

P.E.R.C. NO. 2023-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL 3249,

Petitioner,

-and-

Docket No. IA-2023-011

BOROUGH OF COLLINGSWOOD,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses Local 3249's petition to initiate compulsory interest arbitration with the Borough over the issue of base salaries for new captain positions. The Commission finds that because the parties' contract is not expired, Local 3249 has no statutory right under N.J.S.A. 34:13A-16b(2) to invoke interest arbitration at this time. However, the Commission finds that because the parties do not have a current contract clause pertaining to captain salaries, typical contract dispute resolution procedures may be inadequate to resolve the dispute and the impasse resolution procedures provided for in the interest arbitration act may be appropriate. Therefore, Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1.

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, Mets Schiro McGovern, LLP,
attorneys (James M. Mets, of counsel)

For the Respondent, Brown & Connery, LLP, attorneys
(Michael J. DiPiero, of counsel)

DECISION

On October 27, 2022, the International Association of Fire Fighters Local 3249 (Local 3249) filed a petition with the Commission's Director of Conciliation and Arbitration (Director) to initiate compulsory interest arbitration. Local 3249's petition identified the only issue in dispute as: "Base salaries for newly created Fire Captain positions." On November 4, The Director notified the Borough of the interest arbitration petition and, pursuant to N.J.S.A. 34:13A-16(d), gave it five days to respond and notify her of all issues in dispute. On November 8, the Borough responded by disputing whether interest arbitration was appropriate because the parties are still under

contract. Following Local 3249's November 23 response, the Director on November 28 advised the parties that a request to dismiss the interest arbitration petition could be made on motion. On December 2, the Borough filed a motion to dismiss the interest arbitration petition. The Borough filed a letter brief, exhibits, and the certification of Borough Administrator Cassandra Duffey. On December 29, Local 3249 filed a letter brief opposing the Borough's motion to dismiss.

Based on the parties' submissions, these facts appear.

Facts

Local 3249 is a negotiations unit representing all regularly employed fire officers employed by the Borough. The Borough and Local 3249 are parties to a collective negotiations agreement (CNA) effective from January 1, 2020 through December 31, 2024. The Borough's fire department ordinance includes the ranks of chief, deputy chief, captain, and lieutenant. The only positions excluded from Local 3249 unit are the chief and deputy chief. Local 3249 is the only unit representing employees of the Borough's fire department. There is no superior officers unit.

On approximately March 1, 2022, the Borough and Local 3249 commenced negotiations over the salary for the position of captain, which the parties agree has been "long vacant." Borough Administrator Duffey's March 1 letter to the fire department's officers explained:

The Borough is considering utilizing the Captain position during 2022. However, as you know, the position has not been used recently and even when it was the salaries did not correspond to the contractual differential that exists in the wage provision. We would like to schedule a meeting to discuss updating the language in anticipation of future appointments to the rank. Please let me know when would be a convenient time to schedule a meeting.

The parties exchanged proposals and counter-proposals until July 29, 2022. During that time, the parties exchanged e-mails and met twice, on March 7 and July 26, 2022. During the July 26 meeting, the Borough provided Local 3249 with several options to settle the issue, but the parties did not resolve it. On July 27, Administrator Duffey followed up the meeting with the following e-mail:

Julian and Ed - see attached which lays out both increase options (percentage and flat increases) within the budget discussed. Thank you for meeting and the productive discussion yesterday. Let me know if you have any questions.

On July 29, 2022, Lieutenant Julian D'Alonzo on behalf of Local 3249 e-mailed the Borough that "we will be reviewing this and will get back to you shortly." Duffey certifies that D'Alonzo's July 29 email was the last communication the Borough received from the IAFF concerning the captain salary issue. Duffey certifies that at no point did she declare an impasse, break off negotiations, or fail to respond to the IAFF.

The Borough asserts that the interest arbitration petition must be dismissed because it is not a dispute over an expired agreement, but is a midterm negotiation of new salary rates for the existing position of captain. The Borough contends that it negotiated with Local 3249 about the salaries for five months and that Local 3249 broke off negotiations. It argues that there is no provision in the interest arbitration act for interest arbitration for any unresolved midterm negotiations issue.

Local 3249 asserts that because the current CNA does not provide a salary for the position of captain that the Borough seeks to reactivate, there is no ability to resolve the parties' negotiations dispute via grievance arbitration or an unfair practice charge. Local 3249 argues that interest arbitration is appropriate to resolve this collective negotiations dispute because the interest arbitration act does not prohibit interest arbitration while a CNA is in effect. It contends that the legislative intent of the act supports compulsory interest arbitration as an expeditious procedure for resolving disputes between public safety employees and public employers.

Analysis

The Police and Fire Public Interest Arbitration Reform Act (Reform Act), P.L. 1995, c. 425, as amended, is codified at N.J.S.A. 34:13A-14 through N.J.S.A. 34:13A-21. The Reform Act provides that a public fire or police department and an exclusive

representative shall begin collective negotiations at least 120 days prior to the expiration of their current CNA and if those negotiations reach an impasse, either party may request, or the Commission may assign, a mediator. N.J.S.A. 34:13A-16a. If the impasse persists after mediation, either party may request that the Commission "invoke factfinding with recommendation for settlement of all issues in dispute." N.J.S.A. 34:13A-16b(1).

The statute then provides that, regardless of the mediation and factfinding impasse resolution processes set forth above:

"[E]ither party may petition the commission for arbitration on or after the date on which their collective negotiations agreement expires." N.J.S.A. 34:13A-16b(2). The regulations similarly provide for interest arbitration where the impasse persists after the mediation and factfinding processes, or after the expiration of the parties' most recent CNA. N.J.A.C. 19:16-5.2(a)(1)-(2).

Here, the parties' current CNA is effective through December 31, 2024, so Local 3249 has no statutory right to invoke interest arbitration. N.J.S.A. 34:13A-16b(2); N.J.A.C. 19:16-5.2(a)(2); Franklin Lakes Bor., P.E.R.C. No. 2020-16, 46 NJPER 165 (¶40 2019) ("an expired agreement" is "a prerequisite for filing [an interest arbitration] petition"). Nor have the parties proceeded through the mediation and fact-finding impasse resolution procedures. N.J.A.C. 19:16-5.2(a)(1). Based on the applicable

interest arbitration statutes and regulations, we find that Local 3249's interest arbitration petition is premature.

However, the impasse resolution procedures provided for in the Reform Act for public safety employees such as the Local 3249 fire officers may be appropriate in order to provide an "expeditious, effective and binding procedure for the resolution of disputes." N.J.S.A. 34:13A-14a. Given the unique circumstances that prompted the parties' mid-contract collective negotiations (the base salaries for long vacant captain positions that the Borough plans to utilize again), typical contract resolution and unfair practice procedures may be inadequate because the parties have not identified any current contractual provision, past practice, or status quo that has been violated or that they could be returned to pending further negotiations.

N.J.A.C. 19:16-3.1 allows either party, or the parties jointly, to notify the Director "of the existence of an impasse and request the appointment of a mediator." Local 3249 asserts the parties are at impasse over the issue of salary for fire captains. The Borough disagrees that the parties are at an impasse. N.J.A.C. 19:16-3.1 provides that the Director is empowered to evaluate whether an impasse exists and determine whether to appoint a mediator upon request or in the absence of a party's request:

(c) Upon receipt of the Notice of Impasse,
the Director of Conciliation and Arbitration

shall appoint a mediator if he or she determines after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach an agreement through direct negotiations, and that an impasse exists in negotiations.

(d) The Commission or the Director of Conciliation and Arbitration may also initiate mediation at any time in the absence of a request in the event of the existence of an impasse.

[N.J.A.C. 19:16-3.1(c) and (d).]

Therefore, Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1, however, its petition for interest arbitration is premature and is dismissed.

ORDER

Local 3249's petition to initiate compulsory interest arbitration is dismissed. Local 3249 may file for mediation pursuant to N.J.A.C. 19:16-3.1.

BY ORDER OF THE COMMISSION

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

ISSUED: January 26, 2023

Trenton, New Jersey