

P.E.R.C. NO. 89-27

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-88-148

BELMAR P.B.A. LOCAL #50

Charging Party.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, dismisses a Complaint based on an unfair practice charge filed by Belmar P.B.A. Local #50 against the Borough of Belmar. The charge alleged that the Borough violated the New Jersey Employer-Employee Relations Act when it unilaterally extended health benefits to police officers who retired before January 1, 1987. The Chairman, in agreement with a Commission Hearing Examiner and in the absence of exceptions, finds that the Complaint should be dismissed.

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Appearances:

For the Respondent, Crammer & Covelli, Esqs.  
(Timothy N. Crammer, of counsel)

For the Charging Party, Joseph N. Dempsey, Esq.

DECISION AND ORDER

On December 8, 1987 and January 20, 1988, Belmar Policemen's Benevolent Association Local No. 50 ("PBA") filed an unfair practice charge and amended charge against the Borough of Belmar ("Borough"). The charge alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> by

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (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."

unilaterally extending health benefits to police officers who retired before January 1, 1987.

On June 7, 1988, a Complaint and Notice of Hearing issued. On June 26, the Borough filed its Answer denying it had violated the parties' agreement or was obligated to negotiate over retired employees. It further claims that it was required to extend the benefits pursuant to the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq.

On January 30, 1988, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties stipulated facts and waived the right to call witnesses and argue orally. They filed post-hearing briefs by August 25, 1988.

On September 1, 1988, the Hearing Examiner recommended that the Complaint be dismissed. H.E. No. 89-10, 14 NJPER \_\_\_\_ (¶ \_\_\_\_ 1988). He found that retirees are not employees within the meaning of the Act and that under the Health Benefits Act the Borough was required to extend the benefits to the retirees.

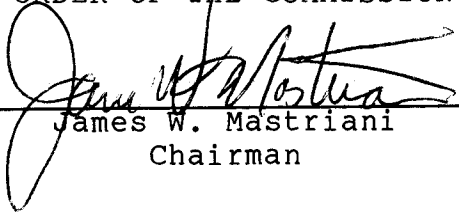
The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before September 14, 1988. Neither party filed exceptions or requested an extension of time.

I have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-8) are accurate. I adopt and incorporate them here. Acting pursuant to authority delegated to me by the full Commission in the absence of exceptions, I dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
September 27, 1988

H.E. NO. 89-10

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
BOROUGH OF BELMAR,

Respondent,

-and-

Docket No. CO-H-88-148

BELMAR P.B.A. LOCAL #50

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Borough of Belmar did not violate the New Jersey Employer-Employee Relations Act when it unilaterally extended health benefits to police employees who had retired prior to January 1, 1987. The Hearing Examiner held that retirees are not employees within the meaning of the Act thus the PBA could not negotiate on their behalf. The Hearing Examiner further held that pursuant to the New Jersey State Health Benefits Act, the Borough was required to extend the benefits to the retirees as a matter of law.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 89-10

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
BOROUGH OF BELMAR,

Respondent,

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Charging Party.

Appearances:

For the Respondent, Crammer & Covelli, Esqs.  
(Timothy N. Crammer, of counsel)

For the Charging Party, Joseph N. Dempsey, Esq.

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 8, 1987 and amended on January 20, 1988 by Borough of Belmar Policemen's Benevolent Association Local No. 50 (PBA) alleging that the Borough of Belmar ("Borough") violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq. (Act)<sup>1/</sup> The PBA alleged in the original charge that the Borough

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

Footnote Continued on Next Page

violated the Act on or about October 27, 1987 by adopting a resolution which changed the terms and conditions of employment in the parties collective agreement (J-1) particularly Article 19 of J-1 which concerned insurance protection. In its amendment the PBA alleged that the Borough violated the Act by unilaterally granting additional insurance benefits to former or retired employees without first negotiating with the PBA over the granting of those additional benefits. During the hearing the charge was further clarified by the PBA alleging that the Borough violated the Act by unilaterally extending the health benefits to police officers who retired prior to January 1, 1987.

A Complaint and Notice of Hearing (C-1) was issued on June 7, 1988. The Borough filed an Answer (C-2) on June 26, 1988, denying that it violated the Act. The Borough argued that it did not violate any provision of the parties' collective agreement and further argued that it was not obligated to negotiate with the PBA over retired employees because retired policemen were no longer employees of the Borough and the PBA did not represent them as members of the negotiations unit. Finally, the Borough argued that

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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.

it was required to give these additional health benefits to retired employees pursuant to the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq. A hearing was held in this matter on June 30, 1988 at which both parties were given the opportunity to present witnesses and make argument. The parties agreed to stipulate relevant facts and waived the opportunity to call witnesses. Both parties, however, filed post-hearing briefs by August 25, 1988.

Based upon the entire record I make the following:

#### FINDINGS OF FACT

1. The parties stipulated to the following facts:

1) The Borough unilaterally enrolled in the State Health Benefits Plan for post-retirement benefits as set forth in Exhibit J-2.

2) That plan had the same level of benefits as contemplated within the terms of the parties collective agreement which is Exhibit J-1.

3) The Borough had a contractual responsibility to provide post-retirement benefits to unit members subsequent to January 1, 1987, and with the impending retirement of a unit member in December of 1987, the Borough enrolled in the State Post-Retirement Benefits pursuant to J-2.

4) The parties frame the issue in this case as follows: Whether the Borough violated the Act by unilaterally extending health benefits to former police employees who retired prior to January 1, 1987, without reaching a completed negotiated agreement on that point with the PBA.

2. The Borough and PBA were parties to a collective agreement (J-1) affective from January 1, 1985 through December 31, 1987. Article 1, the Recognition Clause, of J-1 provided that the PBA represented certain police personnel "employed" by the Borough.



Article 19 of J-1 provided insurance benefits. Article 19, Section B provided in relevant part:

The Borough will purchase the coverage provided by the State Public and School Employees Health Benefits Program....

Article 19, Section C provided in relevant part:

The Borough shall provide medical insurance coverage to bargain [sic] unit members who retire from the Police Department under the provisions of the Police and Fire Pension System after January 1, 1987 on the following terms:

1) Coverage shall be equivalent to that provided employees under Section B, above, but shall be obtained from a provider other than the New Jersey State Health Benefits Plan.

3. On October 27, 1987, the Borough adopted a Resolution, Exhibit J-2, agreeing to adopt the provisions of the State Health Benefits Act (Health Act). The Resolution acknowledged that the provisions of the Health Act applied to the then eligible present as well as all future pensioners of the Borough. Subsequent to October 27, the provisions of the Health Act were unilaterally provided by the Borough to certain eligible police officers who had retired prior to January 1, 1987.

#### ANALYSIS

The PBA argued that since it is entitled to negotiate benefits on behalf of future retirees, the Commission should extend that right to negotiate over benefits for officers who had already retired. One of the PBA's concerns here was that by unilaterally extending health benefits to retired police officers, the Borough

incurred greater cost to its benefits package which could adversely affect the PBA's economic argument in the event it submitted an economic package in interest arbitration.

The Borough argued that although it unilaterally extended health benefits to retired officers, it did not violate the Act for two reasons. First, it argued that as retirees, the former officers were no longer "employees" of the Borough within the meaning of the Act, and were not members of the PBA's negotiations unit, thus the PBA could not negotiate on their behalf. Second, the Borough argued that pursuant to the provisions of the Health Act, it was required to provide the health benefits to the retired officers and that negotiations and interest arbitration over that issue was pre-empted.

In agreement with the Borough, I find that it did not violate the Act by unilaterally extending health benefits to police officers who retired prior to January 1, 1987.

### Retirees

In its post-hearing brief, the PBA argued that "there is no clear decision that persons already retired are not the subject of negotiation." That is not correct. In County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194, 196 (¶10111 1979), aff'd App. Div. Dkt. No. A-3564-78, 6 NJPER 338 (¶11169 1980) (Middlesex); Borough of Bradley Beach, P.E.R.C. No. 81-21, 6 NJPER 429 (¶11216 1980) (Bradley Beach); Tp. of Ocean, P.E.R.C. No. 81-136, 7 NJPER 338

(¶12152 1981); and Borough of Keansburg, D.U.P. No. 86-12, 12 NJPER 278 (¶17114 1986), the Commission held that although a public employer must negotiate over the benefits its "currently active employees" would receive at the time of their retirement, it was not obligated to negotiate over such benefits for "prior" employees, employees who had already retired. Middlesex at 196.

Since the PBA did not negotiate post-retirement benefits on behalf of police officers who retired prior to January 1, 1987, while they were still active employees, the Borough was not unilaterally changing a negotiated agreement and was thus not in violation of the Act by unilaterally granting benefits to those officers once they became retirees.<sup>2/</sup>

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<sup>2/</sup> In its post-hearing brief, the Borough correctly distinguished between its obligation to provide negotiated retirement benefits for currently active employees once they retired, and its right to unilaterally grant benefits to retirees who had not been the beneficiaries of negotiated retirement benefits while they were active employees. The Borough properly recognized that it could not unilaterally alter retirement benefits that had been negotiated for while certain officers were employed, just because those officers retired and were no longer employees within the meaning of the Act. In that situation, a union would continue to represent retirees over benefits negotiated for their retirement while they were employed.

Here, however, there was no negotiated agreement covering the retirement benefits of officers who retired prior to January 1, 1987, thus, as non-employees the Borough had the right to unilaterally provide them with retirement benefits.

The Health Act

Pursuant to the terms of the Health Act and a rule established thereunder, N.J.A.C. 17:9-5.5, the Borough was required, by operation of law, to extend health benefits to eligible former employees who retired prior to January 1, 1987. N.J. Policemen's Benevolent Assoc. v. N.J. State Health Benefits Comm., 153 N.J. Super 152 (App. Div. 1977) (NJPBA); Bradley Beach. The facts in NJPBA are similar to the facts here. In that case, the employer had adopted the provisions of the Health Act and the PBA and employer had a contractual agreement providing for retirement benefits only for employees retiring after January 1, 1975. The Court held that since that contractual provision applied to some and not all retirees, it was illegal under the Health Act and unenforceable. The result here must be the same. Article 19, Section C of J-1 providing for benefits for officers retiring after January 1, 1987, cannot be enforced to prevent the same benefits from being provided to officers who retired prior to January 1, 1987.

Similarly, Article 19, Section C(1), requiring the insurance for retirees to be obtained by a provider other than through the State Health Benefits Plan, cannot be enforced since it violates the provision or requirements of the Health Act.


Finally, with respect to the PBA's concerns regarding interest arbitration, the Court and Commission have held that N.J.S.A. 34:13A-18 specifically prevents an arbitrator from ruling upon any change in health insurance coverage for employees of an

employer participating in the State Health Benefits Program.<sup>3/</sup>  
Middlesex; Bradley Beach; Lyndhurst Tp., P.E.R.C. No. 87-9, 12 NJPER  
608 (¶17230 1986); Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352  
(¶19136 1988). Based upon that same legal principal, I find that to  
the extent that the PBA seeks a grievance arbitration to enforce  
Article 19, Section C to prevent certain retirees from receiving  
health benefits, or seeks to enforce Article 19, Section C(1) to  
require the benefits to be obtained by a provider other than through  
the Health Act, the arbitration would be restrained.

Accordingly, based upon the above facts and analysis, I  
make the following:

RECOMMENDATION

I recommend that the Complaint be dismissed.

  
Arnold H. Zudick  
Hearing Examiner

DATED: September 1, 1988  
Trenton, New Jersey

3/ N.J.S.A. 34:13A-18 provides:

The arbitrator shall not issue any finding, opinion  
or order regarding the issue of whether or not a  
public employer shall remain as a participant in the  
New Jersey State Health Benefits Program or any  
governmental retirement system or pension fund, or  
statutory retirement or pension plan, nor, in the case  
of a participating public employer, shall the  
arbitrator issue any finding, opinion, or order  
regarding any aspect of the rights, duties,  
obligations in or associated with the New Jersey State  
Health Benefits Program or any governmental retirement  
system or pension fund, or statutory retirement or  
pension plan.