

I.R. NO. 2005-11

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2005-067

NEW JERSEY TURNPIKE
SUPERVISORS' ASSOCIATION
LOCAL 200, IFPTE, AFL-CIO,

Respondent.

SYNOPSIS

A Commission Designee declines the request of the New Jersey Turnpike Authority to temporarily restrain arbitration of a grievance filed by the New Jersey Turnpike Supervisors' Association. The grievance asserts that the Authority prematurely terminated the retiree health and prescription drug benefits of a supervisor who retired during the term of the parties 1995 to 1999 collectively negotiated agreement.

The designee finds that the Authority has failed to establish either: (1) that, with respect to the issue raised by the grievance, it negotiated a greater benefit in the 1999-2003 contract than it had agreed to in the 1995-1999 pact; or (2) that the grievance seeks to secure benefits available only under the 1999-2003 agreement for an employee who retired before that agreement took effect. As the Commission has held that a majority representative may use arbitration to enforce provisions providing negotiated benefits that are payable after a contract expires, the designee concludes that there is no substantial likelihood that the Commission would find that the grievance is outside the scope of mandatory negotiability.

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Appearances:

For the Petitioner, Sedita, Campisano & Campisano, LLC,
attorneys (Frank R. Campisano, Of Counsel)

For the Respondent, Mets & Schiro, LLP, attorneys,
Leonard C. Schiro, Of Counsel

INTERLOCUTORY DECISION

On, September 22, 2004, the New Jersey Turnpike Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of a grievance filed by the New Jersey Turnpike Supervisors' Association, IFPTE Local 200. The grievance asserts that the Authority prematurely terminated the retiree health benefits of a supervisor who retired during the term of the parties' 1995 to 1999 collectively negotiated agreement.

On April 6, 2005, the Authority filed an application for interim relief seeking a temporary restraint of the arbitration hearing, scheduled for April 22, 2005, pending a final

determination of the Commission. It filed a brief in support of its application.

On April 8, 2005, acting as Commission Designee pursuant to N.J.A.C. 19:14-9.2(d), I executed an Order to Show Cause returnable on April 20, 2005. On April 19, 2005 the Association filed a brief in opposition to the Authority's interim relief application. Both parties have agreed to forego a hearing and to have a ruling issued on the basis of their submissions.

The Association represents the Authority's supervisors. This dispute involves language found in collective negotiations agreements between the parties covering 1995 to 1999 and 1999 to 2003 as well as Item 11 of a Memorandum of Understanding executed on May 22, 2002. Article XVI, Paragraph P, Section 3(a) of the 1999-2003 agreement provides in pertinent part:

Effective July 3, 1989, all employees who retire and are under age 65 will continue to receive benefits as indicated above. However, upon becoming age 65 and continuing **through age 70**, they will continue to receive medical benefits and upon becoming 65 and continuing through age 80, they will continue to receive the Prescription drug Card Plan.

The same section of the 1995-1999 contract provides:

Effective July 3, 1989, all employees who retire and are under age 65 will continue to receive benefits as indicated above. However, upon becoming age 65 and continuing **through age 70**, they will continue to receive health benefits and the Prescription Drug Card Plan.

However, Item 11 of a Memorandum of Understanding signed by the parties on May 22, 2002 "clarifies" the phrase "through age

70" in Article XVI, Section P.3 a and b of the "current collective bargaining agreement" to mean "the last day of the month in which the person turns 71."

The retired supervisor's benefits were cut off when he reached age 70. The Authority apparently did so in reliance on language in the 1995-1999 agreement providing that such benefits would be provided "through age 70."

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975). Where a restraint of binding grievance arbitration is sought, a showing that the grievance is not legally arbitrable warrants issuing an order suspending the arbitration until the Commission issues a final decision. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144, 155 (1978); Bd. of Ed. of Englewood v.

Englewood Teachers, 135 N.J. Super. 120, 124 (App. Div. 1975);
City of Newark, I.R. No. 2005-4, 30 NJPER 459, 460 (¶152 2004).

I find that the Authority has failed to establish either:
(1) that with respect to the precise issue raised by the grievance, it negotiated a greater benefit in the 1999-2003 contract than it had agreed to in the 1995-1999 pact; or (2) that the grievance seeks to secure benefits available only under the 1999-2003 agreement for an employee who retired before that agreement took effect.

Borough of Bradley Beach, P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999) is pertinent to this case. There the Commission held:

[W]hile a public employer and a majority representative may agree to exclude grievances involving retired employees from an arbitration clause, there is no statutory bar against a majority representative seeking to enforce a contract on behalf of a former employee since it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored.

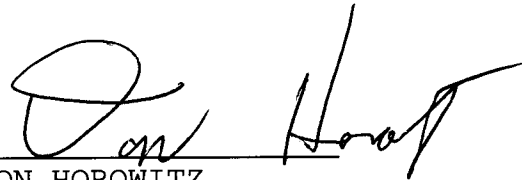
25 NJPER at 414

Accordingly, I conclude that there is no substantial likelihood that the Commission would find that the grievance is outside the scope of mandatory negotiability.^{1/}

^{1/} Bradley Beach involved police officers. Thus the Commission did not have to determine whether the dispute was mandatorily negotiable. However I conclude that the Commission would find that case to be applicable to these employees even though they may not negotiate over permissive subjects.

ORDER

The request of the New Jersey Turnpike Authority for an interim restraint of binding arbitration pending the final decision or further order of the Commission is denied.

A handwritten signature in black ink, appearing to read "Don Horowitz", written over a horizontal line.

DON HOROWITZ
Commission Designee

Dated: April 20, 2005
Trenton, New Jersey