

P.E.R.C. NO. 2023-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 206,

Respondent,

-and-

Docket No. CE-2022-002

OLD TAPPAN BOROUGH,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices (Director) refusal to issue a complaint and dismissal of the Borough's unfair practice charge. The Borough's charge alleges the Association committed an unfair practice when it refused to review and sign a draft collective negotiations agreement (CNA) provided by the Borough in accordance with the interest arbitration award in IA-2021-001 (Award). The Commission finds that the Director properly refused to issue a complaint because the PBA engaged in and completed the compulsory interest arbitration process, and based on the Director's plain reading of the Award, the PBA had legitimate concerns that the draft CNA made material changes to the terms set forth in the Award. The Commission concludes the PBA was not required to negotiate over terms and conditions settled by the Award.

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 Respondent,
Limsky Mitolo, attorneys
(Merick H. Limsky, of counsel)

For the Charging Party,
Trenk Isabel Siddiqi & Shahdanian, P.C., attorneys
(John L. Shahdanian, of counsel)

DECISION

Old Tappan Borough (Borough) appeals from the refusal of the Director of Unfair Practices (Director) to issue a complaint and dismissal of its unfair practice charge (UPC) filed on September 28, 2021 against PBA Local 206 (PBA). The charge alleges that the PBA violated subsections 5.4b(3) and (4)^{1/} of the New Jersey Employer-Employee Relations Act (Act) by refusing to review and sign a draft collective negotiations agreement (CNA) provided by

^{1/} These provisions prohibit employee representatives, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (4) Refusing to reduce a negotiated agreement to writing and to sign such agreement."

the Borough on August 2, 2021 in accordance with the interest arbitration award in Docket No. IA-2021-001 (Award).

We incorporate the Director's recitation of the facts of this matter in his decision, D.U.P. NO. 2022-13, as if fully reproduced herein. We emphasize the following facts that are pertinent to our analysis. On February 9, 2021, the interest arbitrator issued a 52-page conventional Award setting the terms of a successor CNA for a term of four years, from January 1, 2019 through December 31, 2022. After receipt of the Award, the Borough requested clarification only on the portion of the Award addressing retiree healthcare coverage, although the Award addressed numerous issues submitted by the parties, including the following subjects: "Term of the Agreement", "Salaries", "Detective Stipend", "Outside Detail", "Out of Title Pay", and "Work Schedule". On April 29, 2021, in Bor. of Old Tappan, P.E.R.C. No. 2021-43, 47 NJPER 468 (¶110-2021), the Commission ordered the interest arbitrator "to provide clarification as to the Borough's final proposal seeking that retirees' healthcare coverage contribution be pursuant with levels set forth by P.L. 2011, c.78." On June 17, the arbitrator issued a remand award clarifying the sections regarding retiree healthcare coverage contributions in his initial decision, which was in the Borough's favor. On August 26, the Commission affirmed the clarified interest arbitration award. Bor. of Old Tappan, P.E.R.C. No. 2022-4, 48 NJPER 107 (¶26 2021). Notably, a provision specifying the number of hours used to determine an officer's

hourly rate of pay was not included in the Award. However, the Award did include the PBA's proposal that officers who perform the work of a supervisor in a higher rank should be compensated at the rate of pay of that higher rank.

On August 2, 2021, the Borough sent a draft CNA to PBA's counsel. On August 3, the PBA's counsel responded to the Borough's draft CNA as follows:

John, I haven't even read the whole draft yet, but there is no way we are signing anything that has unilateral changes that were not awarded. Specifically, you changed the number of hours that determines the hourly rate. In addition, the members have not had their pay adjusted even though it was not contested, and no back pay has been paid. There is also the ridiculous position regarding out-of-title work. Unless you tell me that it was a mistake, the PBA will be filing an unfair practice charge.

The Borough replied to the PBA's counsel, insisting he read the entire draft and that any changes to the officer's hourly rate of pay was based on the Award's 12-hour "Pittman schedule". On August 4, PBA's counsel responded as follows:

I am not debating this with you. This change in hours was knowingly done by you and the employer. It was not 'necessitated' by anything. In fact, it has been that way for many years under the 12 hour schedule. The arbitrator did not address the issue. I did read the whole draft. I am not making suggestions. Unless this is taken out, there will be no signed agreement and we will be filing an unfair practice. There also is no reason why their pay has not been changed for over six months when there was no dispute.

Additionally, the 'form' for out-of-title pay is ridiculous.

On September 24, the Borough informed the PBA that if the draft CNA was not signed it would consider filing a UPC. The PBA did not sign the draft CNA, objecting that it did not incorporate the terms of the Award, and the Borough filed the instant UPC on September 28.

The Director's May 13, 2022 decision, D.U.P. NO. 2022-13, refused to issue a complaint and dismissed the Borough's UPC, finding that the draft CNA includes material changes to terms and conditions of employment that are either not addressed by, or are inconsistent with, terms set forth in the Award. On May 23, the Borough filed the instant appeal of the Director's decision with a letter brief in support. On May 26, the PBA filed its response.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. Where the complaint issuance standard has not been met, the issuance of a complaint may be declined. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). After a careful review of the parties' submissions, we sustain the Director's decision not to issue a complaint and dismiss the Borough's UPC.

The Borough argues that, following its forwarding of the draft CNA, that the PBA refused to engage in negotiations or further communications regarding the draft, and instead, threatened to file a UPC, which it claims is conduct which violates N.J.S.A.

34:13A-5.4(b)(3). In contrast, the Borough asserts that it has continued to attempt to reach a successor CNA despite the PBA's rebukes. The Borough further argues that the PBA violated N.J.S.A. 34:13A-5.4(b)(4) by refusing to sign the Borough's draft CNA, which accurately incorporated the terms and conditions set forth in the Award. Moreover, the Borough argues that the Director erred in finding that the draft CNA made unilateral changes to the terms set forth in the Award.

The PBA responds that it did not commit an unfair practice and the Director properly refused to issue a Complaint because the PBA was not required to sign or negotiate over the draft CNA, which made significant changes to the terms set forth in the Award. The PBA further argues that it did not refuse to negotiate in good faith by informing the Borough that it would file a UPC if the draft contract was not changed to accurately represent the Award because the PBA has a right, under the Act, to file a UPC based on its valid legal position.^{2/}

^{2/} On October 15, 2021, the PBA filed an unfair practice charge, CO-2022-085. A Complaint and Notice of Hearing issued on April 28, 2022.

Regarding compulsory interest arbitration, New Jersey Courts have stated:

Compulsory interest arbitration is a statutory method of resolving collective-negotiation disputes between police and fire departments and their employers. As our Supreme Court has explained, interest arbitration involves the submission of a dispute concerning the terms of a new contract to an arbitrator, who selects those terms and thus in effect writes the parties' collective agreement.

[In re Borough of Bergenfield, No. A-3495-19, 2021 N.J. Super. Unpub. LEXIS 2398, at *11 (App. Div. Oct. 5, 2021) (Internal citations and quotations omitted)].

Here, we find the Director properly refused to issue a complaint on the Borough's N.J.S.A. 34:13A-5.4(b)(3) charge because, as the Director found, the PBA engaged in and completed the compulsory interest arbitration process, and based on his plain reading of the Award, the PBA had legitimate concerns that the draft CNA made material changes to the terms set forth in the Award. An interest arbitration award is not intended to be the starting point for further negotiations that could lead to further impasse, but rather, it is intended to be a final and binding resolution to such impasse. See Bergenfield, supra; N.J.S.A. 34:13A-14(a) (compulsory interest arbitration affords "an alternate, expeditious, effective and binding procedure for the resolution of disputes.") As such, the PBA was not required to negotiate over terms and conditions settled by the Award. The Director properly refused to issue the complaint, and we sustain his decision.

ORDER

The Director's refusal to issue a complaint is sustained, and the Borough's unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: October 27, 2022

Trenton, New Jersey