

P.E.R.C. NO. 2006-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RINGWOOD,

Petitioner,

-and-

Docket No. SN-2006-081

RINGWOOD P.B.A. LOCAL NO. 247,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds a provision in an expired collective negotiations agreement between the Borough of Ringwood and the Ringwood P.B.A. Local No. 247 to be not mandatorily negotiable. The provision concerns retirement entitlements for past Borough employees. The Commission concludes that the provision is not mandatorily negotiable because it addresses benefits of employees who have already retired as well as the benefits of employees who will retire; and it supplements pension benefits in violation of the prohibition announced in Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979).

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, Laufer, Knapp, Torzewski & Dalena, LLC, attorneys (Fredric M. Knapp, of counsel; Meredith B. Messing, on the brief)

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

DECISION

On April 25, 2006, the Borough of Ringwood petitioned for a scope of negotiations determination. The petition seeks a determination that a provision in its most recent collective negotiations agreement with Ringwood P.B.A. Local No. 247 is not mandatorily negotiable and cannot be included in a successor contract. That provision concerns retirement entitlements for past Borough employees.

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

The PBA represents patrol officers and sergeants. The parties' collective negotiations agreement expired on December

31, 2004. Article XIII is entitled Incentive Program. Paragraph B provides:

Past employees of the Borough who were members of this bargaining unit, while employed, and who shall have retired upon full retirement after twenty-five (25) years or more of service as a member of the Police Department, retiring on or after December 1, 1988, shall be entitled to the following retirement entitlement as long as he or she shall live and this Agreement is in effect:

- 1) Retirees with living spouse - One Hundred Fifty-Two (\$152.00) Dollars per month.
- 2) All other Retirees - Ninety-Five (\$95.00) Dollars per month.

The borough shall have the option of paying this entitlement on a monthly or a yearly basis. In the event the Borough shall opt to pay the same annually, payment for each calendar year shall be made to each retiree no later than December 31st of that year.

The parties are engaged in successor contract negotiations. When the PBA petitioned for interest arbitration, the Borough filed this petition.

Our jurisdiction is narrow. We will address only the abstract issue of whether the subject matter of this proposal is mandatorily negotiable. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981). We do not consider the wisdom of agreeing to it. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The disputed provision is not mandatorily negotiable for two reasons. First, it addresses the benefits of employees who have retired as well as the benefits of employees who will retire. Benefits for former employees who have already retired are not mandatorily negotiable. See, e.g., New Jersey Transit Bus Operations, P.E.R.C. No. 2006-45, 31 NJPER 402 (¶159 2005); Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78, 83 (¶18036 1986); Ocean Tp., P.E.R.C. No. 81-136, 7 NJPER 338 (¶12152 1981). Second, it supplements pension benefits in violation of the prohibition announced in Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979). Contrary to the PBA's argument, this article does not provide a form of deferred compensation and does not share the characteristics of negotiable benefits such as longevity pay, terminal leave, or payment for accumulated sick leave. It is paid to retirees, supplements State-established pension benefits, and is not otherwise authorized by statute. Contrast N.J.S.A. 40A:10-23 (authorizing employer to provide retiree health benefits). It is therefore not mandatorily negotiable. Accord Harding Tp., P.E.R.C. No. 2005-85, 31 NJPER 192 (¶77 2005) (article calling for cost of living increases for pensioners is not negotiable).

ORDER

Article XIII, Paragraph B is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

ISSUED: June 29, 2006

Trenton, New Jersey