

P.E.R.C. NO. 78-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLMDEL TOWNSHIP,

Petitioner,

-and-

Docket No. SN-78-20

LOCAL 239, HOLMDEL TOWNSHIP
PBA,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by Holmdel Township the Commission determined that a proposed contractual provision that is akin to a maintenance of membership clause is an illegal subject for collective negotiations, insofar as it attempts to restrict a member's right to refrain from joining or assisting an organization -- a right that is explicitly protected by N.J.S.A. 34:13A-5.3. The Commission does note that the PBA's proposal would be a required subject of collective negotiations if amended to follow the provisions of N.J.S.A. 52:14-15.9e.

P.E.R.C. NO. 78-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLMDEL TOWNSHIP,

Petitioner,

-and-

Docket No. SN-78-20

LOCAL 239, HOLMDEL TOWNSHIP
PBA,

Respondent.

Appearances:

For the Petitioner, John J. Coughlin, Administrator

For the Respondent, Joseph E. Kelley, III, Esquire

DECISION AND ORDER

On January 19, 1978, Holmdel Township (the "Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute between the Township and Local 239, Holmdel Township PBA (the "Local") was within the scope of collective negotiations.

During the course of negotiations for a successor agreement to the parties' 1977 contract, the Local proposed a contractual provision that would attempt to place certain maintenance of membership requirements upon those employees who were members of the Local at the time of ratification of the new agreement or who subsequently joined the Local. The Township filed the instant Petition requesting a determination as to whether this matter, as demanded, is a required subject of negotiations and therefore subject to compulsory interest arbitration. The Township filed

a brief in this matter on February 8, 1978; the Local did not submit a brief.

The proposed contractual provision in issue reads as follows:

Section 1.

All employees covered by this Agreement who are members of the Association at the time this Agreement is ratified or who hereafter become members during the term of this Agreement must retain their membership in the Association for the duration of this Agreement, in accordance with the qualifications noted in this paragraph, by offering to pay regular monthly dues and initiation fees assessed against all members of the Association. Any member may resign from the Association effective January 1 or July 1, in accordance with the noted requirements of N.J.S.A. 52:14-15.9e. In the event the member fails to notify the Township on January 1, or July 1, of any year to cease dues and deductions, such deductions shall continue for six (6) month periods thereafter. Notice of withdrawal must be submitted by the employee to the Association in writing and a copy thereof furnished to the Township of Holmdel.

Section 2.

The Association agrees that it will indemnify and save harmless the Township of Holmdel against any and all actions, claims, demands, losses, or expenses in any matter resulting from action taken by the Township at the request of the Association under this Article.

In rendering this determination, our analysis begins with a review of our decision in In re County of Bergen (Bergen Pines Hospital), P.E.R.C. No. 76-41, 2 NJPER 166 (1976). In Bergen Pines we found a maintenance of membership clause that sought to bind employees to maintain their union membership for the duration of the collective agreement to be an illegal subject of negotiations.

Such a clause was held to be violative of an employee's right to refrain from joining or assisting an organization. This right is explicitly protected by N.J.S.A. 34:13A-5.3.

As stated in that decision:

Clearly, then, if the clause in question purports to restrict the individual employee's right to refrain, it is unsupported by statutory provision and must fall. The only statutory provision of which we are aware that would permit a restriction of the right to refrain is the dues deduction law, previously discussed. It could be argued, therefore, that a contractual clause paralleling the restrictions of the dues deduction statute would not impermissively restrict the right to refrain. Faced with such a contract clause, we would no doubt so find. (Footnote omitted; at 168)

The instant maintenance of membership proposal is similar but not identical to N.J.S.A. 52:14-15.9e.^{1/} Although the Bergen Pines case arose during the course of a Chapter 303 agreement as opposed to a Chapter 123 agreement,^{2/} our conclusion must be the same. The pertinent portions of Section 5.3 of the Act concerning employees' rights to refrain from employee organization activity have not been changed. Therefore, the instant contractual provision is legal to the extent that it parallels the provisions of N.J.S.A. 52:14-15.9e but is illegal to the extent that it is inconsistent

^{1/} This law was amended by c. 295, P.L. 1977 to authorize the negotiation of exclusive dues deduction privileges for the majority representative but did not otherwise modify or expand the statute.

^{2/} The Commission, citing Bd. of Ed. of the Twp. of Ocean v. Ocean Teachers' Assn., Docket No. A-3334-74 (App. Div., May 5, 1976), has consistently held that the substantive effect of the Chapter 123 amendments, effective January 20, 1975, applies only to those agreements entered into after the effective date of the amendments.

with those provisions.

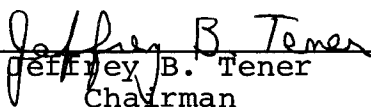
The Local's proposal would be a legal subject of negotiations if amended to follow the provisions of N.J.S.A. 52:14-15.9e. The Local's proposal must, to be a legal subject of negotiations, be modified to parallel that statute. More specifically, the proposal refers to resignation from the Local whereas the statute speaks of a withdrawal of dues deduction authorization. Furthermore, the proposal is silent as to the procedures for authorizing dues deduction and deals only with the withdrawal aspect of that subject whereas the actual provisions of the statute are concerned with both the procedures for authorization as well as the restrictions on withdrawal. The proposal also appears ambiguous as to the method of notification of withdrawal of authorization: both the Township and the Association seem to be implicated whereas the statute only requires notification to the employer's disbursing officer.

ORDER

Based upon the above and with specific reference to the statutory right of employees to refrain from employee organization activity and the qualifications of that right set forth in N.J.S.A. 52:14-15e, it is hereby ordered that the Local refrain from proposing or submitting to interest arbitration a contractual

provision which attempts to restrict employees in their right to refrain from employee organization activity except to the extent authorized by N.J.S.A. 52:14-15.9e.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz and Parcels voted for this decision. Commissioners Forst and Hipp voted against this decision.

DATED: Trenton, New Jersey
March 16, 1978
ISSUED: March 20, 1978