P.E.R.C. NO. 2015-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Appellant,

-and- Docket No. IA-2015-003

FOP LODGE 91,

Respondent.

SYNOPSIS

The Public Employment Relations Commission vacates and remands an interest arbitration award between the State of New Jersey and Fraternal Order of Police, Lodge 91. The State appealed the award on numerous grounds requesting that the award be vacated or modified. However, the main point raised by the State is that the arbitrator should have found that the 2% cap, under N.J.S.A. 34:13A-16.7, applied even though this was the initial CNA between the parties. The FOP asserted that the 2% cap should not apply to this matter and requested that the award be affirmed. The Commission finds that increases in compensation should have been subject to the 2% cap, and vacates the award and remands it to the arbitrator for reconsideration and issuance of a new award that complies with the 2% 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, Jackson Lewis, attorneys (Jeffrey J. Corradino, of counsel)

For the Respondent, Pellettieri Rabstein & Altman, attorneys (Frank M. Crivelli, of counsel)

DECISION

The State of New Jersey ("State") appeals from an interest arbitration award involving a unit of approximately 135 Detective Trainees, State Investigators; Detective II, State Investigators; and Detective I, State Investigators ("State Investigators") who are represented by Fraternal Order of Police, Lodge 91 ("FOP").[1/]

The arbitrator issued a conventional award as she was required to do pursuant to P.L. 2014, c. 11. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors.

1/ We deny the FOP's request for oral argument. The issues have been fully briefed.

This matter arises in unusual and rare circumstances because the parties did not have any prior CNA.

The State Investigators were originally classified as confidential employees but that status was removed by N.J.S.A. 52:17B-100, effective January 18, 2010. On or about December 8, 2010, the FOP was certified by the Commission as the majority representative for the State Investigators. The FOP and the State engaged in negotiations for a collective negotiations agreement ("CNA") which were unsuccessful. The FOP ultimately filed for interest arbitration and the arbitrator was appointed on September 4, 2014. The arbitrator issued a 314 page opinion and award ("award") with an initial CNA commencing on July 1, 2014 and terminating on June 30, 2019.[2/]

The State appeals on numerous grounds requesting that the award be vacated or modified. However, the main point raised by the State is that the arbitrator should have found that the 2% cap, under N.J.S.A. 34:13A-16.7[3/], applied in this case even

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2/ The award is set forth on pages 288 - 314 of the Opinion.

3/ N.J.S.A. 34:13A-16.7(b) provides in pertinent part:

> An arbitrator shall not render any award pursuant to . . . which, in the first year of the collective negotiation agreement awarded by the arbitrator, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation

(continued...)

though this was the initial CNA between the parties. The FOP asserts that the 2% cap should not apply to this matter and requests that the award be affirmed. Because we find that increases in compensation should have been subject to the 2% cap, we vacate the award and remand to the arbitrator for reconsideration and issuance of a new award that complies with the 2% cap.[4/]

Before the arbitrator, the parties raised these contentions regarding the 2% cap. The State asserted:

- Not applying the cap to this proceeding because there has been no prior contract

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3/ (...continued)
agreement subject to arbitration. In each subsequent year of the agreement awarded by the arbitrator, base salary items shall not be increased by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the immediately preceding year of the agreement awarded by the arbitrator.

The parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentage increases, which shall not be greater than the compounded value of a 2.0 percent increase per year over the corresponding length of the collective negotiation agreement. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

4/ Vacating the entire award is necessary as the 2% cap may impact on other aspects of the award subject to the arbitrator's judgment, discretion and expertise. She has the authority to modify other aspects of her initial award.

between the parties would be illogical and contrary to legislative intent;

- Recognizing a cap exemption for first contracts, carried to its logical end, would make interest arbitration unavailable in such cases;

- Neither the letter, the purpose, nor the spirit of the interest arbitration law establishes that its provisions do not apply to first contracts;

- The recent amendments to the interest arbitration law only delays the application of the 2% cap until CNAs in force on the effective date expire;

- Having availed itself of the interest arbitration procedure, the FOP must accept all of the statutory limits, including the 2% cap;

- As the contract awarded starts after the effective date of the amendments, it must be subject to the terms of the law.

The FOP makes these points:

- The specific terms of N.J.S.A. 34:13A-16.9[5/] applies the 2% cap only where the parties to the interest arbitration

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5/ This act shall take effect January 1, 2011; provided however, section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to collective negotiations between a public employer and the exclusive representative of a public police department or public fire department that relate to negotiated agreements expiring on that effective date or any date thereafter until or on December 31, 2017, whereupon, after December 31, 2017, the provisions of section 2 of P.L. 2010, c.105 (C.34:13A-16.7) shall become inoperative for all parties except those whose collective negotiations agreements expired prior to or on December 31, 2017 but for whom a final settlement has not been reached.

[emphasis by the FOP]

proceeding were also parties to an expired CNA;

- As there is no expired agreement within the meaning of N.J.S.A. 34:13A-16.9, the 2% cap does not apply;

- Legislative history and the report of the Police and Fire Public Interest Arbitration Task Force support its position as the amendments to the Act incorporated several recommendations of the Task Force and that administration members of the Task Force recommended that the law be altered to include language specifically stating that the cap apply to newly formed units who have not had a prior CNA;

- The fact that the most recent amendments incorporated many of the task force's recommendations but not the language regarding first contracts, demonstrates that the Legislature did not intend the 2% cap to apply to this case.

After considering these arguments, the arbitrator concluded the 2% cap did not apply. She gave a literal reading to the statute's references to expired CNAs (award at 30-31). She also found it significant that the Legislature adopted many of the Task Force's recommendations, but not the suggestion of some members to include language pertaining to first contracts. Id. at 31. Finally she noted that because the FOP was certified as the majority representative in December 2010, before the cap law took effect, and could have sought an agreement that began January 1, 2011, "they are in a parallel position to those bargaining units

whose contracts expired December 31, 2010," who were exempt from the cap.

We disagree with the arbitrator's reasoning on the applicability of the 2% cap. As her conclusion is one of law and legislative interpretation, it is entitled to no special deference.[6/]

P.L. 2010, c. 105 initially amended the interest arbitration law in 2010 and imposed the 2% salary cap for CNAs that expired after December 31, 2010 through April 1, 2014. On June 24, 2014, the Legislature in P.L. 2014, c. 11 extended the 2% salary cap, along with other changes, to December 31, 2017.

As set forth in In re Hunterdon County Bd. of Chosen Freeholders, 116 N.J. 322 (1989), we are charged with interpreting the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-1 et seq:

> It must also be emphasized that the judicial role in this kind of case must be both sensitive and circumspect. We deal here with the regulatory determination of an administrative agency that is invested by the Legislature with broad authority and wide discretion in a highly specialized area of public life. PERC is empowered to "make policy and establish rules and regulations concerning employer-employee relations in

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6/ Accordingly, we do not recite or apply the normal guidelines used to review the various aspects of an interest arbitration award. See Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997); N.J.S.A. 34:13A-16g. Should there be an appeal after the arbitrator issues a new award, those standards will be relevant.

> public employment relating to dispute settlement, grievance procedures and administration including . . . to implement fully all the provisions of [the] act." N.J.S.A. 34:13A-5.2. These manifestations of legislative intent indicate not only the responsibility and trust accorded to PERC, but also a high degree of confidence in the ability of PERC to use expertise and knowledge of circumstances and dynamics that are typical or unique to the realm of employer-employee relations in the public sector.
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> [Id. at 328]

And, the Commission's interpretation of the statute it is charged with administering is entitled to deference. In re Bridgewater Tp., 95 N.J. 235, 244 (1984).

As part of our analysis, we need to "discern and effectuate the intent of the Legislature" with respect to P.L. 2014, c. 11. See Shelton v. Restaurant.com, Inc., 214 N.J. 419, 428 (2013). The Legislature issued the following statement when the statute was revised in June 2014:

> This bill makes several changes to the current law governing arbitration awards in disputes between public employers and their police and fire departments. Under current law, any time after a collective negotiation agreement between a public employer and a public police or fire department expires, either party may petition the New Jersey Public Employment Relations Commission (PERC) for arbitration. Arbitrators in these cases are required to render their decision within 45 days of the case being assigned to them. This bill extends the time to render the decision to 90 days and requires the arbitrator to conduct an initial meeting as a mediation session to effect a voluntary

> resolution of the impasse. Current law allows an aggrieved party seven days to file a notice of appeal of the arbitrator's decision. This bill extends the time to appeal to 14 days. The bill also increases the time frame allotted PERC to render its decision in an appeal of an arbitration award from 30 to 60 days. The bill further increases the maximum amount arbitrators can be compensated for their services from $7,500 to $10,000. Between January 1, 2011 and April 1, 2014, there was a two percent cap on base salary increases in arbitration awards. This two-percent cap expired on April 1, 2014. The bill extends the two percent cap until December 31, 2017 and makes the cap retroactive to April 2, 2014. The bill also makes changes to the calculation of the two-percent cap. Under current law, an arbitrator may not render an award which, on an annual basis, increases the base salary items by more than two-percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the year immediately preceding the expiration of the agreement. Under the bill, after the first year of the agreement, the award could not exceed two-percent of the base salary items as annually compounded at the end of each agreement year. Finally, the bill extends the reporting requirements applicable to the Police and Fire Public Interest Arbitration Impact Task Force from April 1, 2014 to December 31, 2017 to comport with the extension of the two-percent cap.[7/]

7/ We note, in revising the statute, that the Legislature adopted the Police and Fire Public Interest Arbitration Impact Task Force recommendations from its March 19, 2014 Final Report. The four appointees of the Governor specifically recommended that the statute be amended to include newly certified units without a prior CNA. No legislative history shows that the Legislature considered this recommendation or that it believed that the statute did not apply to newly certified units without a previous CNA.

When the Legislature revised the statute, it excised language from P.L. 2010, c. 105 that stated that once parties that entered into a contract subject to the 2% cap, that ceiling would not have to apply to their next agreement. As a result of that change, the law now continues the 2% cap for all subsequent CNAs that expire on or before December 31, 2017.

Regarding the intent of the Legislature, the New Jersey Supreme Court has stated: "The true meaning of an enactment and the intention of the Legislature in enacting it must be gained, not alone from the words used within the confines of the particular section involved, but from those words when read in connection with the entire enactment of which it is an integral part, Palkoski v. Garcia, 19 N.J. 175, 181 (1955)." Petition of Sheffield Farms Co., 22 N.J. 548, 554 (1956).

Our guidance from the Legislature in the Declaration of Policy for the Act is as follows:

> It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the

> guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.
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> [N.J.S.A. 34:13A-2]

As set forth above, the Legislature extended the 2% cap from April 1, 2014 to December 31, 2017. Although N.J.S.A. 34:13A-16.9 specifically refers to CNAs that have expired on or after January 1, 2011, the Legislature was silent on the issue of newly certified units that did not have a previous CNA. The statute does not contain a legislative declaration that newly certified units are excluded from the requirements of the 2% cap. See N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 193-194 (2002). Additionally, under a strict reading of the Act, in order to be eligible for interest arbitration, parties are required to have a CNA that has expired. N.J.S.A. 34:13A-16 b(2). However, the Commission in this matter authorized the parties to proceed to interest arbitration notwithstanding the specific language in the statute since the FOP was a newly certified unit and negotiations were not successful. Allowing the parties to proceed to interest arbitration was consistent with the legislative intent of the Act that the "best interests of the people of the State are served by the prevention or prompt settlement of labor disputes." Similarly, we find that the

intent of the Legislature was to have collective negotiations between a public employer and the exclusive representative of a public police department or public fire department in interest arbitration to be subject to the 2% cap despite not having an expired CNA. Interpreting the act in pari materia, we find that newly certified units are eligible for interest arbitration and that those units are subject to the 2% cap if an application for interest arbitration is filed between January 1, 2011 and December 31, 2017.

ORDER

The award is vacated and remanded to the arbitrator for reconsideration and issuance of a new award that complies with the 2% cap.

BY ORDER OF THE COMMISSION

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

ISSUED: February 13, 2015

Trenton, New Jersey