

P.E.R.C. NO. 84-143

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTVILLE,

Petitioner,

-and-

Docket No. SN-84-31

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 140,
NJPBA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds illegal two clauses that Policemen's Benevolent Association, Local No. 140, NJPBA seeks to include in its successor collective negotiations agreement with the Township of Montville. The clauses would require the Township to ~~give rank-and-file~~ police officers any holidays or insurance benefits it gave other employees including superior police officers with whom the Township also negotiates. As now worded, the two clauses technically constitute illegal parity clauses.

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Appearances:

For the Petitioner, Eismeier and Falcon, Esqs.
(Lawrence Eismeier, of Counsel)

For the Respondent, Loccke & Correia, P.A.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On December 22, 1983, the Township of Montville ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township seeks a determination whether the following two clauses in its 1982-83 collective negotiations agreement with the Policemen's Benevolent Association, Local No. 140, NJPBA ("PBA") are mandatorily negotiable:

A. Article V - Holidays - "Section 4-In the event the employer shall declare, grant or create paid holidays in excess of those promulgated each year for employees and such time off shall equal or exceed three and one-half (3 1/2) hours, the Police Officers will be granted additional compensation accordingly, without need for further negotiations."

B. Article X - Insurance - "Section 3-In the event the employer shall provide new and/or improved insurance benefits to its other employees, the same shall be provided to employees covered by this Agreement, without need for further negotiations. If the employer provides insurance benefits to any

retired employees, the same will be provided to any employees covered by this Agreement, who have retired previously."

The PBA, the majority representative of the Township's rank-and-file police officers, has proposed the inclusion of these clauses in a successor contract.

The Township contends that the two provisions are illegal parity clauses. It cites In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978) ("Plainfield").

The PBA asserts that the disputed provisions are not parity clauses because they are purportedly triggered by unilateral employer action rather than by any benefit increase negotiated by the employer with another employee organization.^{1/} It cites In re Township of Weehawken, P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981) ("Weehawken") and In re Borough of Watchung, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981) ("Watchung").

In Plainfield, we held illegal a clause which automatically extended to the contractually covered group any salary increases or other benefits different employee groups succeeded in negotiating for themselves. We stated:

"The parity clause has a natural and unavoidable coercive effect. When considering economic proposals of one employee organization, the public employer must inevitably reconcile such a proposal with the ultimate result of providing similar economic proposals

^{1/} There are only two groups of Township employees represented by employee organizations: (1) rank-and-file police officers and (2) superior officers. All other employees are unrepresented. The Township has filed a scope petition questioning the negotiability of these same two provisions found in the contract between the Township and the Montville Superior Officers Association.

to any other employee organization which has the protection of a parity clause in its collective negotiations agreement. This result interferes with the right to negotiate in good faith. The issue is not whether or not a public employer actually relies upon a parity clause to deny an employee organization's economic proposals. The mere existence of the clause is sufficient to chill the free exchange (between the parties) by permitting a third employee organization, not a party to the negotiations, to have impact on those negotiations.

In Weehawken, we found that the following clause was mandatorily negotiable:

Whenever Township employees are excused by an executive order by the Governor, President, Legislative Body, or Mayor of Weehawken, members covered by this Agreement shall no longer be excluded but shall be given equivalent compensatory time off which time shall not accumulate at the end of the year.

We distinguished Plainfield because this provision had no effect on negotiated terms and conditions of employment. Instead, the provision concerned holidays and compensatory time without affecting the negotiation rights of other employee groups.

In Watchung, we found that the following clause was mandatorily negotiable:

The PBA shall be entitled to be paid under the current system of payment for all legal holidays enjoyed by any other Borough employees.

We stated:

The instant matter is not a general parity clause. The parties have fully negotiated an agreement which does not inhibit negotiations between the employer and other units. The disputed clause is part of a negotiated holiday clause that does not reach the level of a parity clause. It merely provides that when the employer designates a holiday for municipal employees, the PBA members who have to work the day shall be paid for such holiday. Id. at 96.

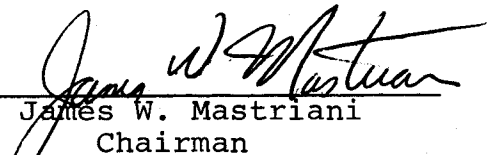
We specifically distinguished Plainfield because the Borough's municipal employees were not represented or covered by a collective negotiations agreement and thus this clause could not chill their negotiation rights.

In the instant case, the clauses are technically illegal because they would extend to the covered employees any increase in holiday and insurance benefits negotiated by any other employee group and there is, unlike Watchung, another employee group -- the superior police officers -- negotiating with the Township.^{2/} Both clauses, however, would be mandatorily negotiable if unambiguously clarified to limit their applicability to extensions of holiday and insurance benefits which the employer had unilaterally, without negotiations, granted other employees. Accordingly, we enter the following order.

ORDER

Articles V and X, as now worded, are not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Newbaker, Suskin and Wenzler voted in favor of this decision. Commissioners Graves and Hipp voted against this decision. Commissioner Hipp voted no with respect to the finding that Article V-Holidays is an illegal clause.

DATED: Trenton, New Jersey
May 30, 1984
ISSUED: June 1, 1984

^{2/} Under Plainfield, provisions reopening negotiations in the event of increases in benefits for other groups are mandatorily negotiable.