

P.E.R.C. NO. 81-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OCEAN,

Petitioner,

-and-

Docket No. SN-81-44

P.B.A. LOCAL NO. 57,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission orders the P.B.A. to refrain from even attempting to negotiate with the Township concerning health benefit provisions or any other term and condition of employment for individuals who have retired from the Township's service, or from attempting to submit to interest arbitration any unresolved dispute concerning health benefits.

P.E.R.C. NO. 81-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
TOWNSHIP OF OCEAN,

Petitioner,

-and-

Docket No. SN-81-44

P.B.A. LOCAL NO. 57,

Respondent.

Appearances:

For the Petitioner, Dennis Crawford, Esq., Township
Attorney
Aron, Till & Salsberg, Esqs., Special Counsel
(David Wallace, of Counsel)

For the Respondent, Abramson & Liebeskind Associates
(Marc D. Abramson, Labor Relations Consultant)

DECISION AND ORDER

On December 9, 1980, a Petition for Scope of Negotiations Determination was filed by the Township of Ocean (the "Township") with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute between the Township and P.B.A. Local 57 (the "P.B.A.") was within the scope of collective negotiations.

The Township seeks a determination regarding the negotiability of a clause which the P.B.A. seeks to maintain in a new agreement, or if not resolved, to perhaps submit to compulsory interest arbitration. The disputed provision is contained in the parties' 1980 collective agreement and the Township seeks to remove the provision, but the P.B.A. seeks to retain the provision in any successor agreement. The parties' briefs were received by February 13, 1981.

The disputed provision relates to hospitalization and insurance benefits for retired employees and was itemized as Article XII Section 2 of the previous contract which provided that:

All retired employee members, commencing with the contract year of 1978, shall receive Blue Cross/Blue Shield or equivalent and major medical hospitalization insurance, and the cost of same shall be paid one-half (1/2) by the Township of Ocean and one-half (1/2) by the retiree. In the event the said retired employee becomes employed after retirement, said employee shall not again be entitled to any further insurance coverage. Proof of employment of retiree shall be by affidavit at the request of the Township, and the said request shall not be made more than once each calendar year.

The Township argues that Section 2 of Article XII pertains to retired employees and is therefore a non-negotiable subject; the P. B. A., in reliance upon In re Borough of Bradley Beach, P.E.R.C. No. 8121, 6 NJPER 429 (¶11216 1980), argues that Section 2 is a term and condition of employment and is therefore mandatorily negotiable. In addition, the P.B.A. argues that the Township has an obligation to maintain the disputed provision as part of the status quo during the course of collective negotiations.

A review of the first sentence of the disputed provision shows that the clause was intended to apply to all retired (emphasis added) employee members (presumably P.B.A. unit members), and not current employees.

In In re County of Middlesex, P.E.R.C. No. 7980, 5 NJPER 194 (¶10111 1979), the Commission found that the employer did not have to negotiate for any form of medical benefits or other terms and conditions of employment for prior employees - employees who were already retired. The Commission stated:

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. 1/

The P.B.A.'s reliance upon Bradley Beach, supra, is misplaced. In that decision the Commission held that a health benefit provision for future retirees was mandatorily negotiable. The instant provision, however, applies to all retired employees rather than only future retirees, and therefore County of Middlesex rather than Bradley Beach is applicable. Thus, Article XII Section 2 is not mandatorily negotiable and may not be submitted to interest arbitration. See N.J.S.A. 34:13A-18. 2/

1/ In affirming the above findings of the Commission, the Appellate Division in County of Middlesex v. P.B.A. Local 152, App. Div. Docket No. A-3564-78 (June 19, 1980), held that it was unnecessary to decide in the context of that case whether the issue was negotiable. The court merely held that retirement coverage proposals could not be submitted to interest arbitration because the County was a participant in the State Health Benefits Program and N.J.S.A. 34:13A-18 prohibits the submission to interest arbitration of any issue which will affect the employer's obligation associated with that program or any governmental retirement system or pension fund.

2/ The Commission, in Bradley Beach, did note that N.J.S.A. 34:13A-18 prohibited such an issue from being presented to interest arbitration, even though it was found negotiable. It is apparently undisputed that the Township herein is also a member of the State Health Benefits Program. Although the Petitioner, in its brief, argues that health benefit provisions for future retirees (current employees who will retire) are also non-negotiable, the Commission, following the Court's lead in County of Middlesex, supra, need not make that determination in this matter since the instant clause applies to retired employees.

ORDER

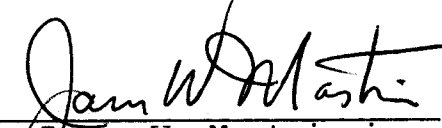
For the foregoing reasons IT IS HEREBY ORDERED

that:

1. Article XII, Section 2 of the parties 1980 collective negotiations agreement does not pertain to a mandatorily negotiable subject; and

2. P.B.A. Local 57 may not insist to the point of impasse upon negotiation over the continuation of that clause in a successor agreement, nor may that issue be submitted to interest arbitration.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Newbaker, Parcels and Suskin voted in favor of this decision. None opposed. Commissioner Hipp abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 10, 1981