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RUTHERFORD PBA LOCAL 300

Plaintiffs,

v.

BOROUGH OF RUTHERFORD

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

GENERAL EQUITY PART

BERGEN COUNTY

DOCKET No. BER-C-068-18

CIVIL ACTION

DECISION

Argued: June 8, 2018

Decided: June 11, 2018

Honorable Menelaos W. Toskos, J.S.C.

Corey M. Sargeant, Esq., appearing on behalf of Plaintiff (Loccke, Correia & Bukosky LLP)

Frank Puccio, Esq., appearing on behalf of Defendant (Eric M. Bernstein & Associates LLC)

OPINION

Before the Court is the return date of the Order to Show Cause, filed on behalf of the Rutherford Local PBA (“PBA”). The Court heard oral argument on March 2, 2018, denying the PBA’s Application for temporary restraints. The PBA and Borough of Rutherford (“Borough”) submitted supplemental briefing thereafter, and the Court heard oral argument on June 8, 2018. The Court reserved decision. A Consent Order was entered into on March 27, 2018, whereby the PBA and Borough agreed to proceed summarily pursuant to R. 4:67-1.

I. STATEMENT OF THE CASE

The issue presented relates to how many police officers may obtain paid leave to attend a state or national police convention, under N.J.S.A. 40A:14-177. More specifically, the PBA and Borough disagree as to whether the PBA may only select and send ten percent (10%) of the police force to the convention, or whether they may send greater than ten percent (10%), provided that no more than ten percent (10%) attends per day and so long as the total attending is no more than ten (10) police officers. The statute reads,

The heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities shall give a leave of absence with pay to persons in the service of the county or municipality who are duly authorized representatives of an employee organization as defined in subsection e. of section 3 of P.L.1941, c.100 (C.34:13A-3) and affiliated with the New Jersey State Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or Professional Fire Fighters Association of New Jersey to attend any State or national convention of such organization, provided, however, ***that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave***, unless more than 10 authorized representatives are permitted such a leave of absence pursuant to a collective bargaining agreement negotiated by the employer and the representatives of the employee organization, and for employee organizations with more than 5,000 members, a maximum of 25 authorized representatives shall be entitled to such leave.

...

Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention, provided that such leave shall be for no more than seven days.

[N.J.S.A. 40A:14-177.]¹

¹ N.J.S.A. 11A:6-10 "Leave of Absence for Convention Attendance" provides identical terms.

The Rutherford Police Department has forty (40) officers. The PBA sought to send a total of seven (7) officers to the state police convention, with only four (4) officers, or ten percent (10%) of the force being sent *per day*. PBA took the position that they were entitled to send ten percent (10%) of the force per day, provided that the total authorized representatives did not exceed ten (10). The Borough opposed the request stating that only ten percent (10%) may attend the convention, and therefore only a total of only four officers can attend.

II. ARGUMENTS PRESENTED

The PBA maintains that there is a distinction in the statute between those persons that are authorized/entitled, and those that are “permitted”. The PBA argues that although only ten percent (10%) can be so “authorized” to attend the conference, per day, a greater number of individuals (up to ten) are “permitted” to attend. In practice, the PBA argues that it permitted seven (7) officers to attend the convention, with only four (4) officers (or 10% of the force) attending each day. This method argues the PBA is entirely consistent with the statutory language

The Borough argues that nothing in the statute speaks to “per day”. Instead, the only indication of time in the statute states that leave “shall be for a period inclusive of the duration of the convention.”

III. ANALYSIS

At the outset, this matter came before the Court on an Order to Show Cause, seeking preliminary restraints. The state convention was a few days away and the PBA sought an order requiring the Borough to send up to four (4) officers per day. The Court found the PBA had not clearly and convincingly demonstrated the factors laid out in Crowe were met, and the application for pendente lite relief was denied. The parties then agreed there were no material factual issues in dispute and asked the Court to proceed summarily pursuant to R. 4:67-1, to interpret the statute.

When confronted with the task of interpreting a statute, the Court is obliged to ascribe a meaning that will “effectuate the legislative intent in light of the language used and the objects sought to be achieved.” State v. Hoffman, 149 N.J. 564, 578 (1997). The starting point of any interpretation is the language itself. See State v. Butler, 89 N.J. 220, 226 (1982). “If the statute is clear and unambiguous on its face and admits only one interpretation, we need delve no deeper than the act’s literal terms to divine the Legislature’s intent.” Ibid. “[T]he language must be read as a whole to arrive at its significant meaning, and an isolated word or term cannot be invoked to defeat a reasonable and fair construction.” Delaware v. Neeld, 52 N.J. Super. 63, 68 (App. Div. 1958).

The relevant statutory language is clear and unambiguous, “that no more than 10 percent of the employee organization's membership shall be permitted such a leave of absence with pay, except that no less than two and no more than 10 authorized representatives shall be entitled to such leave” N.J.S.A. 40A:14-177. The statute clearly provides that only ten percent (10%) of the PBA can be authorized to attend the conference. Moreover, the Court is not persuaded that in reading the statute any substantive difference exists between “authorized” and “permitted”. Even if there was a difference, it would not imply a “per day” reading of the provision. The phrase which states that “except that no less than two and no more than 10 authorized representatives shall be entitled to such leave” Ibid., does not purport to modify the prior language. The initial part of the provision clearly limits the number of authorized representatives to ten percent (10%) of the police force. Instead, the subsequent language sets a minimum and maximum number for attendance, and thereby establishing parameters for the ten percent (10%). For example, if a police benevolent association had only nineteen (19) members, they would still be permitted to send two (2) representatives to the convention, even though that is more than ten percent of the force.

Conversely, an organization with one hundred and twenty (120) members would only be permitted send ten (10) officers to the convention, although that is less than ten percent of the force.

Applying the PBA's reading of the statute would produce results that are inconsistent with the statute. According to the PBA, ten percent (10%) of the force may be allowed to go per day, so long as no more than ten (10) officers go in total. While that figure may be more feasible for a town like Rutherford, application of that same logic would produce odd results for smaller police forces. For example, if a police force had twenty (20) police officers, according to the Rutherford PBA, that police force could nominate two (2) officers per day, but still allow for a total of (10) officers attend. Under that scenario, the municipality would be forced to allow *half* (50%) of its police force to attend, even though the only specified percentage in the statute is ten percent (10%).

In addition to these mathematical concerns, the Court must look at the statute as a whole. Neeld, supra, 52 N.J. Super. at 68. Here, the statute also requires municipalities to provide for "reasonable time" for travel. In this dispute the state convention was in Atlantic City, NJ, however, the statute applies to both state and national conventions. It is entirely possible that a national convention could be held in Hawaii. In that scenario the PBA's interpretation becomes further detached from the statutory language and underlying intent. In fact "reasonable time" would cease to become *reasonable* if a municipality was forced to allow the local PBA to officers on a per day basis to conventions that could literally be anywhere in the United States.

Finally, the PBA's interpretation ultimately fails based upon its conclusory assertion of "per day" being contemplated within the language. A clear reading of the statute demonstrates just the opposite is true. The statute makes only one reference to time: "Leave of absence **shall** be for a period **inclusive of the duration** of the convention" N.J.S.A. 40A:14-177 (emphasis added). Therefore, the only indication as to time, is that the governmental employer is obligated

to provide authorized officers with a period of leave inclusive of the *entire* duration of the convention. This unambiguous reading eliminates any basis for implying a “per day” reading of the statute.

IV. CONCLUSION

For these reasons, the Court enters final judgment in favor of the Borough, dismissing the complaint with prejudice. An Order accompanies this decision.