

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TURNPIKE AUTHORITY,

Petitioner,

-and-

Docket No. SN-2005-067

NEW JERSEY TURNPIKE SUPERVISORS
ASSOCIATION, IFPTE LOCAL 200,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey Turnpike Authority for a restraint of binding arbitration of a grievance filed by the New Jersey Turnpike Supervisors Association, IFPTE Local 200. The grievance asserts that the Authority prematurely terminated the retiree health benefits of a supervisor who had retired during the term of the parties' 1995 to 1999 collective negotiations agreement. The Association claims that the agreement under which the grievant retired requires the employer to provide health benefits until he turns 71 and the employer claims that the agreement permitted it to terminate benefits after he turned 70. The Commission holds that this contractual dispute is legally arbitrable.

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.

P.E.R.C. NO. 2006-13

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Appearances:

For the Petitioner, Sedita, Campisano & Campisano, LLC,
attorneys (Frank R. Campisano, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Merick H. Limsky, on the brief)

DECISION

On March 16, 2005, the New Jersey Turnpike Authority petitioned for a scope of negotiations determination. The Authority seeks a restraint of binding arbitration of a grievance filed by the New Jersey Turnpike Supervisors Association, IFPTE Local 200. The grievance asserts that the Authority prematurely terminated the retiree health benefits of a supervisor who had retired during the term of the parties' 1995 to 1999 collective negotiations agreement.

The parties have filed briefs and exhibits. The Authority has submitted the certification of Elizabeth McGarrity, its Human Resources Director. These facts appear.^{1/}

The Association represents the Authority's supervisors.

Article XVI, Paragraph P, Section 3(a) of the parties' 1995-1999 contract provides, in relevant part:

Effective July 3, 1989, all employees who retire and are under age 65 will continue to receive benefits as indicated above. However, upon becoming age 65 and continuing through age 70, they will continue to receive health benefits. . . .

The language was continued into the parties' 1999-2003 agreement. However, a Memorandum of Understanding executed on May 22, 2002 "clarifies" the phrase "through age 70" in the "current collective bargaining agreement" to mean "the last day of the month in which the person turns 71." According to the Authority, this clarification changed the parties' previous interpretation, which it asserts discontinued benefits as of the retiree's 70th birthday.

Jim Nasatka retired on April 1, 1996. His benefits were discontinued when he reached age 70. On February 17, 2004, the Association filed a grievance alleging that the Authority violated the contract by failing to provide benefits to Nasatka

^{1/} On April 20, 2005, a Commission Designee denied the Authority's application for an interim restraint of binding arbitration. I.R. No. 2005-11, 31 NJPER 76 (¶34 2005).

until he turned 71. The grievance was not resolved and on September 22, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Although a public employer must negotiate over the benefits its current employees will receive upon retirement, it need not negotiate over benefit changes for employees who are already retired. Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979). However, a union may enforce a contract on behalf of a retired employee since it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. See Borough of Bradley Beach, P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999). The Association's claim is that the agreement under which the grievant retired requires the employer

to provide health benefits until he turns 71 and the Authority's response is that the previous agreement permitted it to discontinue benefits after he turned 70. That contractual dispute is legally arbitrable. Whether the 1995-1999 agreement provides the benefit claimed is for the arbitrator to decide.^{2/}

ORDER

The request of the New Jersey Turnpike Authority for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Fuller and Watkins voted in favor of this decision. Commissioners Buchanan and Mastriani recused themselves. Commissioner DiNardo abstained from consideration. None opposed. Commissioner Katz was not present.

DATED: September 29, 2005
Trenton, New Jersey
ISSUED: September 29, 2005

^{2/} The May 22, 2002 Memorandum of Understanding also clarified that prescription benefits provided "through age 80" would last until a retiree turns 81. The employer seeks a restraint of arbitration over this issue as well. The Association has not sought arbitration over prescription benefits and we therefore do not extend our order to this issue.