

P.E.R.C. No. 91-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PROSECUTOR OF MIDDLESEX COUNTY,

Respondent,

-and-

Docket No. SN-91-37

MIDDLESEX COUNTY PROSECUTOR'S
SUPERIOR OFFICERS' ASSOCIATION
FOP LODGE 41,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that a terminal leave clause and a clause requiring the employer to seek an opinion from the State Health Benefits Commission about drug prescription and dental plans for retirees are mandatorily negotiable.

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Appearances:

For the Respondent, Department of Personnel & Employee
Relations (Henry H. Orszulski and James J. McDonnell Jr.,
Labor Relations Specialists)

For the Petitioner, S.M. Bosco Associates
(Dr. Simon M. Bosco, on the brief)

DECISION AND ORDER

On December 5, 1990, Middlesex County Prosecutor's Superior Officers' Association FOP Lodge 41 petitioned for a scope of negotiations determination. The FOP seeks a determination that two clauses it has proposed for inclusion in a successor collective negotiations agreement with the Middlesex County Prosecutor are mandatorily negotiable.

The parties filed briefs and documents. These facts appear.

The FOP represents detectives and investigators holding the ranks of sergeant through captain. It filed this petition after a Superior Court Judge declared illegal a terminal leave clause awarded during interest arbitration to detectives and investigators

represented by PBA Local 214. The Judge later reconsidered his ruling and transferred that case to us for a scope of negotiations determination. Middlesex Cty. Prosecutor and Prosecutor's Detectives and Investigators and PBA Local 214, P.E.R.C. No. 91-17 NJPER ____ (¶ ____ 1991), ruled the PBA's terminal leave proposal to be mandatorily negotiable. We accordingly hold that the FOP's identical proposal is also mandatorily negotiable.

The FOP has also made the following proposal during negotiations and interest arbitration proceedings:

The County shall be directed to formally request in writing from the State Health Benefits Plan Commission, permission to permit retired employees to purchase the prescription plan at group rates. Said permission is in accordance with the current Agreement. Proof of said request and a copy of said answer shall be given to the F.O.P.

The reference to the current agreement is to this paragraph of the expired agreement:

Retirees receiving a pension under the Police and Fireman's Retirement System or Public Employees Retirement System will be permitted to carry their Drug Prescription and Dental plans at the prevailing County group rates at their expense.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982) with Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981). Paterson outlines the steps of a scope of negotiations analysis for police and firefighters.

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

The FOP asserts that the proposed clause would simply require the employer to ask the State Health Benefits Commission if the language already contained in the agreement can be lawfully implemented.^{1/} If the State Health Benefits Commission answers no, the FOP states that the existing language would be removed from the agreement. The employer contends that it cannot currently provide the benefit and attaches an opinion letter from the County

^{1/} We assume that the contract language applies to future retirement benefits for those who were actively employed at the time the contract was executed, rather than for persons who were already retired, since only the former group are public employees within the meaning of the New Jersey Employer-Employee Relations Act. See Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pert. pt. App. Div. A-3564-78 (6/19/80).

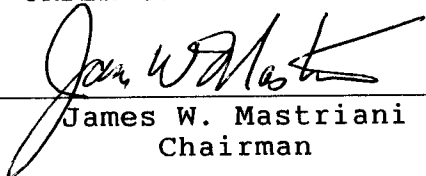
Counsel and a letter from a legislator forwarding a copy of a bill which would allow counties to self-insure for health benefits. There is no indication that the employer has received an opinion from the State Health Benefits Commission.

In Lyndhurst Tp., I.R. No. 85-1, 10 NJPER 455 (¶15205 1984) and P.E.R.C. No. 87-9, 12 NJPER 608 (¶17230 1986), the employer received an opinion from the State Health Benefits Commission that it could not provide a health benefit to a limited class of police retirees as required by a collective negotiations agreement. We thus restrained arbitration of a grievance seeking to enforce that benefit. Here, however, the proposed language only requires the employer to do what Lyndhurst did -- correspond with the State Health Benefits Commission on behalf of active employees who may become retirees. The proposal does not change any existing health benefit and it does not conflict with N.J.S.A. 34:13A-18. Requiring an employer to explore ways of providing a benefit is mandatorily negotiable.

ORDER

The "terminal leave" clause and the clause requiring the employer to seek an opinion from the State Health Benefits Commission are 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: Trenton, New Jersey
March 28, 1991
ISSUED: March 28, 1991