

P.E.R.C. NO. 99-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER,

Petitioner,

-and-

Docket No. SN-98-90

P.B.A. LOCAL 198,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a provision which the Borough of Butler seeks to remove from an expired collective negotiations agreement between the Borough and P.B.A. Local 198. The contractual article in dispute provides for payments that decline with additional years of service and would thus tend to induce employees to retire closer to 25, rather than 28 years of service. The Commission concludes that this article is an early retirement incentive which is not mandatorily negotiable and may not be submitted to interest arbitration for inclusion in a successor agreement.

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 (Fredric M. Knapp, on the brief)

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

DECISION

On May 28, 1998, the Borough of Butler petitioned for a scope of negotiations determination. The Borough seeks a determination that an article contained in the expired agreement between the Borough and P.B.A. Local 198 is an illegal retirement incentive and may not be considered by an interest arbitrator for continued inclusion in a successor agreement.

The parties have filed briefs, certifications, exhibits and reports by actuarial and accounting experts. These facts appear.^{1/}

^{1/} On October 7, 1998, the Commission's Chair denied the parties' request for a hearing. On October 29, the Chair

The PBA represents all police officers in the Borough except the chief, lieutenant and captain and any special officers. The collective negotiations agreement between the parties 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 Employees 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.

1/ Footnote Continued From Previous Page

denied the PBA's request for reconsideration of that decision. The parties have been afforded numerous opportunities to submit certifications, actuarial reports, and opinions from the Police and Firemen's Retirement System.

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.

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).

The Borough asserts that, under Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979), Article XXV, Section 2 is not mandatorily negotiable because it provides for an early retirement incentive and affects retirement age and, therefore, the actuarial assumptions of the PFRS. The Borough relies on the report of an actuarial expert and Jacobs v. New Jersey Highway Auth., 54 N.J. 383 (1969).

The PBA contends that this matter is distinguishable from Fair Lawn because the Court in that matter heard testimony from an expert from the Teachers' Pension Annuity Fund who was able to calculate the increased pension cost that would result from a one-year reduction in the average teacher retirement age. The PBA asserts that the Borough has not provided such information. Further, the PBA has submitted an actuarial report, as well as a report prepared by a certified public accountant, each of which state that Article XXV, Section 2 would not have a substantial effect on the actuarial assumptions of PFRS, even if adopted statewide.

The Borough and the PBA disagree over how to assess whether the clause would affect PFRS' actuarial assumptions and whether the clause is invalid under Fair Lawn because of any such impact. We need not resolve the parties' dispute over these

issues because we are satisfied that this case is governed by our recent decision in City of Elizabeth, P.E.R.C. No. 99-69, 25 NJPER 103 (¶30044 1999). There we held that 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. We reasoned that, under Fair Lawn, a proposal or clause that rewards early retirement rather than years or quality of service is not compensation for services. It is a retirement benefit that supplements State-established pension benefits and therefore cannot be the subject of collective negotiations.

Elizabeth involved such a proposal: the majority representative sought a supplemental retirement incentive that declined with additional years of service and, therefore, fell within the ambit of Fair Lawn's prohibition against adopting early retirement incentive programs not authorized by law. 70 N.J. at 588.

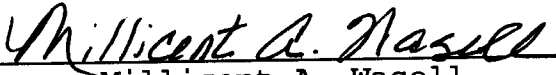
Elizabeth directs the same result here. Article XXV, Section 2 also provides for payments that decline with additional years of service and would thus tend to induce employees to retire with closer to 25 rather than 28 years of service. See Elizabeth. Indeed, the provision explicitly states that it is a "retirement incentive."

For these reasons, we hold that Article XXV, Section 2 is not mandatorily negotiable.

ORDER

Article XXV, Section 2 is not mandatorily negotiable and may not be submitted to interest arbitration for continued inclusion in a successor agreement.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: March 25, 1999
Trenton, New Jersey
ISSUED: March 26, 1999