

P.E.R.C. NO. 83-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and-

Docket Nos. CO-81-366-55
SN-82-4

KEARNY COUNCIL NO. 11,
N.J.C.S.A.,

Charging Party.

SYNOPSIS

In a consolidated scope of negotiations and unfair practice charge proceeding, the Public Employment Relations Commission holds that the Town of Kearny did not violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq, when it made a non-arbitrable decision to obey a directive of the Health Benefits Bureau of the State Division of Pensions ordering it to terminate health insurance benefits for retired employees who had not worked in a governmental position for at least 25 years.

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Charging Party.

Appearances:

For the Respondent, Cifelli & Davie, Esqs.
(Kenneth P. Davie, of Counsel)

For the Charging Party, Fox & Fox, Esqs.
(Richard H. Greenstein, of Counsel)

DECISION AND ORDER

On June 3, 1981, Kearny Council No. 11, N.J.C.S.A. ("Council No. 11"), filed an unfair practice charge against the Town of Kearny ("Town") with the Public Employment Relations Commission. The charge alleged that the Town violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (the "Act"), specifically subsections 5.4(a)(1), (5), (6), and (7),^{1/} when it unilaterally discontinued providing health insurance for

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; and (7) Violating any of the rules and regulations established by the commission."

employees who retired after less than 25 years of service and when it unilaterally required certain employees to perform duties -- the issuance of summonses -- previously performed solely by Street Sweeper Violations Officers.

On July 27, 1981, the Town filed a Scope of Negotiations Petition. The Town asserted that its decisions to discontinue health insurance coverage for retired employees with less than 25 years service and to assign certain employees to issue summonses were outside the scope of mandatory negotiations because: (1) the Assistant Chief of the Health Benefits Bureau had informed the Town Treasurer that providing health insurance for retired employees with less than 25 years of service violated the State Health Benefits Act, N.J.S.A. 52:14-17.38, and (2) the Town had a managerial prerogative to make the personnel assignments it did.

On November 23, 1981, the Director of Unfair Practices issued a Complaint and Notice of Hearing. The Town filed an Answer and a Cross-Motion to Dismiss in which it contended that the Complaint should be dismissed because of the pending scope and grievance arbitration proceedings.

On January 13, 1982, the Commission consolidated the scope petition and the Complaint for hearing. On April 5, 1982, Commission Hearing Examiner Alan R. Howe conducted this hearing, and the parties examined witnesses, presented evidence, and argued orally. Both parties filed post-hearing briefs.

On May 11, 1982, the Hearing Examiner issued his report H.E. No. 82-51, 8 NJPER ____ (¶ _____ 1982) (copy attached). The

Hearing Examiner concluded that the Town violated subsections 5.4(a)(1) and (5) when it unilaterally discontinued providing health insurance benefits for retired employees in contravention of the parties' collective agreement, but did not violate these subsections when it exercised its contractual and managerial right to assign employees to issue summonses. He also recommended the dismissal of the subsection 5.4(a)(6) and (7) allegations.

On May 21, 1982, the Town filed Exceptions. It reasserted its contention that the State Health Benefits Act, specifically N.J.S.A. 52:14-17.38, as enforced by the Health Benefits Bureau of the State Division of Pensions, required the Town either to terminate the health benefits in question or face expulsion from the State Health Benefits Program. The Town also urged that this Commission withhold its ruling on the Complaint until it decides the Town's scope of negotiations petition ^{2/} and requested oral argument.^{3/}

On May 24, 1982, Council No. 11 filed Exceptions. It urged a clarification of the recommended remedy of the Hearing Examiner on the health benefits issue and a reversal of the Hearing Examiner's conclusion that the Town did not violate the

^{2/} We decline to do so. The Commission initially consolidated the scope petition and the Complaint for hearing. The parties then litigated and briefed, and the Hearing Examiner treated, both the scope and the unfair practice issues. We shall continue to treat these inextricably interrelated issues together.

^{3/} The parties have thoroughly briefed all the issues and the record is complete. Accordingly, we deny the Town's request for oral argument.

Act when it required certain employees to issue summonses.

We have reviewed the record. The Hearing Examiner's findings of fact are supported by substantial evidence. We adopt and incorporate them.

We agree with the Hearing Examiner that the Town did not violate subsections 5.4(a)(1) and (5) of the Act when it assigned employees to perform duties previously performed by Street Sweeper Violations Officers. Council No. 11 has failed to prove, by a preponderance of the evidence, that these assignments violated the collective agreement. To the contrary, the management rights clause provides:

The right to manage the affairs of the Town and to direct the working forces and operations of the Town...is vested in and retained by the employer, exclusively.

Further, as the Hearing Examiner found, there has been no increase in the hours worked per week. We also believe, absent any evidence of discrimination, retaliation, or an unduly burdensome effect on the employees' working conditions, that the Town has acted within its managerial prerogative to deploy its work force in order to achieve its policy goals. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); In re Laurel Springs Bd. of Ed., P.E.R.C. No. 78-4, 3 NJPER 228 (1977); In re City of Elizabeth, P.E.R.C. No. 79-93, 5 NJPER 231 (10129 1979). Accordingly, we dismiss the portion of the Complaint concerning the requirement that employees issue summonses and restrain binding arbitration on that issue.

We now consider the Town's discontinuance of payment of health benefits for employees who retired with less than 25 years of service. We hold that the Town had no choice under the State Health Benefits Act. We accordingly dismiss the Complaint and restrain binding arbitration on this issue.

The facts on the health benefits issue are undisputed. Article XIV, Section 2 of the collective agreement provides, in part, that the Town "agrees to provide, at no cost, to all retired employees who have been, prior to retirement, employees covered by this Agreement, full Blue Cross and Blue Shield coverage provided regular employees, (with upgraded Blue Cross/Blue Shield coverage effective January 1, 1980 as set forth in Section 1) including Rider J benefits and major medical insurance for a period of five (5) years after retirement provided, however, that during such five (5) year period the retired employee is not otherwise covered for such insurance by another employer or is not covered by Medicare." Arbitration awards issued on January 29, 1977 and October 7, 1980 held that the Town was contractually obligated under this clause, despite the State Health Benefits Act, to obtain health insurance for retired employees with less than 25 years service.

On December 29, 1980, the Assistant Chief of the Health Benefits Bureau wrote a letter to the Town Treasurer which stated that he had heard that the Town was paying the cost of health insurance coverage for all retired employees, rather

than only employees who had 25 years of service. He stated that such payment would be illegal and requested the Town to verify that it was not making such payment. The Town Treasurer responded with a letter asking for the statutory basis for the belief that such payment would be illegal. On January 19, 1981, the Assistant Chief of the Health Benefits Bureau wrote the Town Treasurer another letter stating that N.J.S.A. 52:14-17.38 prohibited an employer from obtaining health insurance coverage for employees with less than 25 years of credited service in a State or local retirement system. He again requested verification that the Town did not make such payments or would stop doing so immediately. On February 3, 1981, the Assistant Chief once more asked for immediate verification and informed the Town Treasurer that the Health Benefits Commission would consider the matter at its next meeting.

On February 11, 1981, the Town passed a resolution terminating health insurance benefits for retired employees with less than 25 years of service.

N.J.S.A. 52:14-17.38 provides, in part:

The employer, other than the State, may pay the premium or periodic charges for the benefits provided to a retired employee and his dependents covered under the program, but not including survivors, if such employee retired from a State or locally-administered retirement system on a benefit based on 25 years or more of service credited in such retirement system....

The Health Benefits Bureau of the Division of Pensions has interpreted this statute to require the Town, if it wishes to

remain in the State Health Benefits Program, to terminate the health insurance coverage it had previously afforded retired employees with less than 25 years of service. We accept this interpretation of the agency charged with enforcing the statute in dispute. County of Middlesex v. PBA Local 152, App. Div. Docket No. A-3514-78 (June 19, 1980) (a participating employer must furnish any Blue Cross/Blue Shield benefits to retirees in accordance with the rules applicable to the State Health Benefits Program).

We see no indication in the record that the parties would have intended the Town to drop out of the State Health Benefits Program in order to continue to provide this particular benefit. Compare, South Orange-Maplewood Bd. of Ed. and So. Orange-Maplewood Ed. Ass'n, I.R. No. 82-6, 8 NJPER 272 (¶ _____ 1982) (employer may unilaterally withdraw from State Health Benefits Program provided there is no decrease in benefits afforded employees). The previous arbitration awards on the health benefits plan seemingly assume that the Town could remain in the program while providing the benefit;^{4/} Council No. 11's arguments assume the same. In fact, because of the letters from

^{4/} A provision of our Act, N.J.S.A. 34:13A-18, prohibits an interest arbitrator from issuing any finding, opinion or order regarding the issue of whether a public employer shall remain as a participant in the New Jersey State Health Benefits Program or the rights, duties, obligations in or associated with that program. Assuming a grievance arbitrator could do what an interest arbitrator could not, it would nevertheless be a draconian remedy for a grievance arbitrator, in order to preserve a limited contractual benefit for a few employees, to order a public employer to leave the State Health Benefits Program and secure alternative health insurance for all its public employees. Compare, New Jersey Policeman's Benevolent Association v. N.J. State Health Benefits Comm., 153 N.J. Super. 152 (App. Div. 1977) (public employer must award same health insurance benefits to all its employees).

the Health Benefits Bureau, we now know the Town cannot do both. Thus, we are not persuaded that Council No. 11 has proved, by a preponderance of the evidence, that the Town violated its collective agreement when, in order to remain in the State Health Benefits Program, it obeyed the directive of the Health Benefits Bureau and terminated the health insurance benefits in question. We also hold, given the absence of any indication that the parties contemplated the Town's withdrawal from the State Health Benefits Program, that N.J.S.A. 52:14-17.38 specifically preempts binding arbitration over the Town's decision to obey that directive.^{5/}

Finally, we agree with the Hearing Examiner that there is no basis for finding a violation of subsections 5.4(a)(6) and (7).

^{5/} Our independent research discloses another statute -- N.J.S.A. 40A:10-23 -- which appears to restrict an employer's ability to pay for insurance for retired employees. That section provides, in part:

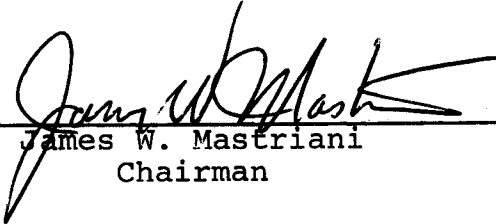
The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired after 25 years or more service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.
(Emphasis supplied)

It may be that there is no statutory authority to pay insurance premiums for employees with less than 25 years service, regardless of whether the employer is in the State Health Benefits Program.

ORDER

We dismiss the Complaint and restrain binding arbitration of the grievances described above.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Newbaker voted for this decision. Commissioners Hipp and Graves voted against this decision. Commissioners Hartnett and Suskin were not present.

DATED: Trenton, New Jersey
July 20, 1982
ISSUED: July 21, 1982

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KEARNY COUNCIL NO. 11, N.J.C.S.A.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent Town violated Subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally without negotiations with the Charging Party discontinued full health insurance benefits for certain retired employees as provided for in the 1979 collective negotiations agreement between the parties. The Hearing Examiner rejected the Town's argument that such negotiations would be illegal since the Charging Party was seeking to negotiate for retired employees. The fact was that the agreement contemplated only negotiations for coverage of present employees under the agreement who thereafter retired and who were to have health insurance benefits coverage for five years thereafter.

The Hearing Examiner further recommends that the Commission find that the Respondent Town did not violate the same provisions of the Act when, commencing in May 1981, it unilaterally and without negotiations with the Charging Party assigned employees in certain job classifications in the Department of Public Works to perform the duties of Sweeper Violation Enforcement Officers. This was purely a managerial prerogative of the employer to direct the work force.

By way of remedy, the Hearing Examiner ordered the Town to reimburse the affected retired employees in the amount of premiums paid by the Town since the discontinuing of health insurance benefits as of February 11, 1981 with interest at the rate of 12% per annum.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

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Appearances:

For the Town of Kearny
Cifelli & Davie, Esqs.
(Kenneth P. Davie, Esq.)

For the Charging Party
Fox & Fox, Esqs.
(Richard H. Greenstein, Esq.)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on June 3, 1981 by Kearny Council No. 11, N.J.C.S.A. (hereinafter the "Charging Party" or the "Council") alleging that the Town of Kearny (hereinafter the "Respondent" or the "Town") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that, notwithstanding two arbitration awards that have sustained the validity of the requirement in the collective negotiations agreement between the parties that health benefits be provided to all retired employees for a period of five years after retirement, the Respondent on February 11, 1981 adopted a resolution without negotiations with the Charging Party, which unilaterally discontinued providing such health insurance for retired employees with less than 25 years of service; and, further on May 13, 1981 the Respondent unilaterally, and without negotiations with the Charging Party required certain employees represented by the Charging Party to perform duties outside of

their job classifications, namely, performing the duties of "Violations Officers," which entailed the issuance of summonses for street sweeping violations; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1), (5), (6) and (7) of the Act.^{1/}

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 23, 1981. Pursuant to the Complaint and Notice of Hearing, hearings were scheduled for January 19 and 20, 1982 in Newark, New Jersey. However, on January 13, 1982 the Commission consolidated a Petition for Scope of Negotiations Determination, involving the identical issues, with the instant Unfair Practice Charge, and as a result, the initial hearing dates were cancelled. The first mutually available date thereafter, following several interim adjournments, was April 5, 1982. A hearing was held on that date in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, and present relevant evidence and argue orally. Oral argument was waived and the parties filed post-hearing briefs by May 4, 1982.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

^{1/} These Subsections prohibit public employers, their representatives or agents from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative.

"(6) Refusing to reduce a negotiated agreement to writing and to sign such agreement.

"(7) Violating any of the rules and regulations established by the commission."

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Town of Kearny is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. Kearny Council No. 11, N.J.C.S.A. is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.
3. The applicable collective negotiations agreement between the parties was effective during the calendar year 1979 (J-1). Article XIV, Health Benefits and Insurance, provides in Section 2 that the Town agrees to provide, at no cost to all retired employees formerly covered by the agreement, full insurance coverage as set forth therein for a period of five years after retirement, provided that the retired employee is not otherwise covered for such insurance or is not covered by Medicare (J-1, p. 18).
4. The Respondent, acting on advice from the Division of Pensions of the State Department of Treasury, adopted a Resolution on February 11, 1981 directing its attorney to advise the State Division of Pensions that the practice of paying health benefits for employees with less than 25 years of credited service has been discontinued (J-2). As a result thereof certain retired employees with less than 25 years of credited service had their health insurance benefits discontinued, notwithstanding the provision of Article XIV, Section 2 of the collective negotiations agreement, ^{2/} supra.
5. On January 29, 1977 Arbitrator Paul G. Kell held that the Respondent violated the 1974-75 collective negotiations agreement with respect to health benefits for retired employees by having unilaterally discontinued same and ordered

^{2/} The first paragraph of the Unfair Practice Charge alleges a violation of the Act by the Respondent in adopting the Resolution of February 11, 1981, supra.

the Respondent to reimburse the retired employees involved in the amount of premiums paid by the Respondent to purchase certain enumerated health insurance coverage, provided that said retired employees were not otherwise covered for such insurance or were not covered by Medicare (CP-1).

6. On October 7, 1980 Arbitrator John J. Pearce, Jr. rendered an award, which followed the Kell award, supra, holding that retired employees should be reimbursed in the amount of premiums paid by the Respondent for the purchase of the insurance coverage specified in the collective negotiations agreement (CP-2).

7. When the Respondent terminated health insurance benefits for retired employees with less than 25 years of service on February 11, 1981 this was done without negotiations with the Charging Party.

8. On May 13, 1981 the Respondent adopted a Resolution extending the authority to issue summonses for street sweeping violations to the following employees under the supervision of the Superintendent of Public Works: Raymond Duger, James McAleavy, Carmine Nigro, Thomas Russo, Frank Kane, James Mossey and Harold McCann (J-3A). On May 27, 1981 the Respondent adopted a like Resolution involving additional employees: Edward Hedden, John Callaghan, Robert Magee and Hugh Forfar (J-3B).

9. The job descriptions for the foregoing employees were introduced in evidence as follows: Laborer (J-4); Truck Driver (J-5); Pumping Station Repairer (J-6); Equipment Operator (J-7); Heavy Equipment Operator (J-8); Assistant Public Works Foreman (J-9); and Public Works Foreman (J-10).

10. The job description for Sweeper Violations Enforcement Officer was enacted by ordinance dated May 22, 1974 (J-11). There was also introduced in evidence the subsequent job description for this position (J-12).

11. The aforementioned Public Works employees were assigned the duties of Sweeper Violations Enforcement Officers commencing in May 1981. There was no change in the hours worked per week for the affected employees not was there any change in salary.

12. The affected employees perform Sweeper Violations duties Monday through Thursday, 8:00 a.m. to 4:00 p.m. with 1 hour for lunch; on Friday the said employees do their regular Public Works assignments in accordance with their job descriptions, supra.

13. The affected employees drive Town-owned vehicles in performing Sweeper Violations duties.

14. If weather conditions prevent the sweeper equipment from being utilized, the affected employees performed their regular work in accordance with their job descriptions, supra.

15. Of the affected employees doing Sweeper Violations work, three employees perform the duties most of the time (two laborers and one truck driver) with the other affected job classifications doing Sweeper Violations work as needed.

16. The foregoing assignment of Public Works employees to perform the job duties of Sweeper Violations Enforcement Officers was made unilaterally and without negotiations with the Charging Party.

17. Prior to May 1981 three female employees performed the duties of Sweeper Violations Enforcement Officers. However, these three employees were laid off for economy reasons on an unspecified date in 1981 but prior to May 1981.

THE ISSUES

1. Did the Respondent Town violate Subsections(a)(1) and (5) of the Act by unilaterally, and without negotiations with the Charging Party, discontinuing the health insurance benefits of retired employees with less than 25 years of credited service, notwithstanding the provisions of Article XIV, Section 2, of the 1979 collective negotiations agreement?^{3/}

2. Did the Respondent Town violate Subsections(a)(1) and (5) of the Act when it unilaterally, and without negotiations with the Charging Party, assigned employees in certain job classifications in the Department of Public Works to perform the duties of Sweeper Violations Enforcement Officers in May 1981?

DISCUSSION AND ANALYSIS

The Respondent Town Violated Subsections(a)(1) And (5) Of The Act By Unilaterally, And Without Negotiations With The Charging Party, Discontinuing The Health Insurance Benefits Of Retired Employees With Less Than 25 Years Of Credited Service, Notwithstanding The Provisions Of Article XIV, Section 2, Of The 1979 Collective Negotiations Agreement

The Hearing Examiner finds and concludes that the Respondent Town did violate the Act by unilaterally discontinuing the health insurance benefits of retired employees with less than 25 years of credited service, notwithstanding the provisions of Article XIV, Section 2, of the 1979 collective negotiations agreement, without negotiations with the Charging Party.

Article XIV, Section 2, of the 1979 collective negotiations agreement provides, in pertinent part, that the Town "...further agrees to provide, at no cost, to all retired employees who have been, prior to retirement, employees covered by this Agreement..." (emphasis supplied) full health insurance benefits for a period

^{3/} There was no evidence adduced which would constitute a violation of Subsections(a)(6) and (7) of the Act and, accordingly, the Hearing Examiner will recommend dismissal as to these allegations in the Unfair Practice Charge.

of five years after retirement, provided that the employee is not otherwise covered by such insurance or covered by Medicare.

The Town argues that the Charging Party has sought to negotiate for "all" retired employees, which is clearly precluded by the Commission's decisions in Township of Ocean, P.E.R.C. No. 81-136, 7 NJPER 338 (1981) and County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (1979). These decisions, however, clearly pertain to efforts by public employee representatives to negotiate for all retired employees with no limitation whatsoever. Plainly, a public employee representative cannot negotiate for benefits for employees who have already retired: Ocean and Middlesex, supra.

However, the instant case does not involve an effort to negotiate for all retired employees, including employees who have previously retired. Article XIV, Section 2, supra, makes clear that the Charging Party has negotiated only for present employees "...covered by this Agreement..." who are to receive full health insurance benefits for a period of five years after retirement. There is no requirement in the agreement that such employees have to have had 25 years of credited service in order to qualify. The Respondent did not offer in evidence, nor does its brief contain, any statute or regulation which "sets" such a qualification within the meaning of State v. State Supervisory Employees Association, 78 N.J. 54, 81, 82 (1978).

As the Commission said in Borough of Bradley Beach, P.E.R.C. No. 81-21, 6 NJPER 429 (1980):

"...Nothing in the State Health Benefits Program Act indicates that such negotiations are beyond the authority of the public employer. However, the case cited by the Borough as precluding negotiations in this area, New Jersey Policemen's Benevolent Assn. v. New Jersey Health Benefits Commission, supra, does indicate that, if such benefits are accorded to future retirees of the Police Department, then these same benefits must be extended to all eligible employees... The apposite administration regulation ...which is binding on the member employer, requires such benefits to be extended to present and future pensioners of the employer. Thus, the employer who is a member is obligated to provide equal benefits to all employees under the State Health Benefits Program Act, but this requirement is not inconsistent with mandatory negotiations."

"Our holding that an employee organization such as the P.B.A. can negotiate such benefit only for present employees does not mean that the member employer cannot extend such benefits to all eligible employees..." (6 NJPER at 430).

The Hearing Examiner notes, but does not attach great significance, to the fact that two arbitrators have sustained grievances involving the discontinuance of the provision for full health insurance benefits for retired employees up to five years after retirement under prior agreements. Thus, the decision of the Hearing Examiner herein is merely consistent with the decisions of two prior arbitrators in construing the same contract language.

The Charging Party having carried its burden of proof that the Respondent Town violated Subsections(a)(1) and (5) of the Act, the Hearing Examiner will recommend an appropriate remedy hereinafter.

The Respondent Town Did Not Violate Subsections(a)(1) And (5) Of The Act When It Unilaterally, And Without Negotiations With The Charging Party, Assigned Employees In Certain Job Classifications In The Department Of Public Works To Perform The Duties Of Sweeper Violations Enforcement Officers In May 1981

The Hearing Examiner finds and concludes that the Respondent Town did not violate Subsections(a)(1) and (5) of the Act when it unilaterally, and without negotiations with the Charging Party, assigned employees in certain job classifications in the Department of Public Works to perform the duties of Sweeper Violations Enforcement Officers commencing in May 1981.

It is first noted that neither the hours of work nor the compensation for the affected employees in the Department of Public Work was altered. No employee's hours were increased nor was any employee's compensation reduced. Further, the 1979 collective negotiations agreement provides in Article XXIV, the management rights clause, that "...the right to manage the affairs of the Town and to direct the working forces and operations of the Town... is vested in and retained by

the Employer, exclusively." (J-1, p. 30).

The right of a public employer to transfer and reassign its employees is clear under the New Jersey Supreme Court's decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) and the Commission's decision in Deptford Twp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (1980).

The only limitation on the employer's right to transfer and reassign employees is that it may not be done for discriminatory or retaliatory reasons: City of Elizabeth, P.E.R.C. No. 79-93, 5 NJPER 231 (1979). There is no allegation of discrimination or retaliatory action involved herein.

Accordingly, the Town having the inherent managerial prerogative to direct and assign or reassign the work force, the Hearing Examiner must recommend dismissal of this aspect of the Unfair Practice Charge.

* * * *

Upon the foregoing, and upon the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Respondent Town violated N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally, and without negotiations with the Charging Party, discontinued full health insurance benefits for certain retired employees as provided for in Article XIV, Section 2, of the 1979 collective negotiations agreement.

2. The Respondent Town did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when, commencing in May 1981, it unilaterally, and without negotiations with the Charging Party, assigned employees in certain job classifications in the Department of Public Works to perform the duties of Sweeper Violations Enforcement Officers.

3. The Respondent Town did not violate N.J.S.A. 34:13A-5.4(a)(6) and (7) by its conduct herein.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Town cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally discontinuing the health insurance benefits coverage for certain retired employees without negotiations with the Charging Party.

2. Refusing to negotiate upon demand in good faith with the Charging Party regarding employees in the contract unit, particularly, by unilaterally discontinuing health insurance benefits for certain retired employees as provided for in the collective negotiations agreement between the parties.

B. That the Respondent Town take the following affirmative action:

1. Forthwith make payment to the retired employees whose health insurance benefits were discontinued as of February 11, 1981 in the amount of the premiums paid by the Respondent Town to purchase Blue Cross and Blue Shield, Rider "J," and Major Medical coverage, except that no payment is required for employees who were otherwise covered by other insurance or were covered by Medicare, together with interest at the rate of 12% per annum from February 11, 1981.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for a least sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Town to assure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent Town has taken to comply herewith.

C. That the allegations in the complaint that the Respondent Town violated N.J.S.A. 34:13A-5.4(a)(6) and (7) be dismissed in their entirety.



Alan R. Howe
Hearing Examiner

Dated: May 11, 1982
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally discontinuing the health insurance benefits coverage for certain retired employees without negotiations with the Charging Party.

WE WILL NOT refuse to negotiate upon demand in good faith with the Charging Party regarding employees in the contract unit, particularly, by unilaterally discontinuing health insurance benefits for certain retired employees as provided for in the collective negotiations agreement between the parties.

WE WILL forthwith make payment to the retired employees whose health insurance benefits were discontinued as of February 11, 1981 in the amount of the premiums paid by the Respondent Town to purchase Blue Cross and Blue Shield, Rider "J," and Major Medical coverage, except that no payment is required for employees who were otherwise covered by other insurance or were covered by Medicare, together with interest at the rate of 12% per annum from February 11, 1981.

TOWN OF KEARNY

(Public Employer)

Dated _____

By _____ (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with
Chairman, Public Employment Relations Commission,
P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780