

P. E. R. C. NO. 80-124

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LINDENWOLD,

Petitioner,

Docket No. SN-80-77

-and-

FRATERNAL ORDER OF POLICE,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission orders the FOP to refrain from proposing the retention of a clause in a successor agreement which provides for benefits for the widows of police officers who are killed in the line of duty. The clause in question has been preempted by statutory enactments and, under State v. State Supervisory Employees Assn., 78 N.J. 54 (1978), there can be no negotiations on this subject.

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Appearances:

For the Petitioner, Capehart & Scatchard, P.A.
(Mr. Alan R. Schmoll, of Counsel)

For the Respondent, Francis A. McHenry,
Lindenwold Police Bargaining Committee

DECISION AND ORDER

On January 28, 1980 the Borough of Lindenwold (the "Borough") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain item in dispute with the Fraternal Order of Police (the "FOP") is within the scope of collective negotiations. Written submissions were received from both parties by February 19, 1980.

At issue is the following clause from their expired contract which the Borough contends is illegal and wishes to delete from the successor agreement:

Section 2. Any officer that (sic) is killed in the line of duty, his widow will receive his full pay as long as she remains his widow.

It is urged by the Borough that this subject has been preempted by statutory enactments, and that under State v. State Supervisory Employees Assn, 78 N.J. 54 (1978), there cannot be negotiations on this subject. The FOP disputes this assertion, alleging that an employer is free to supplement existing statutory benefits.

N.J.S.A. 34:13A-8.1, a section of the New Jersey Employer-Employee Relations Act ("Act"), reads in relevant part:

nor shall any provision hereof annul or modify any pension statute or statutes of this state.

The Legislature has enacted the Police and Firemen's Retirement System - N.J.S.A. 43:16A-1 et seq. - a comprehensive pension system for police and fire employees throughout the State.


N.J.S.A. 53:16A-10 sets forth specific benefits to be paid to the widows of those employees who die while in active service in the performance of duty. We do not see how Article XIV, Section 2 can be read as anything but a modification of the statutory scheme for recompensing the widows of police officers who died in the line of duty. Percentages are set out as the amounts to be paid and the payment of full salary is a change that runs afoul of §8.1 of the Act. Therefore, we are constrained to conclude that the retention of Section 2, Article XIV is an illegal subject of negotiations.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Fraternal Order of Police refrain from proposing the retention

in a successor agreement of Section 2, Article XIV from the collective negotiations agreement which expired December 31, 1979.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hipp, Hartnett, Newbaker and Parcels voted for this decision. Commissioner Graves abstained. None opposed.

DATED: Trenton, New Jersey
April 3, 1980
ISSUED: April 7, 1980