

P.E.R.C. NO. 2008-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RIDGEFIELD,

Respondent,

-and-

Docket No. CO-2005-275

RIDGEFIELD PBA LOCAL NO. 330,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Borough of Ridgefield. The Complaint was based on an unfair practice charge filed by Ridgefield PBA Local No. 330 alleging that the Borough violated the New Jersey Employer-Employee Relations Act by denying bonus terminal leave to a retiring police officer and by refusing to negotiate over changes to the benefit and the impact on PBA unit members. The Commission concludes that the PBA did not prove its allegations.

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 Respondent, Basile Birchwale and Pellino, LLP,
attorneys (Stephen Pellino, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Michael A. Bukosky, of
counsel)

DECISION

Ridgefield PBA Local No. 330 has filed exceptions to a Hearing Examiner's recommendation that we dismiss its unfair practice charge. H.E. No. 2007-11, 33 NJPER 191 (¶67 2007). The charge alleges that the Borough of Ridgefield violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by denying bonus terminal leave to a retiring police officer and by refusing to negotiate over changes to the benefit and the impact on PBA unit members. The Hearing Examiner found that the Borough did not change the method of determining whether an employee would receive the benefit and that the PBA waived its

right to negotiate over the issue mid-contract. We conclude that the PBA did not prove its allegations and dismiss the Complaint.

The PBA filed its charge on April 26, 2005. On August 23, a Complaint and Notice of Hearing issued on allegations that the employer violated 5.4a(1) and (5).^{1/} The Borough filed an Answer asserting that the PBA was aware of its longstanding method of handling police officer's requests for bonus terminal leave on a case-by-case basis directly with the employee. The Borough also asserted that the PBA waived its right to challenge how it provided bonus terminal leave.

On August 24, 2006, Hearing Examiner Arnold H. Zudick conducted a hearing. The record closed on March 8, 2007. On June 29, 2007, the Hearing Examiner issued a report recommending that the Complaint be dismissed.

On July 19, 2007, the PBA filed exceptions. On August 16, the Borough filed an answering brief.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (H.E. at 3-13).

^{1/} These provisions 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."

Since 1992, some officers have been given promotions and/or a bonus payment upon retirement in addition to a contractual terminal leave benefit derived from accumulated vacation, sick time and return days. Each bonus payment was agreed upon by the officer and Borough representatives with the knowledge but not the participation of PBA representatives. In deciding whether to extend bonus terminal leave to a particular officer, the Borough considered whether the particular retirement would generate an overall savings to the Borough. The factors going into the decision were the officer's accrued time, salary, duties, and performance; the Borough's staffing needs; and whether and when the Borough needed to replace the officer.

In early 2005, the Borough rejected the request of Lieutenant William Candeletti for bonus terminal leave. The Borough's decision was purely financial.

On April 22, 2005, the PBA demanded negotiations over all aspects of the "repudiation of the terminal leave benefit." The PBA also requested impact negotiations. It filed its charge four days later. By letter dated May 2, 2005, the Borough responded to the PBA's demand for negotiations by denying that it had changed any terms and conditions of employment and stating that no negotiations were required.

The Borough and PBA were involved in contract negotiations during 2004 and entered into a memorandum of agreement on January

12, 2005. Bonus terminal leave was never raised during negotiations and was not addressed in the 2004-2008 agreement signed on February 24, 2006.

The Hearing Examiner found that the Borough did not deviate from its practice of determining eligibility for bonus terminal leave on a case-by-case basis through discussions with the individual employee. We agree.

The PBA contends that bonus terminal leave of at least one month's salary was a common practice. That is true, but such leave was not granted automatically to all retiring officers. As the Hearing Examiner properly found, a number of officers retired without any bonus terminal leave (H.E. at 4-6). The PBA argues that all officers who retired since the year 2000 have received bonus terminal leave. The record, however, does not indicate that anything changed in that year and the assertion ignores the evidence about officers who retired before then and did not receive bonus terminal leave.

The PBA contends that "there is not a shred of evidence that the Borough determined to grant terminal leave based upon 'savings to the Borough.'" However, a Councilman who was the Police Commissioner explained at length the considerations the Borough took into account, including the need to save money (T132, T137, T143, T159, T161).

The PBA questions how the Borough could achieve savings by granting bonus terminal leave to four officers who retired close in time to Candeletti, but not to him. The answer is that the nature of his duties and the timing of his retirement would not have allowed the Borough to replace him with a new hire earning less compensation. Moreover, whether the Borough would have saved money by granting him bonus terminal leave is really not at issue. The burden was on the PBA to prove its contention that the Borough had a practice of granting bonus terminal leave automatically to all retiring employees and that it deviated from that practice in this case. It could not meet that burden because the benefit was not granted to several retiring employees over the years.

Finally, the PBA's reliance on Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000), is misplaced. In Middletown, the employer deviated from its long-standing practice. Here, the Borough acted consistent with that practice and therefore was not required to negotiate before continuing to act consistent with that practice. South River Bd. of Ed., P.E.R.C. No. 86-132, 12 NJPER 447 (¶17167 1986), aff'd NJPER Supp.2d 170 (¶149 App. Div. 1987).

Under these circumstances, we accept the Hearing Examiner's recommendation that the Complaint be dismissed.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller and Watkins
voted in favor of this decision. None opposed.

ISSUED: November 20, 2007

Trenton, New Jersey