

P.E.R.C. NO. 97-82

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

TOWNSHIP OF MONTCLAIR,

Petitioner,

-and-

Docket No. SN-97-5

PBA LOCAL 53,

Respondent.

TOWNSHIP OF MONTCLAIR,

Petitioner,

-and-

Docket No. SN-97-6

MONTCLAIR SUPERIOR OFFICERS
ASSOCIATION, LOCAL 53A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a successor contract proposal of PBA Local 53 and the Montclair Superior Officers Association, Local 53A may not be submitted to interest arbitration proceedings with the Township of Montclair. The Commission finds that aspects of the rights, duties, and obligations in or associated with the State Health Benefits Plan are integrally involved in the PBA and SOA proposals and thus cannot be considered by an interest arbitrator.

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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ASSOCIATION, LOCAL 53A,

Respondent.

Appearances:

For the Petitioner, Genova, Burns, Trimboli and Vernoia,
attorneys (James J. McGovern, III, of counsel)

For the Respondents, Stein, Bliablias, McGuire, Pantages
and Gige, attorneys (Phillip R. Dowdell, of counsel)

DECISION AND ORDER

On July 22, 1996, the Township of Montclair filed two petitions for scope of negotiations determinations. The Township seeks a determination that negotiations proposals which PBA Local 53 and the Montclair Superior Officers Association, Local 53A seek to submit to interest arbitration are not mandatorily negotiable. The cases were consolidated on July 25, 1996.

The parties submitted briefs. These facts appear.

PBA Local 53 represents the Township's full-time patrol officers. The most recent collective negotiations agreement covering these employees ran from January 1, 1993 through December 31, 1995. Article X, entitled Insurance, provides, in part:

A. The Employer agrees to provide, at no cost to the Employee the State Health Benefit Plan for all employees and their dependents as defined under the respective policies of insurance. The Employer also agrees to provide at no cost to the Employee, major medical insurance to all Employees and their dependents.

B. The Employer shall contribute amounts from time to time, as determined actuarially, to the Montclair PBA Variable Employee Benefit Association Trust, a copy of which is attached hereto and made a part hereof. The contribution each year shall be \$27,000.00 total for both police bargaining units which shall be applied to fund the benefits of the trust, and may be allocated to medical benefits or insurance benefits as the trustees determine. The PBA reserves the right during 1992 to submit to the Employer written verification of the need to receive additional monies (i.e., exhaustion of surplus). The Personnel Officer shall review such written documentation and recommend, if appropriate, to the Mayor and Council, additional funding during 1992. VEBA payments shall be made in quarters, February 1st, May 1st, August 1st, and November 1st. Any amendment to the benefit structure of the trust which affects the cost of such benefits to the Employer, shall require the prior written consent of the Employer's representatives to the VEBA.

The Montclair Superior Officers Association, Local 53A represents the Township's police sergeants, lieutenants and captains employed by the Township. The most recent collective negotiations

agreement covering these employees ran from January 1, 1993 through December 31, 1995. The health insurance article in this contract is essentially identical to the one in the Township-PBA contract.

In 1986, the parties established the Montclair PBA Variable Employee Benefit Association Trust ("VEBA"). The Township agreed to make lump sum payments to the VEBA which were used to reimburse SOA, PBA and FMBA^{1/} retirees for their medical expenses and benefits. Other Township employees did not receive this benefit or participate in the VEBA.

On May 26, 1993, the Township received a letter about the VEBA Plan from Patricia Chiacchio, Assistant Director of the State Health Benefits Bureau. The letter stated:

A local participating employer may only provide for health benefits for retirees under the authority of 52:14-17.38 by adopting the provisions of Chapter 88, P.L. 1974. Chapter 88 requires that the employer provide coverage for all retirees who retire on a benefit based upon 25 years of credited service or a disability retirement. Chapter 88 also requires the employer to reimburse eligible retirees and their dependents for Medicare Part B premium.

Since Montclair has not adopted the provisions of Chapter 88, it may not pay for any retiree health benefits.

After receiving this correspondence, the Township discontinued making contributory payments to the VEBA.

Since 1993, when the Township stopped contributing to the VEBA, the parties have discussed in numerous negotiations sessions

^{1/} The FMBA is not a party to these scope petitions.

how to distribute VEBA monies. It also appears that the PBA and SOA may have grieved the cessation of payments to the VEBA and the employer has refused to arbitrate this issue. The PBA and SOA made the following negotiations proposals:

2. Beginning with the 1994 contract year, payments will be made on a different basis in accordance with NJSA 52:14-17.29(A) which permits the payment of "other health care benefits" other than basic coverages. In this connection, the Unions propose that retirees and their covered dependents (as that term is defined under the State Health Benefits Plan) be reimbursed each December for health care expenses (as that term is defined in Section 219 of the Internal Revenue Code), which are not otherwise covered by the State Health Benefits Plan, up to a maximum of \$1,500 per retiree. We would make a joint submission to the appropriate State authority to insure that this proposal is legally permitted. If legal, the parties will immediately go forward to implement the new format. If a legal impediment exists, the parties agree to redesign the Plan in order to comply with the law and then go forward with the legally acceptable format.

3. We anticipate that the New Jersey Legislature will pass one of the many bills presently before them which will provide continuation of health insurance to Police and Fire retirees as part of their retirement pension from the Police and Fire Pension System. In the event that a comprehensive law of this type is passed which provides such continuation of insurance into retirement, the eligibility for participation in the VEBA shall close whenever new retirees would be eligible for the insurance continuation as part of their pension unless the parties agree to some other alternative which might include some provision for employee contributions. If any such new law also fully covers past retirees as well, the VEBA payment of medical benefits after retirement will come to an end altogether. Unless an alternative law is passed, the VEBA will continue indefinitely.

4. In consideration of these fundamental changes, the Unions have asked that the Township fully fund the ongoing commitment made by the VEBA. This simply means that Montclair is committed to paying up to \$1,500 per retiree and covered dependents each year until the class of persons so covered no longer exist. Any monies not used each year will revert back to the employer. It would be our educated guess that many claims will fall short of the maximum each year. The Unions reserve the right to negotiate appropriate future increases to the maximum amount of reimbursement for good cause, with the understanding that the Township of Montclair reserves its right to disagree with any such increase.

5. As an added inducement, the PBA/SOA has offered to contribute the return of insurance premiums that it has received and now holds in the VEBA Trust in the amount \$30,000 (the net amount after payment of accounting and legal expenses owed by the Trust) towards the 1994 expense of this revised reimbursement program.

6. The parties will cooperate through their Trustees in seeking ways to minimize the administrative costs of the VEBA. For example, the Employer may undertake the administrative burdens of reporting and disclosure (Forms 990 and 5500) as well as administering claims and distribution of monies to retirees.

The Township views the PBA/SOA proposals as requiring it to fund the VEBA as it relates to retirees and their dependents. The Township asserts that it is prohibited from providing or paying for any retirees' health benefits pursuant to N.J.S.A. 52:14-17.25 et seq. because it has not adopted Chapter 88. The Township insists that an employer cannot legally reimburse retirees for health insurance coverage unless it comports with all State Health Benefits

Program ("SHBP") requirements and that it has not met those requirements. Warren Tp., P.E.R.C. No. 95-90, 21 NJPER 182 (¶26116 1995); Hudson Cty., P.E.R.C. No. 92-56, 18 NJPER 37 (¶23012 1991). Finally, the Township asserts that interest arbitration over this issue is preempted. N.J.S.A. 34:13A-18; Hudson Cty.

The PBA and SOA assert that this dispute is about a form of "compensation" to retirees, rather than about providing health insurance benefits to retirees. Their proposal seeks to reimburse retirees for non-covered or otherwise non-reimbursable medical expenses. Additionally, they assert that the Township could pass a resolution pursuant to Chapter 88.

N.J.S.A. 34:13A-18 describes prohibited issues in findings, opinions or orders of an arbitrator. It states:

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan.

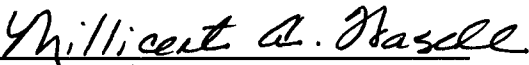
Aspects of the rights, duties, and obligations in or associated with the SHBP are integrally involved in the PBA and SOA proposals. State v. State Supervisory Employees Ass'n, 78 N.J.

54, 80 (1978); see also Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982). Accordingly, we must restrain interest arbitration over the PBA and SOA proposals.

ORDER

The SOA and PBA proposals that the Township contribute money to the VEBA trust fund to be used to reimburse retirees for health care expenses cannot be submitted to interest arbitration.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997