

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Appellant,

-and-

Docket No. IA-97-82

NEWARK DEPUTY FIRE CHIEFS ASSOCIATION,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission denies the request of the City of Trenton for special permission to appeal an interest arbitrator's interlocutory ruling. That ruling denied the City's request for an extension of time to respond to the Newark Deputy Fire Chiefs Association's interest petition or, in the alternative, authorization to include health benefits as part of its economic proposal. The Chair finds that the arbitrator did not abuse his discretion in denying the City's request for an extension of time to respond to the petition and in denying the City's request to submit health benefits proposals.

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 Chair.

P.E.R.C. NO. 98-166

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Respondent.

Appearances:

For the Appellant, Michelle Hollar-Gregory, Corporation  
Counsel (JoAnne Y. Watson, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
attorneys (Paul L. Kleinbaum, on the brief)

DECISION

During interest arbitration proceedings with the Newark Deputy Fire Chiefs Association, the City of Newark has requested special permission to appeal an arbitrator's interlocutory ruling. That ruling denied its request for an extension of time to respond to the Association's interest arbitration petition or, in the alternative, authorization to include health benefits as part of its economic proposal.

The parties have filed briefs and exhibits. These facts appear.

On February 14, 1997, the Association filed a petition to initiate interest arbitration. The City did not file a response within seven days of receiving the petition, as required by N.J.A.C. 19:16-5.5(a).

On March 4, 1997, the City asked that the Director of Arbitration stay interest arbitration until the City's unit clarification petition was decided.<sup>1/</sup> The City also requested an extension of time to file a response to the Association's petition. It stated that the petition had been sent to the personnel director and had not been promptly forwarded to corporation counsel because the director had been out of the office for several days due to illness and involvement in a court proceeding. It maintained that, because of these circumstances, it did not file a timely response. In addition, it noted that due to the resignation of an assistant corporation counsel, there was no attorney assigned to the case when the petition was received.

The Association opposed both an extension of time and the request to stay interest arbitration proceedings. On April 24, 1997, the Director of Arbitration informed the parties that the interest arbitration petition would be processed. On May 9, the Commission appointed an arbitrator. The letter did not address the City's request for an extension of time.

The interest arbitrator held two or three mediation sessions in late 1997. On February 4, 1998, the Association advised the City that it would object to the City's raising any issues in its interest arbitration proposal that were not included in a timely response filed by the City. See N.J.A.C. 19:16-5.5(b)

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<sup>1/</sup> The petition contends that the deputy chiefs are managerial executives.

(where no response to petition is filed, respondent is deemed to have agreed to the initiation of interest arbitration as submitted by the filing party). On April 13, the City wrote to the Director of Arbitration stating that, after it learned that the case would be processed, it did not follow up on its request for an extension of time to respond to the Association's petition. It requested authorization either to file a late response or to include health benefits as part of its economic proposal. The Director referred the matter to the arbitrator. After arguments and submissions from the parties, the arbitrator denied the City's request in a May 15 telephone call.

The City requests special permission to appeal. It contends that its March 4, 1997 extension request established good cause to relax the time limit in N.J.A.C. 19:16-5.5 and, therefore, the arbitrator should have permitted it to file a response to the petition. In the alternative, it urges that it should be permitted to offer proposals consistent with issues identified prior to and during the arbitration proceedings.<sup>2/</sup>

N.J.A.C. 19:16-5.17 authorizes the Commission to review interim orders of interest arbitrators. The Commission exercises

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<sup>2/</sup> The parties agree that City proposals on health benefits were discussed during negotiations and mediation. The City does not indicate whether other issues were discussed. The Association states that, during the first day of the formal hearing on May 14, 1998, the City indicated that it intended to propose several non-economic issues that had never been discussed during negotiations.

that authority sparingly, in the interests of justice or for good cause shown. Middlesex Cty., P.E.R.C. No. 97-63, 23 NJPER 17 (¶28016 1996). N.J.A.C. 19:16-5.17(c) gives the Chair authority to grant or deny special permission to appeal.

An arbitrator has the authority to relax N.J.A.C. 19:16-5.5(a) and (b) to permit a respondent to submit proposals on issues not listed in the interest arbitration petition or in a timely response. See N.J.A.C. 19:10-3.1 (a) and (b); Middlesex Cty., P.E.R.C. No. 98-46, 23 NJPER 595 (¶28293 1997). The Commission defers to the arbitrator's decision to admit or exclude additional issues unless it finds an abuse of discretion. See Middlesex Cty., P.E.R.C. No. 98-46 (establishing this standard and affirming arbitral decision not to admit additional issues); see also Allendale Bor., P.E.R.C. No. 98-27, 23 NJPER 508 (¶28248 1997); Bogota Bor., P.E.R.C. No. 98-104, 24 NJPER 130 (¶29066 1998) (affirming arbitrator decisions not to admit additional issues).

I turn first to the City's contention that, in its March 4, 1997 letter, it established good cause for an extension of time to file a response. Assuming this to be true, I find that it has not explained why it could not or did not follow up on that request until one year after it learned that the petition would be processed. The City's April 1998 request was made nearly one year after the arbitrator had been assigned and after mediation sessions had been held and hearings had been scheduled. Cf.

Allendale Bor. (N.J.A.C. 19:16-5.5 ensures that parties and arbitrator know the nature and extent of the dispute at the outset). It was also made two months after the Association told it that it would object to the submission of additional issues. In these circumstances, the City has not demonstrated that the arbitrator abused his discretion in denying its request for an extension of time to file a response to the petition.

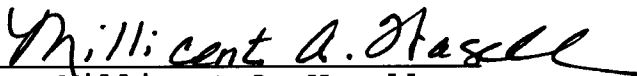
I am also satisfied that the arbitrator did not abuse his discretion in denying the City's request to submit to interest arbitration health benefits proposals discussed during negotiations and mediation. See Allendale Bor. (affirming arbitrator decision excluding proposals discussed during negotiations and mediation).

For these reasons, I deny special permission to appeal. See Middlesex Cty., P.E.R.C. No. 97-63 (no basis for granting special permission to appeal arbitrator's exclusion of additional issues).

ORDER

The request for special permission to appeal the arbitrator's interlocutory order is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

DATED: June 30, 1998  
Trenton, New Jersey