

P.E.R.C. NO. 91-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RIVER EDGE,

Petitioner-Respondent,

-and-

PBA LOCAL 201,

Respondent-Petitioner.

Docket Nos. SN-90-84
ID-90-15
ID-90-17

SYNOPSIS

The Public Employment Relations Commission determines that these contract proposals in dispute between PBA Local 201 and the Borough of River Edge are economic for purposes of interest arbitration: (1) a proposal concerning dropping off and picking up of officers to and from work; proposals concerning days off and how leave time is to be charged for such days, and a proposal concerning full pay for work incurred injuries. The Commission finds that a proposal concerning reporting injuries is not economic. The Commission also finds that a proposal for medical coverage for retirees is barred from submission to interest arbitration by N.J.S.A. 34:13A-18 and a proposal providing for arbitration of disciplinary disputes is not mandatorily negotiable since the employees have an alternate statutory appeal procedure for discharges, suspensions and fines.

P.E.R.C. NO. 91-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RIVER EDGE,

Petitioner-Respondent,

-and-

PBA LOCAL 201,

Respondent-Petitioner.

Docket Nos. SN-90-84
ID-90-15
ID-90-17

Appearances:

For the Borough, Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel)

For PBA Local 201, Alfred G. Osterweil, attorney
(Craig Kozan, of counsel)

DECISION AND ORDER

On May 29 and June 13, 1990, the Borough of River Edge and PBA Local 201 filed issue definition petitions disputing the other's classification of negotiations proposals as either economic or non-economic. On June 21, 1990, the Borough filed a scope of negotiations petition seeking a determination that two PBA contract proposals are not mandatorily negotiable.

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

The PBA is the majority representative of the Borough's patrol officers, sergeants and lieutenants. The parties' collective negotiations agreement expired on December 31, 1989. They are engaged in interest arbitration proceedings.

ID 90-15

N.J.S.A. 34:13A-16f(2) defines an economic issue for purposes of interest arbitration:

Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

The PBA asserts that these two Borough proposals are economic:

ARTICLE 11
Management Rights

5. No officer shall be picked up or dropped off to or from work by any Borough vehicle.

ARTICLE 34
Work-Incurred Injury

A. Employees who are injured, whether slightly or severely, while working, must make an immediate report within eight (8) hours thereof to the Chief of Police.

The PBA claims that for at least 20 years, officers about to come on duty were picked up at their homes by police cars driven by officers about to end their shift. The incoming officers would then drop the outgoing officers at their homes and begin their shift. The PBA asserts that the proposal would require officers to incur the expense of getting to and from work and thus directly affects employee income. The PBA asserts that the work incurred injury proposal is economic because failure to abide by the reporting requirement might result in the employer attempting to deny worker's compensation benefits to the employee.

The Borough asserts that the current "drop-off, pick-up" practice has only an indirect effect on employee income. It asserts that the reporting requirement is not economic by analogy to Saddle Brook Tp., P.E.R.C. No. 78-73, 4 NJPER 195, 197 (¶4098 1978), which held not economic a proposal that unsafe equipment be reported and repaired.

We find that the proposal concerning the dropping off and picking up of employees is economic. In Morris Cty., P.E.R.C. No. 83-31, 8 NJPER 561 (¶13259 1982), aff'd App. Div. Dkt. No. A-795-82T2 (1/12/84), certif. den. 97 N.J. 672 (1984), we held that when employees lost the use of County vehicles for commuting purposes, they suffered an economic loss about which the employer was required to negotiate. Thus we find that granting the employer's proposal would directly affect an economic benefit. We find, however, that the reporting requirement proposal is non-economic as it is not directly linked to worker's compensation benefits.

ID 90-17

The Borough asserts that these proposals are economic:

2. The term "day" or "working day" with respect to sick days, vacation days, bereavement leave and all other types of time off shall be defined in accordance with a common meaning, i.e. 24 hour period during which the employee is scheduled to work.

3. If an employee takes off work on a day during which he is scheduled to work more than one tour, the employee may not be charged with more than one vacation day, sick day, bereavement day or any other type of day as the case may be.

4. An employee shall receive full pay from the Borough during the entire period for which he is out of work due to work incurred injury.

According to the PBA, proposals 2 and 3 are designed to clarify the distinction between a 24-hour "day" and an 8-hour "tour". The PBA wants to make sure that an officer who is scheduled to work more than one tour in a 24-hour period is not charged more than one sick day if he is ill during that period. It contends that the proposals are not economic because they would not increase the amount of paid leave that an employee will receive, nor alter a rate of compensation. According to the PBA, proposal 4 merely would incorporate into the contract an existing practice.

The Borough argues that proposals 2 and 3 define "hours in relation to earnings" and are economic. The Borough argues that since proposal 4 involves an economic benefit, it must be labeled economic.

The PBA has linked proposals 2 and 3. Taken together, they are a way of measuring how economic benefits are to be used and are economic. Proposal 4 would incorporate into the contract existing practices regarding an economic benefit and is also economic. See Bor. of Manasquan, P.E.R.C. No. 82-128, 8 NJPER 403 (¶13185 1982) (absence of economic benefit does not change essential character of economic item).

SN-90-84

The PBA has proposed that this clause be included in the successor contract:

4. Full family medical coverage, including dental, at the same level of benefits received by active employees, for employees who retire after 25 or more years of service, to be paid in full by the Borough now in State Health Benefits.

N.J.S.A. 34:13A-18 bars submission of this proposal to interest arbitration. See Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd App. Div. Dkt. No. A-3564-78 (6/19/80); Lyndhurst Tp., P.E.R.C. No. 87-9, 12 NJPER 608 (¶17230 1986); Bor. of Bradley Beach, P.E.R.C. No. 81-21, 6 NJPER 429 (¶11216 1980).

The PBA's citation of amendments to the State Health Benefits Act is immaterial: the amendments do not alter this ban.

The PBA has proposed that this language be maintained in the successor contract:

ARTICLE 10
DISCHARGE AND DISCIPLINE

1. A permanent employee covered by this Agreement may be discharged, suspended or otherwise disciplined for just cause according to State Law.
2. Any discharge, suspension or other discipline which results in loss of pay shall be subject to grievance and arbitration as set forth hereinbelow. Letters of reprimand or verbal warning shall be subject to grievance but not arbitration.
3. A grievance by an employee claiming that he has been unfairly discharged or suspended must be submitted to the Council in writing, within fourteen (14) working days of the disciplinary action.
4. Any employee whose grievance has been sustained shall be returned to his former position of pay lost during the period of discharge or suspension.

Only the underlined portion is in dispute. N.J.S.A 34:13-5.3 allows public employers to agree to binding arbitration of disciplinary disputes if the disciplined employee does not have an alternate

statutory appeal procedure for contesting the particular type of discipline imposed. N.J.S.A. 40A:14-147 et seq. provides an alternate statutory appeal procedure for discharges, suspensions and fines. South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986). Section 2 would permit binding arbitration of these types of disputes and is therefore not mandatorily negotiable under section 5.3.

ORDER

A. The Borough's proposal in ID-90-15 to modify Article 11 is economic.


B. The Borough's proposal in ID-90-15 to modify Article 34 is non-economic.

C. PBA proposals 2, 3 and 4 in ID-90-17 are economic.

D. Proposal 4 in SN-90-84 may not be submitted to interest arbitration.

E. Article 10, §2 (first sentence) of the existing agreement is not mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Smith, Bertolino, Wenzler, Johnson and Goetting voted in favor of this decision. None opposed. Commissioner Reid was not present.

DATED: November 26, 1990
Trenton, New Jersey
ISSUED: November 27, 1990