

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SADDLE BROOK,

Petitioner,

Docket No. ID-78-2

-and-

P.B.A. LOCAL #102, SADDLE BROOK,

Respondent.

SYNOPSIS

New Jersey adopted an interest arbitration law as a means of resolving negotiations disputes between public police and fire departments and employee organizations representing employees of those departments. Chapter 85, Public Laws of 1977. The statute provides, unless the parties mutually agree otherwise, that an arbitrator is to select the position of one party or the other on all economic items in dispute as a package. It provides for the selection by an arbitrator of the position of one party or the other on an issue by issue basis for all disputed noneconomic items. Therefore, it is necessary to classify all disputed items either as economic or noneconomic.

The statute defines economic items as "...those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacations, paid holidays, health and medical insurance, and other economic benefits to employees." N.J.S.A. 34:13A-16f(2).

In its rules adopted to implement this statute, the Commission delegated to the Chairman the authority to make determinations as to whether disputed items are economic or noneconomic. This case constitutes the first determination regarding the status of disputed issues as economic or noneconomic.

The Chairman determined that the following issues are noneconomic: advance notice of changes in shift operation schedule, advance notice of reassignment of employees to the Patrol Division, the right to exchange certain duties on a voluntary basis, policy regarding taking of vacation leave, a procedure relating to the reporting and elimination of unsafe equipment, minimum manpower assignments per shift, legal representation by attorneys selected by the employee rather than by the employer as is required by statute for job related incidents and the continuation during the

term of a collective negotiations agreement of agreed upon insurance coverage. General liability coverage and false arrest insurance were found to be economic items. A retroactivity clause was found to be dependent upon whether the issue to be covered by that clause was economic or noneconomic. Thus, a proposal to have a wage increase retroactive to the first of the year would be an economic issue but a proposal to make the grievance procedure retroactively effective would be noneconomic.

The parties were ordered to submit their positions to the interest arbitrator in accordance with these determinations.

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DECISION AND ORDER

A Petition for Issue Definition Determination, Docket No. I..D. 78-2, was filed by the Township of Saddle Brook (the "Township") with the Public Employment Relations Commission on February 8, 1978 disputing the definition of certain items which P.B.A. Local #102 (the "P.B.A.") classified as noneconomic issues.^{1/} The dispute arose as a result of the filing by the P.B.A. of a Notice and/or Petition to Initiate Compulsory Interest Arbitration in accordance with the provisions of the Police and Fire Arbitration Act, Chapter 85, Public Laws of 1977, supplementing the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. On that Notice, the P.B.A., as required,^{2/} listed separately those disputed items which it claimed were economic and

1/ The Township on December 27, 1977 submitted to the Commission a six line statement requesting a hearing with regard to the identification of certain issues as economic or noneconomic. In response to this submission, the Commission forwarded the Commission's Rules and forms appropriate for such a filing. Thereafter the instant petition was filed.

2/ N.J.A.C. 19:16-5.4(a).

those which it claimed were noneconomic. Similarly, consistent with the Commission's Rules, the Township filed the instant petition contesting the P.B.A.'s identification of certain issues as economic and noneconomic issues.^{3/}

Because this decision constitutes the first determination by the Commission regarding the identification of issues as economic or noneconomic, the undersigned deems it appropriate to set forth the context of these determinations.

On May 10, 1977, the Senate approved and the Governor signed a bill, Senate No. 482, previously passed by the Assembly, which provides for compulsory arbitration of labor disputes in public police and fire departments. That law, c. 85, P.L. 1977, sets forth a procedure for resolving negotiations disputes for employees of police and fire departments. The procedure to be utilized, in the absence of an alternate mutually agreed upon procedure which has been approved by the Commission, calls for final offer arbitration in which the arbitrator chooses between a) the last offer of the employer and the last offer of the employee representative on all economic issues in dispute as a package and b) the last offer of the employer and the last offer of the employee representative on all noneconomic issues in dispute on an issue by issue basis.^{4/}

Therefore, the procedure requires that each disputed item be identified either as an economic issue or as a noneconomic

^{3/} N.J.A.C. 19:16-5.5(d).

^{4/} N.J.S.A. 34:13A-16d(2).

issue. Section 3 of the Act, N.J.S.A. 34:13A-16f(2), authorizes the Commission, in the event of a dispute, to decide which issues are economic issues. It also defines economic issues as including "...those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacations, paid holidays, health and medical insurance, and other economic benefits to employees." (Emphasis added)

In its Rules adopted to implement the Police and Fire Arbitration Act, the Commission established a procedure to resolve disputes as to whether issues are noneconomic or economic. That procedure is set forth fully at N.J.A.C. 19:16-6.1 et seq. The Rules provide that the Chairman or other designee of the Commission shall render a written determination which classifies the disputed issue or issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16f(2). These determinations are deemed to be final administrative determinations not subject to review in any proceeding before the Commission.

The purpose of the procedure, therefore, is simply to provide a means for resolving disputes as to whether issues are economic or noneconomic. All issues must be classified as one or the other so that the final offers of the parties can be properly considered by the arbitrator who is to consider all economic issues as a package and all noneconomic issues on an item by item basis. The arbitration mechanism requires this classification of disputed issues.

The above-quoted statutory definition, while by no means an exhaustive listing of economic issues, does offer rather clear direction to the parties, arbitrators and the Commission. Aside from the illustrative listing of specific economic issues contained in the definition -- wages, salaries, hours, in relation to earnings, paid vacations, paid holidays, and health and medical insurance -- the definition explicitly refers to economic benefits to employees and a direct relation to employee income.

It is recognized, of course, that almost any item has an actual or potential economic impact upon an employer. A grievance procedure would be a good example of a subject that could have substantial economic impact, but clearly would not be an economic issue within the meaning of the statute. Other examples, both of which could cost the employer time and money but which would not fall within the definition of economic issues, would be a notice requirement regarding promotional opportunities within the unit, or equipment that would improve safety conditions.

The test, however, is not whether the item could have an economic impact on the employer. What is germane in classifying these issues is the effect on employees. Would the item, if agreed to by the parties, affect an employee's income, hours, or economic fringe benefits?

In rendering their decisions, arbitrators will consider the financial impact of all issues on public employers, not only those that are part of the economic package but noneconomic issues

as well.^{5/} The costs to employers may be just as real with respect to noneconomic items as they are regarding economic items. A new communications system which would obviously cost money and which leads to reduced response time and, therefore, greater employee safety, might be an example. Nevertheless, that communications system is a noneconomic item because it has no direct relation to employee income. But, assuming that the installation of the new communications system were subject to arbitration, the arbitrator would consider the cost of that system both in deciding which economic package to award and in evaluating this issue and all other noneconomic items in dispute.^{6/}

Turning now to this case, the Petition for Issue Definition Determination lists seven items, all of which the P.B.A. identified as noneconomic issues on the Petition to Initiate Compulsory Interest Arbitration, Docket No. IA-78-51, and which the Township contends are economic issues.^{7/}

The seven items, as set forth on the P.B.A.'s Petition to Initiate Compulsory Interest Arbitration, are as follows:

1. The P.B.A. is seeking to establish a written policy whereby an employee receives advanced

^{5/} One of the factors set forth in the statute which arbitrators are obligated to consider in their opinions and awards is "the financial impact on the governing unit, its residents and taxpayers." N.J.S.A. 34:13A-16(g)(6).

^{6/} This is not to say that the installation of a communications system is a required subject of negotiations. See note 8 below.

^{7/} The Township's petition also states that superior officers should be excluded from the unit because they are supervisors and that their inclusion in the unit is an economic issue. This matter cannot be resolved in this forum. A clarification of unit petition, appropriately filed, would appear to be a proper vehicle to raise such an issue.

notice of a change in the shift operation schedule. The P.B.A. is seeking written policy placing certain provisions on rescheduling of employees assigned to Patrol Division. The P.B.A. is seeking written policy on the voluntary exchange of assigned duties between employees of equal rank, position or title. The P.B.A. is seeking written policy for vacation leave.

2. The P.B.A. has informed the Township that on occasion certain equipment, owned by the Township, utilized by employees for performance of duty, has been found to be in an unsatisfactory condition whereby the equipment possibly poses a threat or hazard to life or property. The P.B.A. is seeking a written policy whereby such equipment is reported immediately, when found to be in unsatisfactory condition, and whereby these conditions are corrected or repaired, continued use of unsatisfactory equipment is eliminated, and the Township as well as the employee is relieved of possible civil action or liability resulting from the use of this equipment.

3. The P.B.A. is seeking written policy whereby a minimum amount of manpower is assigned to each shift operation, daily, thereby eliminating the continuous shortages on certain shifts.

4. The P.B.A. is seeking a written policy whereby an employee is afforded legal representation of his choosing, in certain action that may arise from a job related incident.

5. General Liability Insurance Coverage and False Arrest Insurance Coverage. The P.B.A. has withdrawn this issue as negotiable at the P.B.A. level, but is seeking to add a clause to the 1978 contract if the present coverage is not increased by the Township.

6. The P.B.A. is seeking the Township pay, in full, all claims under present health and medical insurances, in the event of cancellation or lapse in the present coverages.

7. The P.B.A. is seeking the 1978 contract and future contracts to have retroactivity to January 1st, each year.

The Township also filed a Petition for Scope of Negotiations Determination with the Commission on February 8, 1978

(Docket No. SN-78-18). On April 24, 1978, the Commission issued a decision, P.E.R.C. No. 78-72, regarding the disputed matters. Among the items decided were certain items, specifically items 2, 4, and 6 and parts of item 1, contained in the instant petition. The Commission held that issues 2, 4, and 6 were required subjects as was the portion of issue 1 relating to advance notification of changes in shift operation schedules. Held to be permissively negotiable was that part of item 1 concerning the voluntary exchange of duties.^{8/}

It appears to be the position of the Township, as set forth in its statement in lieu of brief which was attached to the Petition, that any proposal which, if agreed to, would have an economic impact upon the Township would be an economic issue for purposes of the arbitration proceeding.^{9/} As stated above, however, that is not the test. What must be considered is the economic effect on the employee. Thus, items 1, 2, 3 and 4, all of which concededly, if accepted by the Township as proposed by the P.B.A. or if awarded by an arbitrator, would cost the Township money, are nevertheless noneconomic issues. They do not relate to an employee's income or economic fringe benefits.

With respect to item 1, the P.B.A. seeks advance notice of changes in the shift operations schedule and the reassignment of employees to the Patrol Division. Additionally, the P.B.A.

^{8/} N.J.S.A. 34:13A-16f(4) limits arbitration to required subjects unless the parties agree to subject one or more permissive subjects to arbitration.

^{9/} The P.B.A. has failed to submit a brief or statement in lieu of brief to support its position in this matter.

is seeking the right to exchange certain duties on a voluntary basis. Also, the P.B.A. is seeking a policy regarding the taking of vacation leave. A request for more paid vacation, of course, would be an economic issue.

Item 2 relates to employee safety and a procedure to report and correct unsafe equipment. The undersigned does not interpret this proposal as a demand for liability insurance in the event of an accident stemming from an employee's use of Township equipment. The import of the proposal goes to the elimination of unsafe equipment, thereby relieving both the Township and its employees from possible civil action and liability.

Item 3 concerns levels of manning and bears no direct relation to employee income. Item 4 relates to legal representation. As stated in the Commission's related decision on the Petition for Scope of Negotiations Determination, P.E.R.C. No. 78-72, employees have a statutory entitlement to legal representation stemming from job related incidents. What the P.B.A. seeks now is the right of employees to select outside counsel. If the Township were to agree to this proposal or if the arbitrator were to grant it, it would have no effect on employee income although, of course, it could be very costly to the Township. Thus, it is a noneconomic issue. A different result would obtain if the P.B.A. was seeking pre-paid legal insurance for non job-related incidents.

Item 5 concerns general liability coverage and false arrest insurance. The P.B.A.'s Interest Arbitration Petition indicates that this proposal has been withdrawn but that the P.B.A.

is seeking to add a clause to the 1978 contract if the present coverage is not increased. Although the precise nature of the clause sought by the P.B.A. has not been specified, if the P.B.A. is seeking a clause which would affect the premium for insurance, then such a proposal would be an economic issue.

Item 6 involves health and medical insurance claims and, as presented, is a noneconomic issue. It is not a proposal for a change in health or medical insurance coverage nor for a continuation of a previously negotiated insurance benefit. If it were, it would be an economic issue. Health and medical insurance are among the specific examples of economic issues included in the statutory definition of economic issues. Rather, it is simply a proposal to provide that the Township, as opposed to the insured employees, pay at the rates provided in the present policies any claims arising during the term of the agreement in the event of a cancellation or lapse in present coverage. Therefore, it does not relate directly to employee income. Although this matter seems to be speculative, the Township, once having agreed to provide certain levels of health and medical insurance, and in the absence of an express reservation in the collective agreement, is required to maintain that agreed upon coverage during the term of the collective negotiations agreement.

Finally, the P.B.A. has proposed that the 1978 contract and all future contracts be retroactive to the first of each January. This issue cannot be classified as either economic or noneconomic in the abstract. The parties will have to indicate as

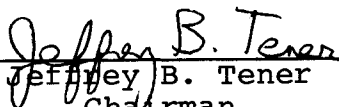
part of their positions with respect to each issue the proposed effective date.

For example, an employer may be submitting as its last offer a wage increase of a certain per cent or a certain number of dollars effective on a specified date e.g. \$800 to be applied to the rate on July 1 (for an actual, annual cost of \$400.00). The employee organization might propose an increase of \$800 effective January 1 (for an actual increase of \$800.00). The arbitrator would consider these positions on both the proposed amounts as well as the effective dates as part of the economic package. With respect to other items, the effective date must also be specified as part of the parties' positions. There could, of course, be a general proposal that all terms of the contract shall be effective on a certain date e.g. January 1 or the date of the arbitration award, etc. Therefore, the effective date is not an independent issue but is part and parcel of specific disputed issues, both economic and noneconomic.

ORDER

The Township of Saddle Brook and P.B.A. Local #102, Saddle Brook, are hereby ordered to submit their positions to the interest arbitrator appointed by the Commission to this matter in accordance with the above determinations as to whether disputed items are economic or noneconomic.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
May 2, 1978