

I.R. NO. 2004-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2004-63

CAMDEN COUNTY SHERIFF'S OFFICERS AND
CAMDEN COUNTY SHERIFF'S SUPERIOR OFFICERS,
PBA LOCAL NO. 277,

Charging Parties.

SYNOPSIS

Camden County notified PBA Local 277 that unit employees who retire after June 19, 2003 will now be required to have 25 or more years of service with the County in order to receive paid post-retirement medical benefits. The collective agreements set forth a sliding scale of years of service with the County required to receive a given percentage of County paid medical benefits in retirement. The PBA claimed that the County repudiated the collective agreement. The County asserted that the agreement was preempted by N.J.S.A. 40A:10-23 and that it did not repudiate the agreement. The Commission Designee found that the County misapplied N.J.S.A. 40A:10-23 and thus appeared to have repudiated the collective agreement. He also found that since the parties were in the midst of interest arbitration for a successor agreement, the PBA established irreparable harm. Consequently, the Designee ordered the County to adhere to the terms of the collective agreement and provide eligible employees with the appropriate level of paid medical benefits premium in retirement as provided in the collective agreement, provided the employees are otherwise in compliance with N.J.S.A. 40:10-23.

I.R. NO. 2004-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2004-63

CAMDEN COUNTY SHERIFF'S OFFICERS AND
CAMDEN COUNTY SHERIFF'S SUPERIOR OFFICERS,
PBA LOCAL NO. 277,

Charging Parties.

Appearances:

For the Respondent
Genova, Burns & Vernoia, attorneys
(Douglas E. Solomon, of counsel)

For the Charging Parties
Klatsky & Klatsky, attorneys
(Fred M. Klatsky, of counsel)

INTERLOCUTORY DECISION

On September 3, 2003, Camden County Sheriff's Officers PBA Local No. 277 (PBA) and Camden County Sheriff's Superior Officers PBA Local No. 277 (SOA) jointly filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Camden (County) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by violating N.J.S.A. 34:13A-5.4a(1), (2), (3), (4), (5), (6) and (7).^{1/} The

^{1/} These subsections prohibit public employers, their
(continued...)

Charging Parties allege that the County has repudiated their collective negotiations agreements when on or about June 19, 2003, the County issued a letter which unilaterally changed terms and conditions of employment so that unit employees who retire after June 19, will now be required to have 25 or more years of service with the County, or be at least 62 years of age and have 15 or more years of service with the County in order to receive any paid post-retirement medical benefits. The County contends that it has not changed terms and conditions of employment because it had neither negotiated nor contractually agreed to provide unit employees with paid health benefits in retirement.

The unfair practice charge was accompanied by an application for interim relief. On September 8, 2003, I executed an Order to

1/ (...continued)
representatives of agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization, (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative; (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement; (7) Violating any of the rules and regulations established by the commission."

Show Cause establishing a return date of October 3, 2003.

Subsequently, at my request, both parties kindly agreed to reschedule the return date to October 14, 2003. The parties submitted briefs, reply briefs, affidavits and exhibits in accordance with the Commission rules and argued orally on the scheduled return date. The following facts appear.

The Camden County Sheriff's Officers PBA Local No. 277 consists of approximately 180 sheriff's officers and sergeants. Local No. 277 also separately represents the Camden County Sheriff's Superior Officers (SOA) which consists of approximately 16 lieutenants and captains. Each collective negotiations unit (officers/sergeants and lieutenants/captains) has a separate collective negotiations agreement with the County. The officers/sergeants' collective agreement expired on December 31, 2002. With regard to the SOA, on or about February 4, 2003, an interest arbitration award was issued covering the period January 1, 1999 through December 31, 2002. The County and the SOA have not yet executed a collective agreement incorporating the terms of the interest arbitration award. On or about February 6, 2003, the PBA initiated compulsory interest arbitration through the Commission (Docket No. IA-2003-058) for the officers/sergeants and the SOA units.

Article XII, paragraph (m) of the 1999-2002 collective agreement between the County and the sheriff's officers/sergeants provides, in relevant part, the following:

Effective January 1, 1998, new retirees will pay the following percentages of the health and prescription premiums.

| <u>Years with the County</u> | <u>Percentage Co-Pay</u> |
|------------------------------|--------------------------|
| 0 up to 5 years | COBRA coverage only |
| 5 years up to 15 years | 25% |
| 15 years up to 20 years | 20% |
| 20 years up to 25 years | 10% |
| 25 years or more | 0% |

In the 1995-1998 collective agreement between the County and the SOA, the last collective agreement executed by these parties, Appendix A, paragraph 15, states, in relevant part, the following:

Effective January 1, 1998, new retirees will pay the following percentages of the health and prescription premiums.

| <u>Years with the County</u> | |
|------------------------------|---------------------|
| 0 up to 10 years | COBRA coverage only |
| 10 years up to 15 years | 25% |
| 15 years up to 20 years | 20% |
| 20 years up to 25 years | 10% |
| 25 years or more | 0% |

N.J.S.A. 40A:10-23, Payments of Premiums after Retirement, states, in relevant part, the following:

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees (a) who have retired on a disability pension, or (b) who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25

years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or (c) who have retired and reached the age of 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or (d) who have retired and reached the age of 62 or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniformed conditions as the governing body of the local unit shall prescribed.

On or about June 19, 2003, the County adopted Resolution No. 103 which stated that health benefits for retired employees shall be provided consistent with the categories set forth in N.J.S.A. 40A:10-23. Resolution 103 incorporates provisions a, b, c, and d of N.J.S.A. 40A:10-23 as quoted immediately above.

On or about July 17, 2003, the County sent the Charging Parties a letter advising them of the adoption of Resolution No. 103 and further advising the Charging Parties of its position:

. . . that the retirement sections in the contracts may not be completely consistent with N.J.S.A. 40A:10-23, the Statute that sets the parameters for the health benefits plans for local government retirees. Specifically, the contracts authorize the County to pay the premiums for health benefits for retirees who have less than 25 years of service with the County and for retirees who have less than 15 years of service and/or are under the age of 62. These provisions make these parts of the contract in apparent conflict with the requirements of the Statute and are therefore unenforceable and non-negotiable.

The County's letter went on to state that

. . . on June 19, 2003, the County adopted [Resolution No. 103] regarding retiree health benefits. Pursuant to the Resolution, all County employees who retire from [June 19, 2003] will only be entitled to health benefits if they meet one or more of the criteria set forth in the . . . Resolution Thus, to the extent that a future retiree meets one or more of the criteria set forth in the . . . Resolution, the County will continue to honor the retirements sections of the contracts. Such retirees must have 25 years of continuous service with the County to qualify for free health and prescription benefits. If the new retiree has less than 25 years of service with the County, to be eligible for health benefits, he/she must be at least 62 years of age and have at least 15 years of service with the County.

The letter concludes by stating, in part, the following:

Those employees who do not meet any of the criteria set forth in the Statute or the County's Resolution will no longer be entitled to receive any payment by the County for health benefits upon their retirement.

In March 2003, Frank Schillig, a captain in the Sheriff's office and member of the negotiations unit represented by the SOA, submitted an application to the Police and Fire Retirement System (PFRS) for a special retirement. Schillig purchased 2 years and 3 months of pension service credit earned from prior service in the United States Air Force. The purchase of that service credit appears to have provided Schillig with a total of 25 years of service credit in a state or locally administered retirement system. Apparently, Schillig was hired as a Camden County corrections officer on September 29, 1980 and as a sheriff's officer on June 5, 1983, resulting in Schillig's accrual of approximately 23 years of service with the County.

On or about August 11, 2003, the County sent Schilling a letter which was nearly identical to the July 17, 2003 letter it sent to the PBA. The County advised Schilling that since he would have only 23 years of service with the County on December 1, 2003, the anticipated date of his retirement, he would not qualify for health and prescription drug benefits upon retirement.

Robert Wisenauer has been employed by the County as a temporary corrections officer since December 1980. In 1983, Wisenauer became a sheriff's officer. The PBA contends that Wisenauer submitted his application for retirement with the PFRS on or about June 17, 2003. The County contends that Wisenauer is enrolled in the Public Employees Retirement System and has approximately 20 years and 4 months of creditable service. Assuming arguendo that Wisenauer is entitled to pensionable service credit since December 1980, he would have accrued approximately 23 years of service credit in a state or locally administered retirement system.

In an affidavit submitted by the County in opposition to the PBA's application for interim relief, it asserts that Wisenauer may not meet any of the statutory eligibility requirements set forth in N.J.S.A. 40A:10-23. Specifically, the County states that Wisenauer is not retiring on a disability pension, he does not have 25 years of service credit in a state or locally

administered retirement system, and he has not yet reached 62 years of age.

The County also asserts in its affidavit, that "the sole purpose of the County's Resolution No. 103 is to make clear that effective June 19, 2003, the County will only assume a portion of, or the entire cost of post-retirement health and prescription benefits for employees that meet the eligibility requirements of the law."

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).

N.J.S.A. 40A:10-23 allows an employer to assume the cost of medical coverage premiums for employees provided they have met the express statutory conditions.^{2/} The Commission has held that

^{2/} The County and the PBA may negotiate regarding whether the full cost of the premium will be paid by the employer, or
(continued...)

certain parts of N.J.S.A. 40A:10-23 preempt the parties from negotiating changes to those statutory conditions stated in the imperative. See Borough of Keansburg, P.E.R.C. No. 95-77, 21 NJPER 163 (¶26100 1995).^{3/}

Reference is made to criteria b, c, and d of N.J.S.A. 40A:10-23. The County appears to argue that the parties have never negotiated nor has the County ever agreed to provide post-retirement health and prescription benefits to employees who retire pursuant to, for example, category b. The County argues that a properly negotiated provision in accordance with N.J.S.A. 40A:10-23, must include an expressly stated requirement in the agreement that the employee have 25 or more years of service credit in a state or locally administered retirement system. Since neither the PBA's nor the SOA's collective agreement contains such express provision, the County argues that it has neither negotiated nor agreed to a post-retirement health and prescription benefit provision. Consequently, nothing in the parties' collective agreement demonstrates that the County has

2/ (...continued)
whether it will share the cost with employees. See Essex Cty. Sheriff, P.E.R.C. No. 97-26, 22 NJPER 362 (¶27190 1996).

3/ On June 26, 1995, subsequent to the issuance of Keansburg, the Legislature amended the conditions contained in N.J.S.A. 40A:10-23. See Middletown Tp. Policeman's Benevolent Ass'n Local No. 124 v. Tp. of Middletown, 162 N.J. 361, 369 (2000). The modifications to the statute do not impact upon the statute's preemptive effect on negotiations.

ever agreed to provide benefits to unit employees under category (b) or any other category set forth in N.J.S.A. 40A:10-23.

Accordingly, the County argues that Schillig, Wisenauer and other similarly situated unit employees have no contractual right to health and prescription benefits upon retirement.

The PBA contends that the respective collective agreements obligate the County to provide post-retirement medical benefits. The percentage of the premium cost paid by the County depends upon the number of years of actual service the employee has with the County. By now requiring all unit employees to have 25 or more years of service with the County to be eligible to receive paid health benefits in retirement appears to constitute a repudiation of the collective agreements and a unilateral change in terms and conditions of employment effectuated during the course of interest arbitration proceedings.

It is evident that the County is subject to N.J.S.A. 40A:10-23. That statute gives the employer the discretion to assume the cost of premiums for employees in retirement provided they meet certain criteria. There is no dispute that the County has routinely exercised its discretion to pay all or part of the cost of health benefit premiums for retired unit employees.

At issue for Schillig, Wisenauer and other similarly situated employees is the statute's criterion (b). As noted above, criterion (b) requires employees to have 25 or more years

of service in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate. Certain aspects of criterion (b) are mandatorily negotiable whereas other aspects are not. The requirement that an employee must have 25 or more years of service credit in a state or locally administered retirement system is non-negotiable as that portion of the statute expressly, specifically and comprehensively establishes the condition of employment. While the parties are free to memorialize the statutory language in their collective negotiations agreement, see State v. State Supervisory Employees Assn., 78 N.J. 54, 80 (1978), their decision not to do so, does not change the statutory mandate or otherwise modify the condition of employment. The other portion of criterion (b) which requires the employee to have a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution, has been found by the Commission to be mandatorily negotiable. See Tp. of Pemberton, P.E.R.C. No. 2000-5, 25 NJPER 369, 370 (¶30159 1999).

Thus, it appears that the County's July 17 letter to the PBA and August 11 letter to Schillig, does not comport with N.J.S.A. 40A:10-23 criterion (b). The letters appear to require 25 or

more years of service with the County in order for an employee to be eligible for any paid health benefits in retirement. However, the statute does not require 25 or more years of service with the County, but 25 or more years of service credit in a state or locally administered retirement system. In the portion of criterion (b) where the issue of service with the County arises, such period of service (up to 25 years) is subject to negotiations between the parties. In this case, it appears that the percentage of premium costs to be borne by the County has already been negotiated by the parties and is reflected in Article XII, paragraph (m), of the 1999-2002 agreement between the County and the officers/sergeants and in Appendix A, paragraph 15, in the 1995-1998 SOA agreement. Accordingly, it appears that by requiring all employees to have 25 or more years of County service before being eligible for any paid health benefits in retirement, the County unilaterally changed a negotiable term and condition of employment and repudiated the express terms of the PBA's respective collective negotiations agreements which reflect a negotiated sliding scale of premium payments based on various years of service with the County. Consequently, I find that the PBA has established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations that the County has unilaterally changed terms and conditions of employment without negotiations.

Under this analysis, Schillig would be required to pay 10% of the premium cost for health and prescription benefits. Since it appears that Schillig has 25 or more years of service in a state or locally administered retirement system at the time of his retirement and between 20 and 25 years of service with the County, the contract appears to mandate a 90% premium contribution toward Schillig's health benefits in retirement by the County. In Wisenauer's case, it would appear that he is not entitled to any County contribution toward his health benefit premiums if he retires now, because, under criterion (b) of N.J.S.A. 40A:10-23, he had not obtained 25 or more years of service credit in a state or locally administered retirement system. Since Wisenauer has not met the non-negotiable 25 year threshold of criterion (b), he is not eligible for paid health benefits.

The PBA has established that it will be irreparably harmed by the County's action. The parties are currently engaging in interest arbitration. N.J.S.A. 34:13A-21 states:

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

Thus, the Act expressly prohibits unilateral changes in terms and conditions of employment specifically during interest

arbitration. Moreover, a unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978). See also Cty. of Union, I.R. No. 2002-12, 28 NJPER 279 (¶33105 2002); Bor. of Chester, I.R. No. 2002-8, 28 NJPER 162 (¶33058 2002), mot. for recon. denied P.E.R.C. No. 2002-59, 28 NJPER 220 (¶33076 2002); Bor. of Roseland, I.R. No. 2000-11, 26 NJPER 191 (¶31077 2000). Additionally, here Schillig and other employees who may be eligible for retirement because they satisfied the criteria in N.J.S.A. 40:10-23 may be wrongfully denied paid health benefits and, consequently, discouraged from exercising their option to retire.

In weighing the relative hardships to the parties resulting from the grant or denial of interim relief, I find in favor of the PBA. As a result of the unilateral change in terms and conditions of employment during the course of collective negotiations and while in the midst of interest arbitration, the PBA will suffer irreparable harm. The County suffers little harm by being required to adhere to the mandate of N.J.S.A. 40A:10-23 and the negotiated provisions contained in the parties' collective agreements. Moreover, the public interest is fostered by requiring the County to adhere to the tenets of N.J.S.A.

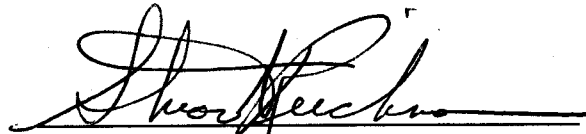
40A:10-23, the express provisions contained in the respective collective agreements and the Employer-Employee Relations Act.

The above-captioned unfair practice matter will proceed through the normal unfair practice processing mechanism.

ORDER

The County is restrained from implementing its July 17 and August 11, 2003 letters and from changing terms and conditions of employment without prior negotiations. The County is directed to comply with N.J.S.A. 40A:10-23 and Article XII, paragraph (m), of the officers/sergeants 1999-2002 collective agreement and Appendix A, paragraph 15, of the 1995-1998 SOA collective agreement. The County is restrained from refusing to pay the cost of Captain Schillig's health benefits in retirement in accordance with N.J.S.A. 40A:10-23 and Appendix A, paragraph 15 of the County/SOA collective negotiations agreement. The County is not restrained from refusing to provide Officer Wisenauer with paid health benefits until he satisfies the provisions of N.J.S.A. 40A:10-23 and Article XII, paragraph (m) of the officers/sergeants collective agreement. Regarding other unit employees who seek to retire and obtain partially or fully paid health insurance premiums, the County is directed to treat such other unit employees in accordance with N.J.S.A. 40:10-23 and the

specific terms of their respective collective agreements.^{4/} This interim order will remain in effect pending a final Commission order in this matter.



Stuart Reichman
Commission Designee

DATED: October 30, 2003
Trenton, New Jersey

^{4/} This order is designed to return the parties to the status quo in effect prior to any apparent unilateral change in terms and conditions of employment. N.J.S.A. 40A:10-23 requires the employer to maintain "uniformed conditions." The County must take whatever steps are necessary to maintain the requisite uniform conditions and effectuate this order.