

P.E.R.C. NO. 2020-50

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERGENFIELD,

Respondent,

-and-

Docket No. CO-2019-288

PBA LOCAL 309,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission adopts a Hearing Examiner's Recommended Decision and Order which found the Borough of Bergenfield violated N.J.S.A. 34:13A-5.4a(6) by refusing to sign a collective negotiations agreement (CNA), drafted by PBA Local 309, that memorialized an interest arbitration (IA) award. In rejecting exceptions filed by the Borough, the Commission finds that the draft CNA accurately reflected the IA award's treatment of increment payments. The Commission rejects the Borough's contention that the draft CNA must include the IA arbitrator's calculations of economic change, as no such requirement is found in N.J.S.A. 34:13A-16 or N.J.S.A. 34:13A-5.4a(6). The Commission finds that the parties' ongoing dispute about the amounts required to be paid pursuant to the step increases dictated by the IA award is a matter of contract interpretation best dealt with through the CNA's grievance procedures, which is immaterial to the question of whether the Borough was obligated to sign the agreement drafted by the PBA.

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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BOROUGH OF BERGENFIELD,

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Appearances:

For the Respondent, McCusker Anselmi Rosen Carvelli,  
P.C., attorneys (John L. Shahdanian II, of counsel)

For the Charging Loccke, Correia & Bukosky, LLC,  
attorneys (Michael A. Bukosky, of counsel)

DECISION On February 20, 2020, the Borough of Bergenfield (Borough) filed exceptions to a Commission Hearing Examiner's recommended Decision and Order, issued on February 10, 2020, H.E. No. 2020-5, 46 NJPER 349 (¶85 2020). The Hearing Examiner granted a motion for summary judgment filed by PBA Local 309 (PBA), on a Complaint issued by the Director of Unfair Practices on an unfair practice charge (UPC) and amended charge filed by the PBA against the Borough on May 29, 2019 and September 11, 2019.<sup>1/</sup> The Hearing Examiner found the Borough violated N.J.S.A.

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<sup>1/</sup> The UPC, as amended, alleges that the Borough refused to sign a new contract prepared by the PBA that was "based upon the [parties'] prior written Agreement . . . as modified and updated by the Interest Arbitration Award [issued on December 27, 2018]," and that this refusal to sign  
(continued...)

34:13A-5.4a(6) by refusing to sign a collective negotiations agreement (CNA) drafted by the PBA that memorialized an Interest Arbitration (IA) Award. H.E. at 15. On February 24, 2020, the PBA filed opposition to the Borough's exceptions.

The matter is now before the Commission to adopt, reject or modify the Hearing Examiner's recommendations. We have reviewed the record, the Hearing Examiner's Findings of Fact and Conclusions of Law, and the parties' submissions. We find that the Hearing Examiner's findings of fact are supported by the record and we adopt them. We further hold that the Hearing Examiner correctly resolved the legal issues presented by this dispute. We add the following.

This matter has its roots in the Borough's belief that a CNA (drafted by the PBA) memorializing the IA Award does not accurately reflect that Award, specifically with respect to 2019 and 2020 step increases and the cost to Bergenfield for same. This, the Borough states in its exceptions, is the reason it refused to sign the agreement. That refusal prompted the PBA to file the subject UPC, which culminated with the Hearing

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1/ (...continued)  
constituted an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(3, 4 and 6). The Director declined to issue a complaint on the 5.4a(3) and (4) allegations because there were insufficient facts pled to support them, but issued a Complaint on the 5.4a(6) charge. H.E. at 2. That provision prohibits public employers, their representatives or agents from:“(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.”

Examiner's granting of the PBA's subsequent motion for summary judgment. The Borough then filed with the Commission the following exceptions to the Hearing Examiner's decision:

1. The Hearing Examiner's Decision on the Motion for Summary Judgment, which decision was made without hearing any oral argument, ignored genuine, contested issues of fact, which precludes the granting of such Motion.
2. The Hearing Examiner's Decision ignored PERC's deference to the decision of an Arbitrator and ignored the Arbitrator's assignment of weight to the statutory factors and the record. The Hearing Examiner's decision essentially usurps the Arbitrator's decision and award and replaces it with a different award.

A focal point of this dispute is the Borough's payment of step increases on October 1, 2019, which the Borough contends were paid as set forth in the [IA] Award, while the PBA, according to the Borough, complained the payments were incorrect.<sup>2/</sup> In other words, the parties evidently disagree about the amounts required to be paid pursuant to the step increases dictated by the Award. The provisions of the Award germane to the Borough's exceptions are as follows:

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<sup>2/</sup> See also, H.E. No. 2020-5, n.3 (noting the parties "disagree about whether increments for 2019 were paid . . . in accordance with the IA Award. The Borough asserts they were, the PBA asserts they were not.") However, the PBA did not amend its UPC to include an allegation that the Borough's implementation of the step increases was an unfair labor practice.

1. Duration. January 1, 2018 through December 31, 2020.
2. Salary. 2018 - 0% salary increase, full step increases, longevity and senior officer differential; 2019 - 0% salary increase, step increases October 1, 2019, longevity compensation and senior officer differential in accordance with the terms of the Agreement; 2020 - 0% salary increase, no step movement, longevity and senior officer differential in accordance with the terms of the Agreement.
5. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award.

[IA Award, p. 54.]

The PBA's draft agreement addresses the subjects of salary increments and step increases at Article III, Section 2, which states:

Increments shall be paid in accordance with past practice except that during the year 2019 only the Salary Step Increases, where applicable, shall be effective October 1, 2019. For the year 2020 there shall be no Step movement for salary increases.

The Borough's concern appears to be with its understanding that the PBA believes the phrase "in accordance with past practice" in the above-quoted passage (which was carried over from the prior CNA), requires step payments for any periods beyond those specified in the Award. The parties are at odds on this issue.

This disagreement arose after the expiration of the 14-day period for filing an appeal of the IA Award with the Commission,

during which neither party appealed. N.J.S.A. 34:13A-16f(5); N.J.A.C. 19:16-8.1(a). The difference of interpretation first appears in the record in the Borough's March 1, 2019 email to the PBA in which the Borough raised perceived "inconsistenc[ies] between the proposed CBA and the Interest Arbitration Award," including with respect to language in Article III of the draft agreement requiring the payment of increments "in accordance with past practice." The Borough contended that the IA Award required the removal of the "past practice" language because the IA Award "specifically addressed" increments "by way of the partial step increase in October of 2019."

In the course of subsequent exchanges between the parties through April 2019, the PBA proffered a revised draft which provided for the payment of increments according to past practice "except . . . during 2019 only." The PBA contended the balance of the paragraph was consistent with the Award. The issue remained unresolved on and after both the PBA's initial and amended filing of the UPC, and the Borough's disputed payment of the step increments on October 1, 2019.

The Borough's stated position in opposition to the UPC was that the PBA's draft misstates and misinterprets the language of the Award as to step movement during the new contractual period and during any unnegotiated period by its inclusion of the following language from the prior agreement: "Increments shall be

paid in accordance with past practice.” The Borough stated in its brief opposing the PBA’s motion for summary judgment that the Award does not permit the language in the proposed contract, without modification regarding the step increases. The Borough further argued that under both the PBA’s proposed draft contract and the Borough’s articulation of the PBA’s “position” on step payments, the 2020 economic change will be over \$240,000, a figure not consistent with the Award’s allowance of a total spend or economic change of \$13,888.75 for 2020.

In its exceptions, the Borough again argues that the PBA’s draft agreement is not one “that accurately reflects the terms of the Award and the Arbitrator’s calculations of economic change.” (Bor. Exceptions Br. at 8.)

In deciding the PBA’s motion for summary judgment, the Hearing Examiner correctly noted that N.J.S.A. 34:13A-5.4a(6), as interpreted by the Commission, requires an employer to sign “a written collective negotiations agreement that accurately reflects the terms of the [IA] award.” H.E. No. 2020-5, at 10-11, and Commission cases cited. The Hearing Examiner also correctly noted that in deciding the motion he was required to view “the competent evidential materials presented in the light most favorable to” the Borough, the non-moving party, and determine whether there existed any genuine issue of material fact that would preclude a grant of summary judgment. Id., at 3,

citing Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995).

The Borough in its exceptions states that it has no issue with the Award, its terms or any of the information set forth by the Arbitrator as the basis for his decision, and it does not challenge the cost calculations as cited by the Arbitrator. Given that the Borough does not challenge any terms of the IA Award, we find that it is not a genuine issue of material fact (that would preclude a grant of summary judgment) as to whether the PBA's draft agreement accurately reflects the Award by its inclusion of these words, carried over from the 2017 CNA:

"Increments shall be paid in accordance with past practice." We agree with the Hearing Examiner that "this language was not removed or modified by the IA Award and, pursuant to the IA Award, 'all provisions of the existing agreement [2017 CNA] shall be carried forward except for those which have been modified by the terms of this Award.'" H.E. No. 2020-5 at 14, quoting IA Award, p. 54. As such, in agreement with the Hearing Examiner,<sup>3/</sup> we find that the "past practice" provision is a term of the IA

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<sup>3/</sup> Specifically, the Hearing Examiner found that Article III, Section 2 of the PBA's draft CNA "is consistent with the IA Award in that it provides for step increases effective October 1, 2019 and no step movement in 2020. Moreover, consistent with the IA Award, the CNA does not address salary step movement beyond 2020 and only provides for increments effective October 1, 2019 for the 2019 contract year." H.E. No. 2020-5, at 14.



Award, and the PBA's draft agreement accurately reflects that term.

But the Borough also insists that if the PBA's draft is to accurately reflect the Award, it must include both "the terms of the Award and the Arbitrator's calculations of economic change." (Bor. Exceptions Br. at 8, emphasis supplied.) The Borough offers no authority for the latter proposition. No such requirement is found in N.J.S.A. 34:13A-16, which governs interest arbitration proceedings, or in N.J.S.A. 34:13A-5.4a(6), which prohibits employers from refusing to reduce a negotiated agreement to writing and to sign it. Regardless, we do not see this contention as creating a genuine issue of material fact that would preclude a grant of summary judgment.

The Arbitrator's calculations of economic change were based on the record evidence before him, and his calculations were "constructed based on evidence of financial conditions and personnel costs taken from a particular snapshot in time." City of Orange Tp., P.E.R.C. No. 2017-13, 43 NJPER 101 (¶31 2016). There is no support for the Borough's assertion that the Arbitrator's calculations would necessarily be the same at another snapshot in time, such as that addressed by the Borough's subsequent independent calculations and analysis nearly one year after the IA Award's issuance. In any case, that analysis was not presented to the Arbitrator. N.J.S.A. 34:13A-16f(3).

Moreover, as the Borough did not appeal the Award and does not dispute its terms or cost calculations, the Borough's post-Award independent analysis can have relevance only with respect to the parties' ongoing disagreement as to whether the Borough correctly implemented the October 1, 2019 step increases in accordance with the Award. We agree with the Hearing Examiner that this is a matter of contract interpretation best dealt with through the CNA's grievance procedures,<sup>4/5/</sup> and that the Borough's argument is immaterial as to whether it was obligated to sign the agreement drafted by the PBA pursuant to N.J.S.A. 34:13A-5.4a(6). Brill, supra.

Based upon all of the foregoing, we reject the Borough's exceptions and adopt the Hearing Examiner's Recommended Decision and Order.

#### ORDER

The Borough of Bergenfield is ordered to:

A. Cease and desist from refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to sign the draft agreement submitted to it by the Bergenfield PBA Local No. 309.

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4/ If that procedure results in a grievance arbitration award that the Borough believes is contrary to the IA Award, the Borough may seek judicial review pursuant to N.J.S.A. 2A:24-7 through 2A:24-10.

5/ H.E. No. 2020-5 at 15, n.5.

B. Take this action:

1. Immediately sign the draft agreement submitted to it by the Bergenfield PBA Local No. 309 that implements the interest arbitration award issued on December 27, 2018.

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 Weisblatt, Commissioners Bonanni, Ford, Jones and Voos voted in favor of this decision. None opposed. Commissioner Papero recused himself.

ISSUED: April 30, 2020

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 refusing to reduce a negotiated agreement to writing and to sign such agreement, particularly by refusing to sign the draft agreement submitted to it by the Bergenfield PBA Local No. 309.

**WE WILL** immediately sign the draft agreement submitted to it by the Bergenfield PBA Local No. 309 that implements the interest arbitration award issued on December 27, 2018.

**WE WILL** 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.

**WE WILL** 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.

Docket No. CO-2019-288

BOROUGH OF BERGENFIELD  
(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, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830