

P.E.R.C. NO. 2006-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY SHERIFF/
COUNTY OF ESSEX,

Petitioner,

-and-

Docket No. SN-2006-068

ESSEX COUNTY SHERIFF'S
OFFICERS, P.B.A. LOCAL 183,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Essex County Sheriff's Officers, P.B.A. Local 183 for inclusion in a successor collective negotiations agreement with the County of Essex/Essex County Sheriff. The proposal would provide employer-paid medical coverage to officers who retire because of job-related disabilities. The employer argues that the Police and Firemen's Retirement System statute, specifically N.J.S.A. 43:16A-7, and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq., prohibit granting disabled retirees any benefit beyond a pension, annuity, and workers' compensation payments. The Commission holds that these statutes do not expressly, specifically, or comprehensively eliminate the employer's discretion to grant the requested benefit and thus do not preempt negotiations.

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, Genova, Burns & Vernioia, attorneys
(Brian W. Kronick, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Marcia J. Tapia, on the brief)

DECISION

On March 13, 2006, the Essex County Sheriff/County of Essex petitioned for a scope of negotiations determination. The employer seeks a determination that a proposal made by the Essex County Sheriff's Officers, P.B.A. Local 183 for inclusion in a successor collective negotiations agreement is not mandatorily negotiable and cannot be submitted to interest arbitration. The proposal would provide employer-paid medical coverage to officers who retire because of job-related disabilities.

The parties have filed briefs and exhibits. These facts appear.

The PBA represents all sheriff's officers, court attendants, ID officers, and sheriff's investigators. The parties' most recent collective negotiations agreement expired on December 31, 2005. The parties are in negotiations for a successor collective negotiations agreement. The PBA has made this proposal:

To provide for full retiree medical coverage for Employees who are caused to retire due to a job-related disability. The standard for job-related disability shall be consistent with New Jersey Police and Fire Pension statute definitions and regulations. . . .

On February 17, 2006, the PBA petitioned for interest arbitration. The employer then filed this scope petition.^{1/}

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." We do not consider the wisdom of the proposal, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

^{1/} The employer also asked that the interest arbitration petition be blocked because of a pending unfair practice charge filed by the PBA. That charge alleges that the employer failed to sign the parties' agreement that was due to expire on December 31, 2005. The interest arbitration petition has been processed and an arbitrator has been assigned. The charge has been held in abeyance.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps for determining whether a proposal involving police officers is mandatorily negotiable:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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. [Id. at 92-93; citations omitted]

Health benefits for future retirees are mandatorily negotiable as long as the benefit sought is not preempted by statute or regulation. Atlantic Cty., P.E.R.C. No. 95-66, 21 NJPER 127 (¶26079 1995). See also Borough of Emerson, P.E.R.C. No. 2005-68, 31 NJPER 125 (¶53 2005); Watchung Bor., P.E.R.C. No. 2000-93, 26 NJPER 276 (¶31109 2000). The employer initially argues that N.J.S.A. 40A:10-23 preempts negotiations over the proposal. That law provides, in part:

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees (a) who have retired on a disability pension, . . . including the premiums on their dependents,

if any, under uniform conditions as the governing body of the local unit shall prescribed.

According to the employer, this law grants it non-negotiable discretion to pay all, part, or none of the retirees' health premiums. The PBA responds that the employer's discretion over this compensation issue must be exercised through the negotiations process. The PBA is correct. We so held in Atlantic Cty., Emerson and Watchung. See also Pemberton Tp., P.E.R.C. No. 2000-5, 25 NJPER 369 (¶30159 1999). See generally State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978) (statutes or regulations are not preemptive unless they eliminate an employer's discretion to grant the benefit proposed); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982) (mere existence of legislation touching on a subject does not preempt negotiations).

The employer also argues that the Police and Firemen's Retirement System statute, specifically N.J.S.A. 43:16A-7, and the Workers' Compensation Act, N.J.S.A. 34:15-1 et seq., prohibit granting disabled retirees any benefit beyond a pension, annuity, and workers' compensation payments. These statutes do not expressly prohibit an employer from exercising its discretion under N.J.S.A. 40A:10-23 to provide retiree health coverage as well and we will not find an implied repealer of that statutory discretion either. Brewer v. Porch, 53 N.J. 167, 173 (1969)

(implied repealers disfavored). The cited statutes do not expressly, specifically, or comprehensively eliminate the employer's discretion to grant the benefit requested and thus do not preempt negotiations. Bethlehem.

ORDER

The PBA's proposal is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

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

ISSUED: May 25, 2006

Trenton, New Jersey