

P.E.R.C. NO. 2020-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF FRANKLIN LAKES,

Petitioner,

-and-

Docket No. IA-2020-002

PBA LOCAL 150,

Respondent.

SYNOPSIS

The Commission grants the motion of PBA Local 150 to dismiss the petition to initiate compulsory interest arbitration filed by the Borough of Franklin Lakes. The Commission finds that the parties signed and ratified a Memorandum of Agreement, and accordingly, there is not an expired agreement between the parties, which a prerequisite to filing the petition.

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, Ruderman & Roth, LLC, attorneys
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the
brief)

For the Respondent, Limsky & Mitolo, attorneys (Merick
H. Limsky, of counsel and on the brief)

DECISION

On August 7, 2019, the Borough of Franklin Lakes (Borough) filed a Petition to Initiate Compulsory Arbitration (Petition). The Petition asserts that the previous collective negotiations agreement (CNA) between the Borough and PBA Local 150 (PBA) expired on December 31, 2018, and lists "Retiree Health Benefits Chapter 78 contributions" as the only disputed issue.

On September 12, 2019, the PBA filed a motion to dismiss the Petition, with a supporting brief, exhibits and the certification of its attorney. On September 24, the Borough filed a responsive brief, exhibits and the certification of its Administrator.

The following facts appear from the record. The parties

engaged in numerous negotiations sessions for a CNA to succeed the CNA that expired on December 31, 2018. The expired contract contained Article VIII, Medical, Dental and Life Insurance, Paragraph D which addresses retiree health coverage and states:

For employees who retire after seventeen (17) years of service to the Borough and twenty-five (25) years in the pension system, the Borough will provide full (100%) medical insurance, dental, prescription, and family or spousal coverage, at the same level of such benefits received at the time of retirement. Insurance coverage for fully retired (25 years of service) employees, as authorized herein, is secondary to any coverage or benefits available or which may become available from Medicare or any other sources of insurance, governmental or otherwise. Additionally, such coverage as may be provided by the Borough, will be discontinued for any period when insurance coverage is obtained as a result of other employment, but will be reinstated upon the termination of such employment. For employees hired after January 1, 2016, the benefits in this paragraph shall cease upon the employee turning 65 years old.

The Borough Administrator certifies as follows:

- Early in the negotiations process the Borough advised the PBA that it wanted to revise, update and simplify the language in the PBA contract, and the PBA was amenable to this goal.
- On December 20, 2018, he forwarded to the PBA a redlined version of the CNA containing "Clean-Up Language", including changes to Article VIII, Paragraph D as follows:

~~For employees who~~ Except as provided hereinbelow, for Members that retire after seventeen (17) years of service to the Borough and twenty-five (25) years in

the pension system, the Borough shall ~~will~~ provide full (100%) medical, prescription and dental, insurance coverage for the Member, his or her family and spouse dental, prescription, and family or spousal coverage at the same or substantially comparable level of such benefits received at the time of retirement, provided such coverage is available in the market received at the time of retirement. Insurance coverage for such fully retired (25 years of ~~service~~) Members employees, as authorized ~~herein,~~ shall be is secondary to any insurance coverage or benefits available or which may become available from Medicare or any other sources of insurance, governmental or otherwise. The Member shall be responsible for payment of Medicare premiums. The Borough shall provide supplemental Medicare coverage only. Additionally, such coverage as may be provided by the Borough, shall ~~will~~ be discontinued for any period when insurance coverage is obtained as a result of other employment, but will be reinstated upon the termination of such employment. For Members employees hired after January 1, 2016, the retiree benefits in this paragraph shall cease upon the Member employee turning 65 years old.

- The December 20, 2018 redlined version of the CNA also contained many revisions to other paragraphs of Article VIII.

A PBA and a Borough representative, on April 13 and April 26, 2019, respectively, signed a Memorandum of Agreement (MOA). The MOA states that the term of the Agreement is five years, from January 1, 2019 through December 31, 2023. The MOA addresses several issues, including a change to Article VIII, paragraph D, as follows:

For those employees who retire after the effective date of this contract, Article VIII. D. shall be changed to include the language "at the same level of benefits received at the time of retirement, provided such coverage is available in the market."

The MOA's last sentence sets out that its terms shall not be binding until they are ratified by the PBA and approved by the Mayor and Council. On April 17, 2019, the Mayor and Council approved the MOA via Resolution 125-10 which, in pertinent part, contains the following language:

WHEREAS, the [Borough] and the [PBA] have reached an agreement on a new Collective Bargaining Agreement for the period January 1, 2019 through December 31, 2023; and

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Franklin Lakes, County of Bergen, and State of New Jersey that the Memorandum of Agreement is hereby approved.

. . . .

[Ibid.; emphasis added.]

The PBA ratified the MOA prior to April 17, 2019. The Borough's Administrator certifies that the parties met for a negotiations session on July 30, when it became clear that the PBA would not agree to the Clean-Up Language pertaining to retiree health benefits (Article VIII, paragraph D) that was sent by the Borough on December 20, 2018. The Borough filed the Petition shortly thereafter. The parties have not signed the 2019-2023 CNA.

The PBA asserts that the Petition should be dismissed because there is a signed and ratified MOA in effect.

The Borough asserts that the PBA delayed its consideration of the Clean-Up Language until after the parties signed the MOA, and therefore, despite there being a signed and ratified MOA, there remains an open issue about retiree health benefits. Under the circumstances presented, we dismiss the Petition.

An MOA represents negotiated changes on the disputed issues between parties and, once signed and ratified, its terms equate to an agreement/contract. In City of Newark, P.E.R.C. No. 2006-84, 32 NJPER 159 (¶71 2006), the Commission dismissed an interest arbitration petition filed by the union one and one half years after the parties signed and ratified an MOA, finding that the MOA covered the issues raised in the petition and could not be set aside. See also Township of Irvington, P.E.R.C. No. 2010-44, 35 NJPER 458 (¶151 2009) (finding that the employer violated N.J.S.A. 34:13A-5.4a(1), (5) and (6) by refusing to sign the draft agreement that tracked the terms of the MOA entered into between the parties); City of Newark, P.E.R.C. No. 2016-56, 42 NJPER 441 (¶119 2016) (finding that the employer violated N.J.S.A. 34:13A-5.4a(1), (5) and (6) when after an agreement was reached, a City representative attempted to alter its terms and the City refused to execute the agreement that did not contain the contested provision).

The Borough argues that this matter is distinguishable from City of Newark, P.E.R.C. No. 2006-84, because here the parties

engaged in a negotiations session after the MOA had been signed and ratified, and because it quickly filed the Petition. Despite that the Borough's actions were not delayed, we find the key facts in dismissing the Petition to be as follows.

It is undisputed that the MOA was signed and ratified by both parties. Paragraph 1 of the MOA states that the term of the CNA is five years, covering January 1, 2019 through December 31, 2023. Thus, there is not an expired agreement between the Borough and the PBA, a prerequisite for filing the Petition. N.J.S.A. 34:13A-16b(2); N.J.A.C. 19:16-5.2(a)2.

Moreover, included among the negotiated changes reflected in the MOA is a modification to the language addressing retiree health benefits. While the Petition seeks arbitration of retiree health benefits, that issue is already addressed in the MOA, and that modification is the product of the parties' negotiations. If the MOA's terms were contingent upon the parties' agreement on modifications to retiree health benefits beyond what is contained in the MOA, it would have or should have explicitly stated so. The MOA contains no such provision.

Finally, the one contingent term of the MOA, that both parties ratify it before its terms become binding, was met. We are comfortable assuming that if from the Borough's perspective there were substantive open issues between the parties, the Mayor and Council would not have adopted the MOA via Resolution 125-10,

which states that the Borough and the PBA have reached agreement on the terms of a new CNA.

ORDER

The Petition to Initiate Interest Arbitration filed by Franklin Lakes is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero was not present.

ISSUED: October 10, 2019

Trenton, New Jersey