

P.E.R.C. NO. 2014-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Respondent,

-and-

Docket No. CO-2013-133

NORTH ARLINGTON PBA
LOCAL NO. 95,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the North Arlington PBA Local No. 95's motion for summary judgment and denies the Borough of North Arlington's cross-motion for summary judgment in an unfair practice case filed by the PBA. The PBA's charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1), (2), (6), and (7), by refusing to sign a draft collective negotiations agreement that memorialized the terms of an interest arbitration award. A Complaint issued on the 5.4a(1) and (6) charges. The Commission finds that the only disputed fact by the parties is whether a Memorandum of Agreement (MOA) settling a grievance was part of the record during the interest arbitration proceedings. However, the Commission holds that disputed fact immaterial because the MOA's terms applied to the previous contract's language and were no longer effective once the interest arbitration award issued. The Commission orders the Borough to immediately execute the draft agreement.

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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NORTH ARLINGTON PBA
LOCAL NO. 95,

Charging party.

Appearances:

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

For the Charging Party, Rubenstein, Meyerson, Fox,
Mancinelli, Conte & Bern, P.A. (Douglas M. Bern, of
counsel and Andrew P. Bolson on the brief)

DECISION

This case comes to us by way of cross-motions for summary judgment. In the underlying unfair practice charge, the North Arlington PBA Local No. 95 alleges that the Borough of North Arlington violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A -1 et seq., specifically subsections a(1) (2), (6) and (7), when it refused to sign a draft collective negotiations agreement that memorialized the terms of an interest arbitration award. The PBA's motion is granted and the Borough's cross-motion is denied.

The PBA filed its charge on November 26, 2012. On August 8, 2013, a Complaint and Notice of Hearing issued on alleged

violations of 5.4a (1) and (6) only. On September 9, the Borough filed an answer.

On November 27, 2013, the PBA filed a motion for summary judgment. The Borough filed a brief in support of its cross-motion for summary judgment and in opposition to the PBA's motion on December 9, with a supporting certification from Douglas M. Bern, its attorney. On January 6, 2014, the PBA filed a brief opposing the Borough's cross-motion for summary judgment, with a supporting certification from Merrick Limsky, its attorney. On January 16, the parties were notified that pursuant to N.J.A.C. 19:14-4.8, the motions for summary judgment were being referred to the full Commission.

The PBA represents all members of the Borough's Police Department, except the chief. The Borough and the PBA are parties to a collective negotiations agreement with a term of January 1, 2007 through December 31, 2010 (the Agreement). Article IX, section 3 of that agreement is entitled "Terminal Leave" and sets forth as follows:

An officer having completed the time required by law for retirement (including military leave) shall be entitled to ninety (90) days at his current rate of pay. Upon retirement, all Employees shall be entitled to utilize his/her unused and unaccumulated sick leave days up to a maximum of one hundred and eighty (180) days. Total time shall not exceed one hundred and eighty days.

An Employee may, at his sole option, elect to take said Employee's terminal leave option as

either time off at the end of his/her active duty career or the retiring employee may choose to take the cash value of that time at said Employee's daily rate of pay. If the retiring Employee elects the lump sum cash option, then said Employee may elect to receive said monies from the Employer in up to three (3) separate payments at dates specified by the retiring employee over a period of time not to exceed eighteen (18) months from completion of active duty. There shall be ninety (90) days notice for the cash option during the first half of the calendar year and a two (2) check minimum in the last half of the calendar year.

Effective January 1, 1988, Employees retiring are recognized as having terminal benefits including a continuation of compensation status until all sick leave, accrued time and terminal benefits are exhausted. During such period of compensation continuation, the retiring employee shall be entitled to full compensation and accrual of all Employee benefits. Annual benefits for such retiring Employee shall be pro-rated so as to cover the period of continued compensation. The compensation period for accrual purposes shall not exceed one hundred eighty (180) days.

On October 7, 2010, the parties entered into a Memorandum of Agreement (MOA) to settle a grievance that had been filed by the PBA regarding the amount of paid leave an officer was entitled to prior to retirement. The MOA stated as follows:

(1) Calculations for benefits upon retirement shall be applied as below for all employees who retire while the current contract language is still in effect:

(a) Due time shall be a maximum of 480 hours (60 days)

(c) Further accrual of vacation and personal time shall be limited to that accrued over a period of a maximum of 180 work days

(d) Sick time shall be to a maximum of 90 work days.

(e) Terminal leave shall be to a maximum of 90 work days.

The parties were unable to negotiate the terms of a successor agreement and ultimately entered interest arbitration. One of the Borough's proposals in interest arbitration concerned Article IX, section 3. The Borough sought to eliminate terminal leave of 90 days of pay upon retirement. The Borough also sought to have a maximum of \$15,000 for paid sick leave, and for officers not to receive payment for any unused leave or compensatory time of all types in excess of 90 days at his daily rate of pay. On June 13, 2011, an interest arbitrator issued an award setting forth the terms of the parties' successor agreement. His award regarding Article IX, section 3 was as follows:

As to the terminal leave demand there is ample evidence that this type of compensation is endemic in police contracts and this Employer has made the attempt to have the allowance reduced substantially in this procedure. The key argument presented has to do with the costs involved at a time when the Borough is trying to find ways to economize in order to avoid pressure to raise taxes. However, the Agreement it made with the Chief, previously mentioned, provides the same type of plan that subordinates have. And the opportunity to begin to restrict that program was not pursued. The singular

element of the current plan which I find to be beyond defense is the statement therein which is "During such period of compensation, the retiring Employee shall be entitled to full compensation and accrual of all Employee benefits. Annual benefits for such Employee shall so prorated so as to cover the period of continued compensation." I find this provision to be without merit as there is no work obligation from which the Employee might be sick or otherwise earn any leave benefits. Except for the removal of that clause I have found no substantial basis for sustaining the demand of the Employer. Therefore, I award a modification of the termination provisions in the Agreement to eliminate the sentences quoted above.

On June 17, 2011 the Borough appealed the arbitration award with the Commission, asserting that the wages awarded were substantially influenced by a fraudulent exhibit entered into evidence by the PBA. On July 19, the Commission vacated the award and remanded it to the arbitrator to issue another award. On August 22, the arbitrator issued a second award which confirmed the original award with no change. On September 14, the Borough appealed the second award, asserting that the arbitrator failed to apply the requisite statutory criteria. That appeal was subsequently withdrawn.

On February 9, 2012, the PBA provided a draft contract to the Borough reflecting the changes awarded by the arbitrator. On February 15, the Borough sent back the draft contract with proposed revisions. Included in the proposed revisions was a substantially revised Article IX, section 3. On April 27, the

PBA responded that the arbitrator only awarded the removal of the two sentences, and as such, that was the only language that had been removed. On May 8, the Borough responded asserting that Article IX, section 3 must be revised in accordance with the MOA, and that the MOA was made part of the Agreement prior to arbitration and was not made an issue in arbitration by either party. The Borough proposed language reflecting the MOA that was identical to that proposed on February 15. On May 17, the PBA responded, disagreeing with the Borough's position and reiterating that the arbitrator only awarded the removal of two sentences from Article IX, section 3. On May 29, the Borough responded, proposing less substantial changes than that proposed on February 15 and May 8, but more changes than that specifically awarded by the arbitrator. On May 31, the PBA responded, restating its same position. On June 27, the PBA followed up with the Borough regarding its failure to sign the draft agreement. On July 20, the Borough responded, restating its same position and asserting that the MOA had been submitted to the arbitrator as an exhibit during the interest arbitration proceedings and as part of the Agreement between the parties. On July 25, the PBA responded, essentially restating its prior position. This unfair practice charge ensued.

Since this case comes to us by way of cross-motions for summary judgment, we are guided by the principles that summary

judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8 (d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

The only fact disputed by the parties was whether the MOA was part of the record during the interest arbitration proceedings. However, we find this disputed fact to be immaterial. Even assuming that the MOA was entered into evidence and made part of the interest arbitration proceedings, its language states that its terms will be applicable "for all employees who retire while the current contract language is still in effect." When the interest arbitration award was issued on June 13, 2011, the current contract language ceased being in effect because the arbitrator awarded the removal of two sentences from Article IX, section 3. Thus, we find that the language in the draft agreement proposed by the PBA clearly tracks the terms of the award regarding Article IX, section 3 since it retains its language minus the two sentences removed by the arbitrator. We also note that in neither of the two appeals filed by the Borough did it specifically raise the concerns regarding Article IX, section 3 that it used as its rationale for its failure to sign the draft agreement. Accordingly, the PBA's

motion for summary judgment is granted and the Borough's cross-motion is denied.

ORDER

The Borough of North Arlington is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to execute the draft agreements submitted to it by the North Arlington PBA Local No. 95.

2. Refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to execute the draft agreements submitted to it by North Arlington PBA Local No. 95.

B. Take this action:

1. Immediately execute the draft agreement submitted to it by North Arlington PBA Local 95, with terms retroactive to the effective date of the agreement.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Within twenty (20) days of receipt of this decision, notify the Chairman of the Commission of the steps the Respondent has taken to comply with this order.

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: March 27, 2014

Trenton, New Jersey

NOTICE TO EMPLOYEES
PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to execute the draft agreements submitted to it by the North Arlington PBA Local No. 95.

WE WILL cease and desist from refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to execute the draft agreements submitted to it by North Arlington PBA Local No. 95.

WE WILL immediately execute the draft agreement submitted to it by North Arlington PBA Local 95, with terms retroactive to the effective date of the agreement.

Docket No. CO-2013-133

BOROUGH OF NORTH ARLINGTON
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372