P.E.R.C. NO. 97-97

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF STANHOPE,

Respondent,

-and-

Docket No. IA-96-102

PBA LOCAL 138,

Appellant.

SYNOPSIS

The Public Employment Relations Commission vacates an interest arbitration award, remands it to the arbitrator, and directs him to apply the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, with disputed issues to be resolved by conventional arbitration.

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 Appellant, Morris & Hantman, attorneys (Allen Hantman, of counsel)

For the Respondent, David A. Wallace, attorney

DECISION AND ORDER

On December 6, 1996, PBA Local 138 filed a notice of appeal from an interest arbitration award issued on November 17, 1996. The notice alleges that the arbitrator erred in concluding that the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, did not govern the parties' interest arbitration. The PBA asks us to remand the case to the arbitrator and direct that it be reconsidered under the reform statute, with disputed issues to be resolved by conventional arbitration. The PBA also requests oral argument, which we deny.1/

On January 13, 1997, the Borough of Stanhope filed a letter brief in response to the appeal. It maintains that we lack

1/ The PBA did not file a brief. We will consider the appeal based on its December 6 submission.

jurisdiction to consider the appeal because, contrary to the requirements in N.J.S.A. 34:13A-16(f)(5)(a), the notice of appeal did not allege a violation of N.J.S.A. 2A:24-8 or -9 or a failure to apply the statutory criteria in N.J.S.A. 34:13A-16(g).

These facts appear. The parties entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1995. On January 29, 1996, the PBA filed a petition to initiate interest arbitration. On May 23, the Acting Director of Arbitration appointed an arbitrator mutually selected by the parties and advised the parties and the arbitrator that the proceedings were governed by P.L. 1995, c. 425.

The arbitrator held hearings on July 2 and August 1, 1996. On November 17, he issued a final opinion and award. At the outset of the opinion, the arbitrator commented that:

> In view of the fact that these proceedings were commenced prior to the enactment of the revised Statute, this impasse did not fall thereunder procedurally. The undersigned will, however, carefully consider the criteria and cautions espoused under both the old and new Statutes. [Arbitrator's opinion, p. 3.]

The arbitrator also wrote that:

> The parties, at the inception of the hearings, were not able to agree upon any means for rendering an Award herein except for that mandated by Statute where agreement could not be reached, namely the Last Offer-Best Offer of one side or the other, as a single economic package. [Arbitrator's opinion, p. 4.]

The arbitrator then reviewed the parties' final offers.

The arbitrator analyzed the respective proposals in light of the following criteria, listed here as they are identified in his opinion: (1) the interest and welfare of the public; (2) comparison of wages and overall compensation and conditions of employment; (3) compensation and fringes; (4) stipulations; (5) the Borough's authority to govern, raise taxes, pass ordinances and enter into contracts; (6) the financial impact on the municipality and the taxpayers; (7) the cost of living; and (8) the stability and continuity of employment.

The arbitrator decided to award the Borough's offer.

P.L. 1995, c. 425, §11 of the Police and Fire Public Interest Arbitration Reform Act, states in part:

> This act shall take effect immediately and shall apply to all collective negotiations between public fire and police departments and the exclusive representatives of their public employees except those formal arbitration proceedings in which the arbitrator has, prior to the effective date of this act, taken testimony from the parties;

The Act was approved January 10, 1996. See Historical and Statutory Notes after N.J.S.A. 34:13A-14.

P.L. 1995, c. 425 governs this case. The PBA initiated interest arbitration on January 29, 1996 and formal hearings began in July 1996. Absent an agreement to use another terminal procedure, conventional arbitration should have been the procedure used to resolve the unsettled issues between the parties. P.L. 1995, c. 425, §3(d)(2).

The Borough does not dispute that the arbitrator should have applied P.L. 1995, c. 425, but maintains that we do not have jurisdiction to decide an appeal premised on the failure to apply the correct statute. We reject the Borough's contention.

N.J.S.A. 34:13A-16(f)(5)(a) states that a party may file a notice of appeal from an interest arbitration award on the grounds that the arbitrator failed to apply the criteria specified in subsection g. or violated the standards set forth in N.J.S.A. 2A:24-8 or N.J.S.A. 2A:24-9. By challenging the arbitrator's failure to apply P.L. 1995 c. 425, the PBA has in effect appealed from the arbitrator's failure to apply all of the criteria, or at least those which were modified by the reform statute. The requirement that an appellant identify as grounds for an appeal a violation of N.J.S.A. 2A:24-8 or -9 or a failure to apply one of the criteria in N.J.S.A. 34:13A-16(g) is intended to underscore that an appeal should allege a violation of the standards governing interest arbitration. The PBA's appeal is based on such a contention. Those standards include the terminal procedure mandated by the Act in the absence of an agreement between the parties, since the terminal procedure is inseparable from the application of the criteria in N.J.S.A. 34:13A-16g.

The PBA asks us to remand this matter "for reconsideration under the control of the new statute." It asks that we direct that it be decided by "conventional arbitration rather than the last best offer provisions applied by the

arbitrator." The Borough responds that even if we had jurisdiction and ruled in the PBA's favor, it would be unnecessary to engage in lengthy analysis or remand the case because it can be inferred from the opinion how the arbitrator would have ruled had he issued a conventional arbitration award.

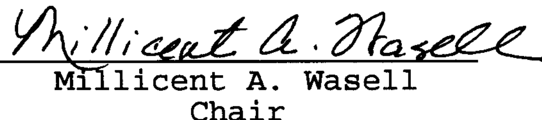
The need for a remand is not eliminated by suggestions in the arbitrator's opinion as to how he would have ruled had he decided the matter by conventional arbitration. We have the authority to affirm, modify, correct, or vacate the award or remand to the same or a different arbitrator, selected by lot. N.J.S.A. 34:13A-16(f)(5)(a). We do not have the authority to fashion an award in the first instance.

Therefore, we vacate the arbitration award, remand this case to the arbitrator, and direct him to apply P.L. 1995, c. 425.

ORDER

The arbitration award in IA-96-102 is vacated and remanded for reconsideration in accordance with P.L. 1995, c. 425.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: February 27, 1997
Trenton, New Jersey
ISSUED: February 28, 1997