

P.E.R.C. NO. 2000-69

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-2000-69

P.B.A. LOCAL 198,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable a proposal made by P.B.A. Local 198 for inclusion in a successor agreement with the Borough of Butler. The proposal provides a flat payment of 20% of salary upon retirement of an employee who has worked 25 years. The Commission finds that this benefit supplements State-established pension benefits and is not otherwise authorized by statute.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Courter, Kobert, Laufer & Cohen,
P.C., attorneys (Stephen E. Trimboli, on the briefs)

For the Respondent, Klatsky & Klatsky, attorneys
(David J. DeFillippo, on the brief)

DECISION

On January 6, 2000, the Borough of Butler petitioned for a scope of negotiations determination. The Borough seeks a determination that a retirement bonus proposal submitted by P.B.A. Local 198 to an interest arbitrator for inclusion in a successor agreement is not mandatorily negotiable.

The parties have filed documents and briefs. These facts appear.

The PBA represents all police officers in the Borough except the chief, lieutenant, captain, and any special officers. The parties' collective negotiations agreement expired on December 31, 1997. The parties have engaged in successor contract negotiations and are now in interest arbitration.

Article XXV, Section 2 of the parties' agreement provides:

The Borough agrees to provide a retirement incentive program to all Employees retiring in good standing with the Borough. The program will be based on a percentage of each Employee's base salary. Payment to be paid in one lump sum upon the Employee's official retirement date. The retirement incentive payment shall be as follows:

40% of base salary	-	25 years
30% of base salary	-	26 years
20% of base salary	-	27 years
10% of base salary	-	28 years
After 28 years	-	0%

An employee who wishes to avail himself or herself of the benefit, prior to retirement shall give the Borough one year's notice of his or her official retirement date. A waiver of the one year notice can be granted if agreed to by both Employee and Employer. Also for good cause, if both Employer and Employee agree, an Employee's retirement date can be extended one extra year and not affect his or her retirement percentage.

Exception: For contract year 1995, any Employee who wished to avail himself/herself of this program and has more than 28 years of service to the Borough, is retiring in good standing with the Borough, shall receive 40% of his/her base salary. Any Employee meeting this exception shall give the Borough six months notice of his/her official retirement date. This must be done prior to September 30, 1995.

On May 28, 1998, the Borough filed a scope petition contesting the negotiability of Article XXV, Section 2. On March 26, 1999, we declared the provision not mandatorily negotiable. P.E.R.C. No. 99-83, 25 NJPER 160 (¶30073 1999). We reasoned that the provision was an illegal retirement incentive under Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979), because it

provided for payments that decline with additional years of service and would thus tend to induce employees to retire with closer to 25 rather than 28 years of service. We also found that the provision rewarded early retirement rather than years of service or quality of service and was therefore a retirement benefit that supplemented State-established pension benefits and therefore could not be the subject of collective negotiations.

On November 15, 1999, the PBA submitted to interest arbitration a proposal to replace Article XXV, Section 2. That proposal provides a flat payment of 20% of salary upon the retirement of an employee who has worked 25 years. It states:

The Borough shall pay to each employee who retires in good standing with the Borough 20% of each employees base salary. Each employee, prior to retirement, shall give the Borough one year's notice of his or her official retirement date. A waiver of the one year notice can be granted if agreed to by both employee and employer. Also for good cause, if both employer and employee agree, then employee's retirement date can be extended one extra year.

The employer argues that the proposal is illegal because of its effect on the actuarial integrity of the pension system. It contends that the proposal creates a financial incentive for employees not to retire until they reach 25 years of service. The employer also argues that the proposal is an unlawful supplement to the employees' statutory pension benefits.

The PBA responds that the proposal will not affect the actuarial integrity of the pension system because it does not

reward, encourage or otherwise provide an incentive to officers to retire upon reaching 25 years of service. It further argues that, if anything, the pension system will be enhanced because employees who opt to continue in active service after 25 years will continue to contribute into the pension fund.

The employer replies that a retirement bonus equal to 20% of the officer's base salary is clearly a reward, encouragement and incentive to defer retirement until the 25th year of service.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

We will consider only whether the proposals are mandatorily negotiable. We do not decide whether contract proposals concerning police officers are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Fair Lawn barred two types of proposals or contract clauses: those that, by themselves or if adopted by others, would affect the actuarial integrity of a pension system and those that, regardless of any such impact, would establish pension benefits that would contravene or supplement State-established benefits. This proposal contravenes the second prohibition.

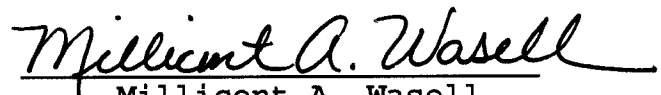
We agree with the employer that this proposal may have a tendency to encourage an employee not to retire until he or she is eligible for the payment. However, that tendency exists with any additional benefit granted to employees as compensation for years of service. Thus, that tendency, standing alone, is not sufficient to place this proposal outside the scope of negotiations. However, this proposal is also, in essence, a retirement benefit that contravenes Fair Lawn by supplementing State-established pension benefits. It does not share the characteristics of negotiable benefits such as longevity pay, terminal leave, or payment for accumulated sick leave. See, e.g., Pompton Lakes Bor., P.E.R.C. No. 95-103, 21 NJPER 223 (¶26141 1995) (90 days terminal leave is mandatorily negotiable); City of

Newark, P.E.R.C. No. 88-106, 14 NJPER 336 (¶19126 1988) (longevity is a mandatorily negotiable form of compensation); see also Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998) (pre-retirement longevity allowances not prohibited by pension statutes and regulations; terminal leave based on unused leave balances mandatorily negotiable). Pension regulations regulate whether those forms of compensation are creditable compensation for pension purposes, but those regulations do not prohibit such payments as "extra compensation." N.J.A.C. 17:4-4.1. Unlike those other benefits, the benefit under this proposal is not paid to current employees as a reward for years of service. Nor is it a form of deferred compensation. This benefit is payable upon retirement, supplements State-established pension benefits, and is not otherwise authorized by statute. Contrast N.J.S.A. 40A:10-23 (authorizing employer to provide retiree health benefits).

ORDER

The PBA's proposal is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: February 24, 2000
Trenton, New Jersey
ISSUED: February 25, 2000