

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Petitioner,

-and-

Docket No. SN-83-1

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 145

Respondent.

SYNOPSIS

In an interim relief proceeding, a Hearing Examiner, acting on behalf of of the Commission, restrained arbitration inasmuch as a scope of negotiations petition indicated clearly that the matter involved an attempt to modify a pension statute, contrary to N.J.S.A. 34:13A-8.1 as construed in State v. State Supervisory Employees Association, 78 N.J. 54 (1978).

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Appearances:

For the Petitioner
Thomas J. Savage, Esq.

For the Respondent
Shanley & Fisher, Esqs.
(Patrick J. Monahan, Jr., Esq.)

INTERLOCUTORY DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on July 1, 1981 by the Township of East Brunswick (hereinafter the "Petitioner") seeking to have declared non-negotiable a provision in the collective negotiations agreement between the Petitioner and the Patrolmen's Benevolent Association, Local No. 145, which agreement is effective from January 1, 1981 through December 31, 1982. In particular, a certain Article XXIII provides that the Petitioner agrees to seek to obtain membership for the employees covered by the agreement in the Police and Fire Pension Plan, and to terminate the present pension plan during the term of the agreement, if not by an act of the New Jersey Legislature, then by binding referendum of the public.

Chapter 404, Public Laws 1982, was enacted on January 6, 1982 and provides, inter alia, that the governing body of any municipality having a population of

at least 20,000 and not more 40,000, which has adopted the mayor-council Plan E of the Optional Municipal Charter Law, may by ordinance have its Police and Fire employees covered by the Police and Firemen's Retirement System of New Jersey, provided that such ordinance is adopted no later than December 31, 1982.

When the Petitioner failed to adopt an ordinance covering the members of the Respondent herein, the Respondent filed a grievance on March 5, 1982 alleging a violation by the Petitioner of Article XXIII, supra. On March 24, 1982 the Respondent notified the Petitioner that it was instituting arbitration proceedings and an arbitration is presently scheduled for July 6, 1982 before Arbitrator Herbert Haber.

The Petitioner accompanied its Scope Petition with the verified affidavit of its Assistant Business Administrator, an Order To Show Cause seeking interim relief by way of restraining the arbitration scheduled for July 6 , 1982 together with a supporting Brief. Counsel for the Respondent appeared in opposition to the request for restraint of arbitration and, after considering the arguments of counsel for each party on July 1, 1982, the undersigned, who is authorized by the Commission to hear applications for interim relief, HEREBY ORDERS that the arbitration scheduled for July 6, 1982 be restrained pending the disposition by the Commission of the Petitioner's Petition for Scope of Negotiations Determination herein.

DISCUSSION

Positions Of The Parties

The Petitioner notes first that prior to 1974 N.J.S.A. 34:13A-8.1 provided, inter alia, "...nor shall any provisions hereof annul or modify any statute or statutes of this State..." With the adoption of Chapter 123 in 1974 this language was changed to read "...nor shall any provisions hereof annul or modify any pension statute or statutes of this State..." (emphasis supplied). Petitioner then cites State v. State Supervisory Employees Assn., 78 N.J. 54 (1978) where the Court

traced the legislative history of Section 8.1, notwithstanding that there was not specifically before the Court the attempted change or modification of a pension statute. After holding that negotiations were permissible within certain parameters (78 N.J. at 79-82), the Court said:

"Our holding permitting negotiations concerning matters not covered by specific statute does not apply to pension statutes. The Legislature has determined that the entire subject matter of public employee pensions is to be insulated from negotiated agreement which would contravene or supplement its comprehensive regulation of that area. Public employees and employee representatives may neither negotiate nor agree upon any proposal which would affect the sacrosanct subject of employee pensions." (78 N.J. at 83). (Emphasis supplied).

The Petitioner next cites Fair Lawn Education Association v. Fair Lawn Board of Education, 79 N.J. 574 (1979) where the Board's attempt to induce early retirement of teachers by providing larger bonuses was held to be an action which substantially affected the actuarial assumptions of the State employees pension system and was therefore impermissible. The Court cited State Supervisory, supra, and Jacobs v. New Jersey Highway Authority, 54 N.J. 393 (1969).

The Respondent, without the benefit of written memorandum, sought to distinguish State Supervisory, supra, by arguing that the language quoted above, regarding pension statutes, is dictum inasmuch as there was not before the Court a controversy over any attempted modification of pension statutes. The Respondent also contends that Fair Lawn, supra, is distinguishable inasmuch as in that case there was a real and substantial effort to modify actuarial assumptions by encouraging employees to retire early. This, if duplicated by other school boards, would substantially affect the State retirement system.

The Respondent notes that all that is sought in the arbitration in the instant case is the transfer of PBA members, by ordinance, from the State retirement system to the Police and Firemen's Retirement System of New Jersey, which the Legislature has specifically provided for, stating that this may be done "Notwithstanding the provisions to the contrary of any law..." By implication the Legis-

lature has acted in full awareness of the provisions of Section 8.1, supra. There is, thus, no attempt to modify a pension statute, but merely to move a group of employees from one pension system to another.

The Scheduled Arbitration Must Be Restrained

The Hearing Examiner is persuaded that, notwithstanding the Legislature's disclaimer in Chapter 404, supra, regarding "...provisions to the contrary of any law...", Section 8.1, supra, appears to be in tact and precludes the Respondent from seeking through arbitration enforcement of Article XXIII, which, on its face, contemplates the modification of a pension statute. The New Jersey Supreme Court in State Supervisory, supra, clearly has precluded negotiations and, hence, arbitration of "...any proposal which would affect the sacrosanct subject of employee pensions."

The foregoing is reinforced by the decision of the Supreme Court in Fair Lawn, supra, particularly, the citing therein of State Supervisory and Jacobs, supra. In Jacobs a rule promulgated by the Highway Authority, which set mandatory retirement at age 65, was invalidated because "...the actuarial integrity of the system would suffer an unavoidable trauma, which could only be remedied by substantial additional contributions to the fund by all covered employees." (54 N.J. at 400).

Having concluded that the pending arbitration, involving Article XXIII of the parties' collective negotiations agreement, necessarily involves the modification of a pension statute, the Hearing Examiner has no alternative but to restrain arbitration pending the disposition by the Commission of the instant Petition for Scope of Negotiations Determination.

The Hearing Examiner, in order expedite the disposition of the matter by the Commission, will issue an Order setting forth a briefing schedule directly to the Commission so the Commission may have an opportunity to consider reversing the Hearing Examiner's restraint of arbitration. Thus, if arbitration is to proceed,

an award may be entered in sufficient time for the Petitioner to adopt an ordinance prior to December 31, 1982, the date of expiration of Chapter 404.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Alan R. Howe
Hearing Examiner

Dated: July 1, 1982
Newark, New Jersey