

D.U.P. NO. 86-12

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BOROUGH OF KEANSBURG,

Respondent,

-and-

DOCKET NO. CO-85-312

COMMUNICATIONS WORKERS OF
AMERICA, AFL-CIO, LOCAL 1044,

Charging Party.

Synopsis

The Director of Unfair Practices refuses to issue a complaint on an Unfair Practice Charge filed against the Borough of Keansburg by the Communications Workers of America. The charge alleges that the Borough stopped providing medical benefits for retired persons, thereby constituting a deviation from past practices and an alleged violation of the Act.

The Director determined that medical benefits for retired employees are not negotiable and therefore, no violation exists.

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Appearances:

For the Respondent
Edward Weigand, Borough Manager

For the Charging Party
Sweeney & Sweeney, Esqs.
(John A. Sweeney, of counsel)

REFUSAL TO ISSUE COMPLAINT

On May 24, 1985, Local 1044, Communication Workers of America ("C.W.A.") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the Borough of Keansburg ("Borough") engaged in unfair practices within the meaning of the New Jersey Public Employer-Employee Relations Act N.J.S.A. 34:13A-1 et seq. ("Act"), specifically, §5.4(a)(1) and (5)^{1/} when it discounted payment for medical benefits to retirees.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

The charge alleges that the Borough stopped providing medical benefits for retired persons . It is claimed that this is contrary to past practice.

The Commission delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations are true.^{2/} The Commission's rules provide that I may decline a complaint.^{3/}

On March 12, 1986, I sent the parties a letter outlining the reasons why I was not inclined to issue a complaint and the parties were given an opportunity to respond. Neither party filed an answer.

For the reasons set forth below, I have decided not to issue a complaint in the above-captioned matter.

In In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶ 10111 1979) the Commission found that the employer did not have to negotiate medical benefits or any other terms and conditions of employment for employees who were retired. The Commission said:

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by 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."

2/ N.J.A.C. 19:14-2.1

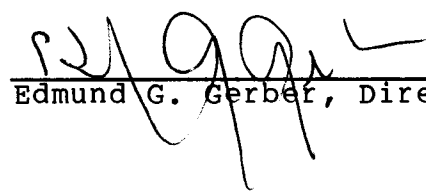
3/ N.J.A.C. 19:14-2.3

"It is undisputed that hospitalization and medical coverage is a term or condition of employment. However, with regard to this benefit, a clear distinction must be made between current employees and former employees who are already retired. The County must negotiate with the P.B.A. over what medical benefits its currently active employees will receive at the time of their retirement. But the County does not have to negotiate over this benefit for prior employees who are already retired from County service. These people are not considered "employees" nor is this benefit considered a "term and condition of employment." 5 NJPER at p. 196. [Footnote omitted].

Also, see In re Township of Ocean, P.E.R.C. No. 81-136, 7 NJPER 338 (¶12152, 1981). The County's holding in Middlesex would seem to be dispositive of this case and therefore, the employer committed no violation of the Act.

Accordingly, I determine the Commission's complaint issuance standard has not been met and I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: April 16, 1986
Trenton, New Jersey