allow the parties to present argument with respect to its applicability here. We also direct the arbitrator to address the contentions of the parties respecting the applicability of the other articles in the

CNA which they raised in their post-hearing submissions.

[2012 N.J. Super Unpub LEXIS 1122 at 14-15, emphasis added]

The Court's opinion contains no discussion of negotiability issues. Its remand is to the arbitrator, not the Commission. Thus, unlike Town of West New York, we have not been directed to exercise our scope of negotiations jurisdiction.

ORDER

The request of the Township of Montclair for a restraint of binding arbitration is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni, Boudreau and Wall were not present.

ISSUED: May 30, 2013

Trenton, New Jersey