

P.E.R.C. NO. 91-120

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. SN-91-17

MORRIS COUNTY PROSECUTOR'S OFFICE
SUPERIOR OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable a proposal of the Morris County Prosecutor's Office Superior Officers Association that the Morris County Prosecutor pay health insurance premiums for employees retiring without 15 years of service with the employer.

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Appearances:

For the Respondent, Armand D'Agostino, Morris County
Counsel (Daniel W. O'Mullan, Assistant County Counsel, on
the brief)

For the Petitioner, Klausner & Hunter, attorneys (Stephen
B. Hunter, of counsel)

DECISION AND ORDER

On September 19, 1990, the Morris County Prosecutor's
Office Superior Officers Association petitioned for a scope of
negotiations determination. The Association seeks a determination
that the Morris County Prosecutor may agree to pay health insurance
premiums for employees retiring with 15 years of cumulative public
service.

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

The Association represents the employer's officers holding
the civil service ranks of lieutenant of county detectives,
lieutenant of county investigators, sergeant of county detectives
and sergeant of county investigators.

During the 1970s and 1980s, Morris County participated in the State Health Benefits Program ("SHBP"). That program permitted the employer to pay the health benefits premiums for retired employees and their dependents if the employee retired from a State or locally administered retirement system after 25 years or more of service credited in such retirement system. N.J.S.A. 52:14-17.38. In 1974, the County and the Prosecutor agreed to offer that retirement benefit.

The parties' 1986 contract indicates that the parties had negotiated a change from the SHBP to a local plan authorized by N.J.S.A. 40A:10-17. Employers with local plans may continue insurance coverage for retired employees, subject to the requirements of N.J.S.A. 40A:10-23. That section provides:

Retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed to be adequate to cover the benefits, as affected by Medicare, of the retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of the older age classification; provided, however, that the total rate payable by a retired employee for himself and his dependents, for coverage under the contract and for Part B of Medicare, shall not exceed by more than 25% the total amount that would have been required to have been paid by the employee and his employer for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for Medicare benefits.

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired on a disability pension or after 25 years' or more service with the employer, or have retired and reached age of the 62 or older with at least 15 years of 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]

The parties understood that the change in plans would increase benefits to current employees. It is not clear that either party then understood that changing health plans would limit the employer's ability to extend benefits to certain retirees.

At the end of negotiations for a 1989-1991 contract, the parties entered into a sidebar agreement. That sidebar provides, in part:

The Superior Officers Association has demanded that this provision, consistent with previous contract, be written to pay health and hospital benefits coverage for a retiree with 15 years of cummulative [sic] public service. The employer has taken the position that N.J.S.A. 40A:10-23 preempted such a "cummulative [sic] public service" provision and made it non-negotiable.

The parties have arrived at an agreement on all other issues. To resolve the dispute on this issue, the parties have agreed to accept the employer's language...subject to the right of the...Association to reopen the contract on this section...for the purpose of filing a Scope of Negotiations petition.... Specifically, the issue to be tested is whether the employer under N.J.S.A. 40A:10-23 is free to negotiate a "cummulative [sic] public service" provision rather than "with the employer."

The Association then filed this petition.

In Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990), we restrained arbitration of a grievance seeking to enforce a contract provision providing for full medical coverage for an employee who had retired with less than the 15 years service required by N.J.S.A. 40A:10-23. We stated:

We agree with the Township that N.J.S.A. 40A:10-23 expressly, specifically and comprehensively precludes payment of medical insurance premiums for any retiree who does not meet that statute's conditions. Thus, Salvano cannot seek payment of his medical insurance premiums unless he retired on a disability pension, he worked more than 25 years with the employer, or he worked more than 15 years and reached the age of 62 or older. [16 NJPER at 399]

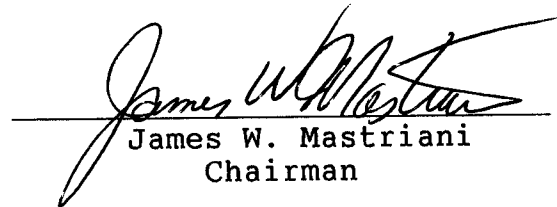
The Association argues that Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987), recognizes an exception to the prior service requirements of N.J.S.A. 40A:14-23. We disagree. In Gauer, the plaintiff had been employed by the Essex County Welfare Board which, pursuant to SHBP statutes, paid health insurance premiums for employees who retired with 25 or more years of service. Essex County later reorganized its form of government and abolished the Welfare Board. Relying on the uniform application requirement of N.J.S.A. 40A:10-23, the County discontinued the payment of premiums for Welfare Board retirees because it did not extend a similar benefit to County retirees. The Court held that the uniform application requirement neither required nor justified terminating benefits afforded to the plaintiff by a predecessor autonomous agency pursuant to state regulations. The Court noted that the plaintiff and similarly situated employees stood on a distinctively different footing from any employees who were thereafter hired or continued to be employed up to the point of retirement under a different compensation/benefit scheme. The Court reasoned that the retired former employees constituted a distinct group so that particularized treatment could be accorded without violating the uniformity standards.

Here, the Association does not seek to have us apply the exception to the uniformity requirement that the Supreme Court carved out in Gauer. It seeks to have us carve out a new exception for employees who do not meet N.J.S.A. 40A:10-23's prior service requirements. We do not have that authority. We must therefore find that under N.J.S.A. 40A:10-23, the proposal to pay health insurance premiums for employees retiring without 15 years of service with the employer is not mandatorily negotiable.

ORDER

The proposal that the employer pay health insurance premiums for employees retiring without 15 years of service with the employer is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: June 20, 1991
Trenton, New Jersey
ISSUED: June 21, 1991