

I.R. No. 2006-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PARAMUS,

Respondent,

-and-

Docket No. CO-2005-303

TEAMSTERS LOCAL 97,

Charging Party.

SYNOPSIS

A Commission Designee denies a motion for reconsideration of I.R. No. 2005-14 filed by the Borough of Paramus. In that decision, the Designee granted Teamster Local 97's application for interim relief based on its unfair practice charge against the Borough. The charge alleged that the Borough repudiated the parties' collective agreement by denying paid retiree medical benefits to employees who retire at age 62 or older with 15 years of service to the Borough. The Designee concludes that no extraordinary circumstances exist warranting reconsideration.

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Appearances:

For the Respondent, Mets & Schiro, attorneys (James M. Mets, of counsel)

For the Charging Party, Eric Bernstein, attorney

INTERLOCUTORY DECISION

On July 12, 2005 the Borough of Paramus moved for reconsideration of I.R. No. 2005-14, 31 NJPER ____ (¶ 2005). In that decision, I granted Teamsters Local 97's application for interim relief pending a final Commission order and restrained the Borough from repudiating the terms of the parties' collective negotiations agreement by unilaterally eliminating paid medical benefits for employees who retire at the age of sixty-two (62) or older with fifteen (15) years of service to the Borough. Specifically, the Borough was restrained from refusing to pay the cost of Calvin Koenig's health benefits in retirement in accordance with Appendix B of the parties' collective agreement. The Borough was also ordered to make Koenig and any similarly situated negotiations unit member whole for any out-of-pocket

expenses incurred and demonstrated because of the Borough's repudiation of Appendix B.

Local 97 filed no response to the motion.

The Borough does not dispute that Appendix B of the parties' agreement confers paid retiree health benefits to employees retiring at age 62 or older with at least 15 years of service to the Borough nor that the benefit has been included in the parties' collective agreements since January 1992. The Borough asserts rather that it never intended to confer paid health benefits to retirees with less than twenty-five years of service. As evidence of its intention, the Borough states that no employee prior to Calvin Koenig sought to enforce this benefit. Also, the Borough suggests that Appendix B's reference to N.J.S.A. 40:10-23 not N.J.S.A. 52:14-17.38, the statute controlling employers in SHBP, somehow supports that the Borough never intended to provide the benefit it negotiated and codified in Appendix B. Finally, the Borough suggests that I consider the potential long-term financial implication to the Borough's taxpayers in providing retiree health benefits which were not intended.

Reconsideration will be granted only in extraordinary circumstances not present here. N.J.A.C. 19:14-8.4. In City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), the Commission wrote that the designee in interim relief cases acts on behalf of the full Commission and that "in rare circumstances, a designee might have misunderstood the facts presented or a

party's argument. That situation might warrant the designee's granting a motion for reconsideration of his or her decision." Id. at 67.

Here there are no facts in dispute. The language of Appendix B expressly confers paid health benefits to employees retiring after age 62 with at least 15 years of service with the Borough. The Borough's assertion that it never intended to confer paid medical benefits to those with less than 25 years of service is not supported by the terms of the parties' written agreement. Parole evidence about any possible contrary intent cannot be used to change the clear language of that agreement. It is a fundamental canon of contract construction that the interest of the parties as clearly expressed in writing controls. Burlington Cty., I.R. No. 93-2, 18 NJPER 406 (¶23185 1992), citing Jersey City Bd. of Ed., P.E.R.C. No. 84-64, 10 NJPER 19 (¶15011 1983). Also, the assertion that no employee before Calvin Koenig qualified for and/or sought the benefits conferred by Appendix B is irrelevant to his or any unit member's entitlement under the parties' negotiated agreement.

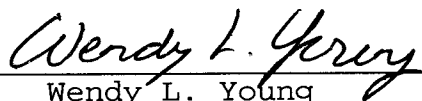
Additionally, the contention that the parties referenced N.J.S.A. 40:10-23, not N.J.S.A. 52:14-17.38, in the titling of Appendix B does not abrogate the negotiated terms of Appendix B or the intention of the parties to provide the benefits conferred therein. N.J.S.A. 40A:10-23 addresses the conditions under which public employers not in the SHBP may pay retiree health benefits,

while N.J.S.A. 52:14-17.38 specifies the conditions under which public employers in the SHBP may agree to provide paid retirement medical coverage. The Borough is in the SHBP. Both statutes, however, permit public employers to provide the benefits conferred in Appendix B, and specifically authorize them to extend paid medical benefits in retirement to employees who reach the age of 62 with 15 years of service with the employer through negotiated agreement.

Finally, in my decision I considered the relative hardships to the parties resulting from the granting of interim relief. I determined that the public interest is fostered by requiring the Borough to adhere to the express provisions contained in the collective agreement and to adhere to the tenets of the New Jersey Employer-Employee Relations Act. Any potential financial burden to the Borough may be addressed during negotiations for a successor collective agreement.

ORDER

The motion for reconsideration is denied.



Wendy L. Young
Commission Designee

DATED: July 26, 2005
Trenton, New Jersey