I.R. NO. 86-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HOWELL,

Petitioner,

-and- Docket No. SN-86-97

HOWELL TOWNSHIP PBA LOCAL 228,

Respondent.

Synopsis

A Commission Designee restrains in part a demand for arbitration which is being brought by the Howell Township PBA Local 228 against the Township of Howell. The cotnract between the parties has the following provision: "In the event the Township Committee grants an additional holiday to other Township employees, the Police Department shall enjoy the same benefits. This provision shall not apply to holidays authorized on a permanent or recurring basis."

It was held that to the extent the PBA seeks to extend to covered employees any increase in holiday benefits negotiated by another employee group, the arbitration would be restrained. However, to the extent the PBA seeks to extend holiday benefits which the employer unilaterally and without negotiations granted other employees, the arbitration was allowed to go forward. This was an interim order only and the matter was referred to the full Commission for final disposition.

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Appearances:

For the Petitioner
Aron, Salsberg & Rosen
(Richard H. Bauch, Esq.)

For the Respondent
(Allen R. Schott, President)

INTERLOCUTORY DECISION

The Township of Howell ("Township") filed a Scope of Negotiations Petition with the Public Employment Relations Commission ("Commission") on June 6, 1986 stating that a demand for arbitration was filed by the Howell Township PBA Local 228 ("PBA"). The Township's petition alleges that the PBA seeks to submit a grievance for binding arbitration relating to the PBA's current collective negotiations agreement. Article XI, Section 3 of the contract provides that if the governing body grants certain additional holidays to other Township employees, the PBA employees shall enjoy the same holidays. The petition further states that all other Township employees are part of other recognized negotiations

units (aside from those employees excluded by statute). It was claimed that this provision is an illegal parity clause and, therefore, the Commission must restrain arbitration under the issue in question. The petition further asks that the scheduled arbitration be restrained pending a decision from the full Commission. The application was accompanied by an Order to Show Cause. The Order was signed and made returnable on June 19, 1986, at which time both parties had an opportunity to present affidavits and other evidence, argue orally and present briefs.

The Commission has issued a series of decisions relating to parity clauses starting with City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978). A parity or "me to" clause provides that when another negotiations group gets a certain benefit, that benefit will also be given to the unit in question. The Commission held that such provisions are illegal for they have

> "...a natural and unavoidable coercive effect. When considering economic proposals of one employee organization, the public employer must inevitably reconcile such a proposal with the ultimate result of providing similar economic proposals to any other employee organization which has the protection of a parity clause in its collective negotiations agreement. This result interferes with the right to negotiate in good faith. The issue is not whether or not a public employer actually relies upon a parity clause to deny an employee organization's economic proposals. The mere existence of the clause is sufficient to chill the free exchange between a public employer and an employee organization by permitting a third employee organization, not a party to the negotiations, to have impact on those negotiations."

The Commission has held, however, that when a clause provides that a benefit is triggered by unilateral employer action, rather then by any benefit increase negotiated by the employer with another employee organization, that clause is not a parity clause and is negotiable. In re Township of Weehawkin, P.E.R.C. No. 81-104, 7 NJPER 145 (¶12065 1981); In re Borough of Watchung, P.E.R.C. No. 81-88, 7 NJPER 9 (¶12038 1981).

In the instant matter, the controlling contract provision states:

> "In the event the Township Committee grants an additional holiday to other Township employees, the Police Department shall enjoy the same benefits. This provision shall not apply to holidays authorized on a permanent or recurring basis."

This contract language is similar to the contract provision in Township of Montville, P.E.R.C. No. 84-143, 10 NJPER 365 (¶15168 1984). There, the Township of Montville sought a determination whether such a clause was mandatorily negotiable. The Commission held there is an ambiguity in the clause and as stated is technically illegal for the clause extends to the covered employees any increase in holiday benefits negotiated by any other employee groups. (In Montville, as here, there are other employee groups negotiating with the Township). The Commission went on to state that this clause would be negotiable if the ambiguity was clarified to

limit the clauses' applicability to extensions of holiday benefits which the employer had unilaterally and without negotiations, granted other employees. The Commission found in Montville that the provision as stated was not mandatorily negotiable.

Here, the contract has the same ambiguity as the proposal in Montville. However, unlike Montville, the clause is already in the contract. To the extent that this contract provision is illegal, arbitration must be restrained. However, to the extent that the provision is legal, it should be enforced and this instant matter should proceed to arbitration.

It is a well-settled principle of contract law that a contract is to be interpreted in a manner that gives it a reasonable, lawful and effective meaning - as opposed to an interpretation which leaves the contract unlawful or useless. See, Washington Cont. Co. v. Spinelli, 13 N.J. Super 139, aff'd 8 NJ 212 (1951); Anfield v. Love, 5 N.J. Super 347 (1949).

This contract language is capable of a reasonable, lawful interpretation. This language was derived at between the parties after good faith negotiations. The Commission and indeed, the New Jersey Supreme Court has held that arbitration is to be encouraged as a means to resolve labor disputes. Bernard Twp. Bd. of Ed. v. Bernard Twp. Ed. Assn., 79 NJ 311 (1979) and Teaneck Bd. of Ed. v. Teaneck Teachers Assn., 94 NJ 9, 19-20 (1980).

Therefore, the arbitration herein is restrained only to the extent that the PBA seeks to gain additional holidays off or holiday pay for its own members on the basis of other negotiated contracts between the Township and other employee organizations. To the extent that the PBA seeks to obtain additional holidays or holiday pay for its members on the basis of holidays unilaterally granted to certain employees by the Township, this matter may proceed to arbitration.

This is an interim order only and this matter will be referred to the Commission for a final disposition.

Edmund G. Gerber
Commission Designee

DATED: June 20, 1986
Trenton, New Jersey