

I.R. No. 85-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LYNDHURST,

Petitioner,

-and-

Docket No. SN-84-47

LYNDHURST PBA LOCAL NO. 202,

Respondent.

SYNOPSIS

A Commission designee restrains arbitration in the context of a Petition for Scope of Negotiations Determination where the issue was whether an Interest Arbitrator exceeded his authority by granting medical benefits to retirees, the employer being a participant in the State Health Benefits Program. The designee found that the case was governed by County of Middlesex v. PBA Local 152, Docket No. A-3564-78 (App. Div. 1980).

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Appearances:

For the Petitioner
George Savino, Esq.

For the Respondent
Loccke & Correia, Esqs.
(Lawrence Henderson, Esq.)

INTERLOCUTORY DECISION AND ORDER

Factual Background

Following an impasse in negotiations for a two-year contract for 1981 and 1982, the Respondent initiated interest arbitration, which resulted in an arbitration award on July 27, 1981. The Interest Arbitrator adopted the economic demands of the Respondent, one of which required the Petitioner to provide medical coverage for all police retirees.

In attempting to implement the Arbitrator's award providing for medical coverage for police retirees, the Petitioner learned from the Department of Treasury, Division of Pensions, that no implementation could be made unless it covered all retirees of the Petitioner. This was brought to the attention of the Respondent and on June 14, 1982 the Petitioner filed a Petition for Scope of Negotiations Determination with the Commission (Docket No. SN-82-123). The Scope Petition challenged the authority of the Arbitrator to render an award with respect to medical benefits for retirees in the light of N.J.S.A. 34:13A-18, which provides in part as follows:

"The arbitrator shall not... in the case of a participating public employer issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program..."

The Petitioner, at the time of the arbitration award, supra, and all times material hereto, has been a participant in the New Jersey State Health Benefits Program.

After the filing of the Scope Petition, supra, the Respondent filed an Unfair Practice Charge on June 28, 1982 (Docket No. CO-82-312), which alleged, inter alia, that the Petitioner had violated N.J.S.A. 34:13A-5.4(a)(6) by refusing to reduce to writing the provisions in the arbitration award. As a result, the parties agreed to execute an agreement, which included the retirement benefits question, and provided that the parties would be bound by the outcome of the Scope Petition determination. This was done on September 1, 1982. Thereafter, the Respondent withdrew the Unfair Practice Charge on May 9, 1983. On October 6, 1983, as a result of inactivity in the matter of the Scope Petition, the case was closed.

On December 28, 1983 the Respondent filed a grievance resurrecting the issue of implementation of the Arbitrators' award, supra. On January 19, 1984 the Respondent requested a panel of arbitrators from the Commission and on January 20, 1984 the Petitioner filed a second Scope Petition (Docket No. SN-84-47), which is presently pending before the Commission. An arbitrator has been appointed and a hearing set for July 6, 1984.

The Petitioner filed an Order To Show Cause to restrain the arbitration on the ground that the subject matter is non-negotiable and non-arbitrable. Hearing Examiner Edmund G. Gerber executed the Order To Show Cause on June 27, 1984, returnable July 3, 1984. Counsel for the parties appeared before the undersigned on July 3, 1984 and argued orally on their written submissions. A decision was deferred and the record closed on that date. After considering the arguments of counsel for each party, the undersigned, who has been authorized by the Commission to hear applications for interim relief, HEREBY ORDERS that the arbitration

scheduled for July 6, 1984 be restrained pending the disposition by the Commission of the Petition for Scope of Negotiations Determination herein.

DISCUSSION

This application is governed by the Appellate Division decision in County of Middlesex v. PBA Local 152, Docket No. A-3564-78, decided June 19, 1980. In that case the Appellate Division reviewed the Commission's decision in P.E.R.C. No. 79-80, 5 NJPER 194 (1979) where the Commission had, inter alia, found mandatorily negotiable benefits for retired employees. However, in appearing before the Appellate Division, the Commission modified its position. The Court noted that the Commission had properly conceded that it had erred to the extent that its decision indicated that a medical benefits retirement coverage proposal may be submitted to interest arbitration since the County was a participating employer in the State Health Benefits Program. An arbitrator was thus prohibited from making any award regarding the rights, duties, and obligations associated with the Program (N.J.S.A. 34:13A-18, supra). The Court noted that any benefit accorded to a particular employee or group of employees must under State Health Benefits Program be accorded to all employees of the employer like situated. The Court then cited New Jersey PBA v. New Jersey Health Benefits Commission, 153 N.J. Super. 152 (App. Div. 1977) where it was held that a participating employer in the Program which provides a benefit thereunder to a particular employee or group of employees must provide the same benefit to all employees of the public employer. Finally, the Court noted that an interest arbitration award would directly affect the benefits of employee groups who are not participants in the arbitration hearings, or who are not eligible for binding interest arbitration, which is limited to units of police and fire employees.

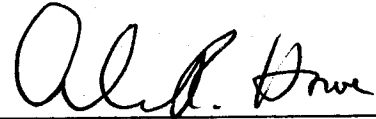
In so concluding that the arbitration must be restrained herein, the Hearing Examiner has considered the several decisions cited by the Respondent, in particular, Mountain Lakes PBA Local 310 v. Borough of Mountain Lakes, Chan. Div., Docket No. C-3482-83-E (1983) where, but for the fact that the employer in that case was not a

participant in the State Health Benefits Program, the instant result might have been otherwise. The Hearing Examiner finds that case distinguishable by virtue of the absence of participation in the State Health Benefits Program by the employer. The other decisions cited by the Respondent are noted but are also distinguishable.

ORDER

It is HEREBY ORDERED that the arbitration hearing scheduled for July 6, 1984 be and same is hereby restrained pending the disposition of the Petition of Scope of Negotiations Determination by the Commission.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Alan R. Howe
Hearing Examiner

Dated: July 6, 1984
Newark, New Jersey