

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEEHAWKEN,

Petitioner,

-and-

Docket No. ID-81-1

WEEHAWKEN FMBA, LOCAL 26,

Respondent.

SYNOPSIS

In an indentification of issues proceeding, pursuant to N.J.A.C. 19:16-6.1 et seq., the Commission holds that the following are economic issues as defined in N.J.S.A 34:13A-16 (f)2: 1) Modification of Sick Leave Program; 2) Modification of Dental, Legal and Prescription Programs.

The Commission holds the following to be non-economic issues: 1) Agency Shop; 2) Separability and Savings; 3) Reopener Provisions in Event of Regionalization.

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Appearances:

For the Petitioner, Dorf & Glickman, P.A.
(Mark S. Ruderman, Of Counsel and on the Brief)

For the Respondent, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, Of Counsel and on the Brief)

DECISION AND ORDER

A Petition for Issue Definition Determination, Docket No. ID-81-1, was filed by the Township of Weehawken (the "Township") with the Public Employment Relations Commission on November 19, 1980, to resolve a dispute with the Weehawken FMBA Local No. 26 (the "FMBA") as to whether certain issues are economic or non-economic as defined in N.J.S.A. 34:13A-16(f)(2). At the time the petition was filed, the parties were engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85.

In its Rules adopted to implement the Police and Fire Arbitration Act (Chapter 85), the Commission established a procedure to resolve disputes as to whether issues are non-economic or economic. That procedure is set forth fully at N.J.A.C. 19:16-6.1 et seq. The Rules provide that the Chairman or other

designee of the Commission shall render a written determination which classifies the disputed issue or issues as economic or non-economic within the meaning of N.J.S.A. 34:13A-16(f)(2). When the parties utilize fair and final offer arbitration pursuant to N.J.S.A. 34:13A-16(d), issues must be classified as economic or non-economic. The arbitrator must select between all disputed economic issues as a package and all non-economic issues on an item by item basis.

Section 3 of the Police and Fire Arbitration Act, N.J.S.A. 34:13A-16(f)(2), defines economic issues as follows:

"Economic issues include those items which have a direct relation to employee income including wages, hours in relation to earnings, and other forms of compensation such as paid vacations, paid holidays, health and medical insurance, and other economic benefits to employees." (emphases added)

The Township disputes that five items demanded by Local 26 are non-economic issues and seeks findings that they are economic:

1. Agency Shop
2. Separability and Savings
3. Sick Leave Modification
4. Reopener Provisions in Event of Regionalization
5. Modification of Dental, Legal and Prescription Programs.

As the FMBA concedes that item three is an economic issue, we only the remaining four items, are in dispute.

The parties filed statements in lieu of briefs in support of their respective petitions, both of which were received by December 19, 1980.

With respect to the Agency Shop provision, the FMBA concedes that the provision would create a monetary fund, but

asserts that "such fund is comprised of the employees", not the employer's, monies."^{1/} Since "there is no benefit which flows from employer to employee,"^{2/} the FMBA argues, the Agency Shop provision is a non-economic issue. We agree.

The Agency Shop provision does not provide "economic benefits to employees," and cannot be considered a form of compensation as required by the statute for the issue to be defined as economic. The contested provision is not an economic issue within the meaning of N.J.S.A. 34:13A-16(f)(2) and may be submitted to the arbitrator on an issue by issue basis.

Both the Separability and Savings provision and the Reopener Provision in Event of Regionalization would require the reopening of negotiations on certain items upon the occurrence of certain events. The Township asks the Commission to accept its hypothesis that "[n]o one could doubt the potential economic benefits 'inuring to the employee' from such renegotiation."

These re-opener provisions would not grant any immediate benefits or compensation on employees nor would they mandate the grant of benefits or compensation in the event they were included in a contract and become operative. Accordingly, we find them to be non-economic items and order that they be submitted to the arbitrator as such.

The last item for our consideration is a proposed Modification of Dental, Legal and Prescription Programs. This provision would guarantee that certain benefits existing under the present contract be continued in the succeeding agreement.

^{1/} Statement of FMBA at page 3.

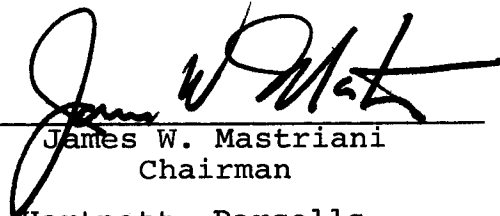
^{2/} Id.

The FMBA argues that the provision is non-economic, since the provision would require the maintenance of status quo benefits and employee income would not be at all affected. The contested provision guarantees the continuation of the economic benefits of dental, legal and prescription services to those employees. The fact that it may not involve an increase in a benefit or additional compensation does not alter the essence of its meaning which is to provide contractual coverage of the aforementioned economic benefits. We therefore find the item to be an economic issue, and order that it be submitted to the arbitrator as such.

ORDER

The Township of Weehawken and the FMBA Local No. 26 are hereby ordered to submit their positions to the interest arbitrator appointed by the Commission to this matter in accordance with the above determination as to whether disputed items are economic or non-economic.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani and Commissioners Hartnett, Parcels, Graves, Hipp and Newbaker voted for this decision. None against.

DATED: Trenton, New Jersey
March 10, 1981
ISSUED: March 11, 1981