

P.E.R.C. NO. 81-141

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-81-79

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission refuses to enjoin arbitration over a contractual clause which provided for a life insurance policy upon the employee's retirement. The Commission held that a life insurance policy is not a "pension", and therefore would not contravene or supplement the State Pension Plan and would not violate N.J.S.A. 34:13A-8.1 or the Supreme Court's findings in State v. State Supervisory Employees Assn., 78 N.J. 54 (1978). The Commission concluded that the instant life insurance clause was a negotiable term and condition of employment.

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Appearances:

For the Petitioner, Louis P. Caroselli, Corporation
Counsel (Thomas Fodice, First Assistant Corporation
Counsel, on the Brief)

For the Respondent, Schneider, Cohen, Solomon and
DiMarzio, Esqs. (Bruce D. Leder, of Counsel)

DECISION AND ORDER

On March 12, 1981, the City of Jersey City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute between the City and the Jersey City Police Officers Benevolent Association ("POBA") was within the scope of collective negotiations.

The petition requested that the Commission restrain an arbitration requested by the POBA concerning a supplementary life insurance benefit set forth in Article XIII, Section 2, of the parties' collective agreement. That clause provides:

Life Insurance: The City will provide insurance in the amount of \$5,000.00 and additional accidental death and dismemberment insurance in the amount of \$5,000.00 for such employee, and it is the intention of the City to provide employees with \$2,000.00 life insurance policy upon regular retirement, provided this is not in conflict with state law. (emphasis supplied)

The City contends that the clause conflicts with State law in two ways. (1) That it conflicts with the annul or modify language of N.J.S.A. 34:13A-8.1;^{1/} and, (2) that it conflicts with the Supreme Court's holding in State v. State Supervisory Employeea Association, 78 N.J. 54 (1978), that the Legislature preempted the field of employee pensions. The City stated that the instant clause conflicts with N.J.S.A. 43:16A-6(3)^{2/} which provides for a death benefit concerning employees who retired on an ordinary disability retirement allowance. Although the City admits that the instant clause does not contravene the State retirement plan, it alleges that because it supplements that plan it is nonenforceable in view of the Legislature's preemption of public employee pensions.

The POBA argued that the instant clause is merely a life insurance policy and not a pension benefit which is paid to the employee. The POBA contends that N.J.S.A. 43:16A-6(3) only concerns beneficiaries of employees who were on an ordinary disability retirement allowance and does not involve life insurance policies.

1/ N.J.S.A. 34:13A-8.1 provides: "Nothing in this Act shall be construed to annul or modify, or preclude the continuation of any agreement during its current terms heretofore entered into between any public employer and any employee organization nor shall any provision hereof annul or modify any pension statute or statutes of this State.

2/ N.J.S.A. 43:16A-6(3) reads: "Upon the receipt of proper proofs of the death of a member who has retired on an ordinary disability retirement allowance, there shall be paid to such member's beneficiary, an amount equal to 3 1/2 times the compensation upon which contributions by the member to the annuity savings fund were based in the last year of creditable service; provided, however, that if such death shall occur after the member shall have attained 55 years of age the amount payable shall equal 1/2 of such compensation instead of 3 1/2 times such compensation.

The Court in State Supervisory Employees Assoc., supra, held that parties could not negotiate any provision which would contravene or supplement the Legislature's regulation of public employee pensions. However, the Court also held that negotiable terms and conditions of employment

"are those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy."
78 N.J. at 67.

If the instant clause concerned public employer pensions then it would be an illegal clause. However, if the clause does not involve the State pension plan nor affect its implementation and if it does not significantly interfere with management prerogatives, then it is a lawful and negotiable term and condition of employment since it does apply to a traditional fringe benefit which intimately affects the welfare of the employees.

The Commission has examined the instant clause and the parties' positions and concludes that the disputed provision is not a pension provision and neither contravenes nor supplements in the traditional sense the State pension plan. Unlike a pension contribution, the life insurance policy does not alter the City's payment rate to the State pension plan or impact on the funds payable by the plan. The City is only required to pay the premiums of the policy, and the proceeds of the policy are paid by the insurance company. This is distinguishable from the pension system, proceeds of which are paid from public employee and public employer contributions, as well as the pension fund.

The City's contention that the instant clause conflicts with N.J.S.A. 43:16A-6(3) is without merit. That statute only provides for a death benefit to beneficiaries of public employees who retired on an ordinary disability retirement allowance. This death benefit statute requires payment from the State Pension System, whereas the instant clause does not require the City or the State Pension System to supplement any pension a public employee may receive.

The instant case can be contrasted with Fair Lawn Ed. Assn. v. Fair Lawn Bd. Ed., 79 N.J. 574 (1979). In that case, the parties had agreed to a contractual provision which required an additional employer payment to employees who agreed to retire early. The Court held that the clause was illegal because it required the Board to supplement the pension the employees would have received and that it violated N.J.S.A. 34:13A-8.1 because by encouraging early retirement it jeopardized the actuarial integrity of the State pension plan.^{3/}

Neither of those elements exists in the instant matter. The disputed clause does not encourage early retirement nor require any supplemental pension payments by the City or pension system. Since the proceeds of the policy are paid by a private company, the clause does not affect the actuarial integrity of the State pension system.

The Commission has recognized the application of State Supervisory Employees Assn. with regard to the pension system. In In re Borough of Lindenwold, P.E.R.C. No. 80-124, 6 NJPER 204 (¶11097 1980), the parties had agreed to a contractual provision

^{3/} See also Jacobs v. N.J. Highway Auth., 54 N.J. 393 (1969).

which required widows of officers killed in the line of duty to receive full pay. The Commission found that clause to be illegal because it supplemented provisions provided for in the statutes. Lindenwold can be distinguished from the instant matter, however. The clause in that case contravened a statute which provided specific benefits for widows of employees who died while in active service. Since, on its face, N.J.S.A. 43:16A-6(3) does not cover life insurance policies and is in fact limited to employees on a disability allowance and since payments from the instant clause are made by a private company, it does not fall within the prohibitions previously discussed and is distinguishable from Lindenwold.

In a similar case, In re Watchung Borough Bd. Ed., P.E.R.C. No. 80-110, 6 NJPER 111 (¶11059 1980), the Commission held that a disability income insurance plan was negotiable. The Board argued that since the blanket extension of sick leave was illegal, the clause providing for the insurance violated education statutes because it provided a benefit on a blanket basis to employees who had exhausted sick leave. However, the Commission found that the disputed clause concerned disability insurance, not an extension of sick leave, and that the Board incurred no obligation to grant sick leave or pay salaries pursuant to the clause. By way of dicta, the Commission indicated that although the Board paid the premiums, the benefits were paid by the insurance carrier.

The instant clause is also negotiable under the same

analysis. The clause involves a life insurance policy, not pensions, and although the City pays the premiums, the insurance carrier pays the benefits and the premium payments do not affect the City's obligation to the State pension system.

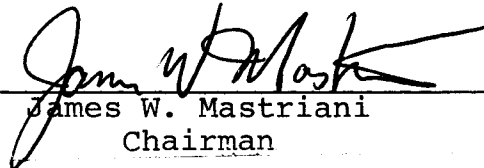
There can be no doubt that a clause providing a life insurance policy, just like a disability insurance policy, is a term and condition of employment because it intimately affects the welfare of the employees, it applies to current employees who will return and it saves them the expense of providing that coverage for their beneficiaries.

Accordingly, having found that the disputed clause does not involve or affect the actuarial integrity of the State pension plan, and noting that it does not significantly interfere with the City's management prerogatives, we hold that the clause in question is within the scope of collective negotiations and hence legally arbitrable.

ORDER

For the reasons cited above, we find that the subject matter of the City's petition is within the scope of collective negotiations and, accordingly, we deny the City's request to enjoin arbitration.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Parcels, Suskin, Hipp and Newbaker voted for this decision. None opposed. Commissioner Graves was not present.

DATED: June 9, 1981
Trenton, New Jersey
ISSUED: June 10, 1981