

P.E.R.C. NO. 2018-35

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2016-011

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the State's request for a restraint of binding arbitration of two grievances contesting its refusal to pay annual step increments upon the expiration of the parties' collective negotiations agreement. Applying the Supreme Court's decision In re County of Atlantic, 230 N.J. 237 (2017), the Commission finds that step movement during the hiatus period between an expired contract and a successor agreement is mandatorily negotiable.

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, Gibbons, P.C. Attorneys (John C. Romeo, of counsel; Mr. Romeo, James J. La Rocca and Timothy D. Tremba on the briefs)

For the Respondent, Weissman and Mintz, attorneys Steven P. Weissman of counsel and on the briefs)

DECISION

On August 21, 2015, the State of New Jersey (State) petitioned for a scope of negotiations determination. The State seeks a restraint of binding arbitration of two grievances filed on July 6, 2015 by the Communications Workers of America, AFL-CIO, (CWA) contesting the State's determination to stop paying annual step increments upon the expiration of the State-CWA collective negotiations agreement (CNA). The State's petition asserts, relying on two Commission decisions, that the payment of salary increases in such circumstances is outside the scope of collective negotiations. The State cites Atlantic County, P.E.R.C. No. 2014-40, 40 NJPER 285 (¶109 2013) and Township of

Bridgewater, P.E.R.C. No. 2015-11, 41 NJPER 107 (¶38 2014). The State and CWA filed briefs, reply briefs, and sur-reply briefs with exhibits and certifications.^{1/}

At the time the State and CWA were submitting their filings in this case, appeals from the Commission's Bridgewater and Atlantic County decisions were pending before the Appellate Division of the Superior Court, which heard argument on October 28, 2015. On November 19, 2015, the Commission wrote to the State and CWA granting the CWA's request to hold the State's scope of negotiations petition in abeyance pending a decision on the Bridgewater and Atlantic County appeals.

On March 9, 2016, after consolidating the appeals, the Appellate Division reversed both Atlantic County, P.E.R.C. No. 2014-40 and Township of Bridgewater, P.E.R.C. No. 2015-11. In re County of Atlantic and PBA Local 243, 445 N.J. Super. 1 (App. Div. 2016).

On August 3, 2016, the Supreme Court of New Jersey granted three petitions for certification, thus agreeing to review the ruling of the Appellate Division. In re Township of Bridgewater and PBA Local 174, 227 N.J. 148 (2016); In re County of Atlantic and PBA Local 243; 227 N.J. 152 (2016); In re County of Atlantic and PBA Local 243, 227 N.J. 153 (2016).

^{1/} The CWA requested oral argument. Given that the parties have fully briefed the issues, we deny the request.

The case was argued before the Supreme Court on March 13, 2017, and the Court issued its decision on August 2. 230 N.J. 237; 44 NJPER 39 (¶12 2017).

After the Supreme Court decision, the State requested that the Commission decide its scope of negotiations petition. It argues that the Supreme Court's decision left the rationale of the Commission's decisions in Atlantic County and Bridgewater undisturbed and, accordingly, the Commission should restrain arbitration of the CWA's grievances because they do not relate to a mandatorily negotiable term and condition of employment.

The CWA responds that the Supreme Court unequivocally held that the issue of incremental movement on a salary guide following contract expiration is a mandatorily negotiable term and condition of employment. It observes that the Supreme Court ruled that whether increments are to be paid during the hiatus between CNAs is governed by the parties' expired agreement. Citing Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), it maintains that the Commission has no authority to restrain arbitration over the merits of the grievances, including the issue of whether the parties' CNA required the State to pay increments after its expiration.

As this is a scope of negotiations proceeding, we only consider the abstract issue of whether the subject matter in dispute - step movement during the hiatus period - is within the

scope of collective negotiations. The Supreme Court answered that question in Atlantic County/Bridgewater, stating:

We find that salary step increments is a mandatorily negotiable term and condition of employment because it is part and parcel to an employee's compensation for any particular year.

[230 N.J. at 253, emphasis added]

The Court held that the Bridgewater and Atlantic County CNAs required payment of the increments during the hiatus period. Accordingly, whether the State-CWA CNA required the payment of increments post-contract is a question for the arbitrator to decide. We decline to restrain arbitration.

ORDER

The request of the State of New Jersey for permanent restraints of arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. None opposed. Commissioner Eskilson recused himself. Commissioner Jones was not present.

ISSUED: February 22, 2018

Trenton, New Jersey