

P.E.R.C. NO. 97-142

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-97-80

THE EDUCATION ASSOCIATION
OF MORRIS,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission restrains the Morris School District Board of Education from applying a factfinder's proposed caps on "Compensatory Pay At Retirement" to employees represented by the The Education of Morris who already have accumulated amounts in their retirement banks in excess of those caps. The Commission finds that the parties did not enter into the caps knowingly and that implementation of the caps would constitute an unlawful inducement to retire under 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 Respondent, Carroll & Weiss, attorneys
(David W. Carroll, of counsel)

For the Petitioner, Balk, Oxfeld, Mandell & Cohen,
attorneys (Sanford R. Oxfeld, & Gail Oxfeld Kanef, of
counsel and on the briefs)

DECISION AND ORDER

On February 13, 1997, The Education Association of Morris petitioned for a scope of negotiations determination. The Association seeks a declaration that a portion of a factfinder's recommendation is non-negotiable. That recommendation would, in part, cap payments for unused sick leave and personal leave days already accumulated in retirement banks of employees of the Morris School District Board of Education. The Association asked for an interim restraint against the imposition of the caps pending the completion of Commission proceedings.

The parties have filed certifications, exhibits and briefs. On April 29, 1997, Commission Designee Ira W. Mintz heard oral argument on the interim relief application.

On May 9, 1997, the designee issued his interim relief decision and order. I.R. No. 97-22, ___ NJPER ___ (¶ ___ 1997). His order stayed the application of the factfinder's proposed caps to employees who already had accumulated amounts in their retirement banks in excess of the caps. The designee found a substantial likelihood that the Commission would invalidate the caps for two reasons: (1) the parties did not enter into the caps knowingly; and (2) implementation of the caps effective July 1, 1997 would constitute an unlawful inducement to retire under Fair Lawn Ed. Ass'n v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979).

The Board has submitted a supplemental letter brief. It asserts that the designee's finding that the parties have not entered into the caps knowingly is not supported by the record; his analysis on that issue brings into question the processes of factfinding and interest arbitration generally; Fair Lawn does not apply; and the predecessor contracts did not grant employees any vested rights.

We have reviewed the record. We adopt the designee's findings of fact (I.R. at 2-6). We specifically adopt his finding, based on the factfinder's report quoted in the designee's report (I.R. at 4), that neither party proposed that the amounts already accumulated in the employees' retirement banks be reduced.

We also adopt the designee's analysis of the legal issues (I.R. at 6-18). Like the designee, we do not decide whether it

would be unconstitutional to reduce retirement banks of already accumulated leave through a negotiated agreement. We also do not decide whether we should follow or distinguish private sector precedents holding that proposals to extinguish liabilities for accrued wages and benefits under previous contracts are non-mandatory subjects of bargaining. NLRB v. Swift Adhesives, ___ F.3d ___, 154 LRRM 3025 (8th Cir. 1997), aff'g 320 NLRB No. 43, 151 LRRM 1278 (1995); R.E. Dietz Co., 311 NLRB 1259, 145 LRRM 1025 (1993); Harvstone Mfg. Co., 272 NLRB No. 144, 117 LRRM 1447 (1984). Instead, we will assume, for purposes of this decision, that already accumulated benefits in retirement banks can be reduced through negotiated caps. Nevertheless, we agree with our designee that such reductions must be entered into knowingly and that there was no knowing waiver in this case since neither party had proposed retroactive caps and since the Association voted to accept the factfinder's report before it issued.^{1/}


^{1/} This ruling is narrow and limited to the unusual circumstances of this case where previous contracts had encouraged employees not to use sick leave and personal days and had entitled them to place unused days in banks for payment upon retirement. We recognize that factfinders and interest arbitrators ordinarily may make recommendations and decisions at variance with the parties' proposals on a given subject. Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER _____ (¶_____ 1997). We also recognize that a party ordinarily may agree to accept a factfinder's report sight unseen. But we believe this case presents a limited exception to the validity of such practices.

More importantly, we conclude that implementation of the caps would constitute an unlawful inducement to retire under Fair Lawn. Accordingly, we hold that the factfinder's proposed caps may not be applied to employees who already have accumulated amounts in their retirement banks in excess of those caps.

ORDER

The Morris School District Board of Education is restrained from applying the factfinder's proposed caps on "Compensatory Pay At Retirement" to employees who already have accumulated amounts in their retirement banks in excess of those caps.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997