

P.E.R.C. NO. 91-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 206 (ORADELL UNIT),

Petitioner,

-and-

Docket No. SN-91-60

BOROUGH OF ORADELL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains the Borough of Oradell from submitting a proposal freezing medical costs to interest arbitration. This matter arises in a dispute with PBA Local 206 (Oradell unit).

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Appearances:

For the Petitioner, Alfred G. Osterweil, attorney
(Craig Kozan, of counsel)

For the Respondent, DeCotiis & Pinto, attorneys
(David V. Nasta, of counsel)

DECISION AND ORDER

On February 7, 1991, PBA Local 206 (Oradell Unit) petitioned for a scope of negotiations determination. The PBA seeks a determination that the Borough of Oradell may not submit a proposal freezing the Borough's medical costs to interest arbitration.

The parties have filed briefs. These facts appear.

The PBA represents the Borough's patrol officers and sergeants. The parties' last collective negotiations agreement expired on December 31, 1990. The parties are engaged in interest arbitration. The employer, a participant in the State Health Benefits Program, has proposed that all its medical, dental and

prescription costs be frozen at 1990 levels, with all increases to be borne by the employees.

The PBA asserts that N.J.S.A. 34:13A-18 bars the interest arbitrator from considering a proposal freezing the Borough's medical costs.^{1/} That statute provides:

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.

The Borough responds that this statute does not apply because its proposal would not change the level of health coverage, but would merely apportion increased costs.

N.J.A.C. 17:9-5.4 provides, in part:

(a) The statute [The New Jersey State Health Benefits Program Act, N.J.S.A. 52:14-17.25 et seq.] requires the employer to pay the employee's cost of the coverage and may pay any portion of the cost for the dependent coverage.

(b) Any employer who elects to pay any portion of the cost for dependent coverage shall pay the same proportion of the cost of such dependent coverage for all employees covered in the program.

^{1/} The PBA underlines the word medical and does not address dental or prescription costs or reply to the Borough's assertion that dental and prescription costs are different from medical costs. We will assume that only the medical costs are in dispute.

See also N.J.S.A. 52:14-17.38. Given subsection (a) of this regulation, the Borough's proposal is preempted to the extent it would relieve the Borough from paying the costs of medical coverage for its employees. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

Under subsection (b) of this regulation, it appears that the employer need not pay the entire cost of medical coverage for dependents of its employees. Generally, a proposal to share such costs would be mandatorily negotiable. But it also appears that an employer must treat the medical cost of dependent coverage uniformly. The question before us is whether N.J.S.A. 34:13A-18 precludes the submission to interest arbitration of a proposal which would freeze medical costs of dependent coverage for one negotiations unit.

In Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988), we held that N.J.S.A. 34:13A-18 precluded the submission to interest arbitration of a union's proposal to have the employer pay premiums for current employees upon their retirement. We stated:

This statute prevents an arbitrator from ruling upon any change in health insurance coverage for employees of a participating employer in the New Jersey State Health Benefits Program, N.J.S.A. 52:14-17.28. The reason behind the ban is that the Health Benefits statute requires a participating employer to provide the same level of health coverage to all of its employees. See New Jersey Policemen's Benevolent Association v. New Jersey Health Benefits Comm., 153 N.J. Super. 152 (App. Div. 1976). An award increasing coverage would affect the benefits of other units of employees not participating in interest arbitration. Accordingly, the statute removes

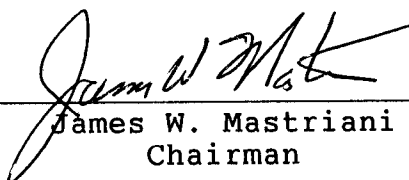
the issue from interest arbitration. See Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd App. Div. Dkt. No. A-3564-78 (6/19/80); Lyndhurst Tp., P.E.R.C. No. 87-9, 12 NJPER 608 (¶17230 1986); Bradley Beach, P.E.R.C. No. 81-21, 6 NJPER 429 (¶11216 1980). [14 NJPER at 353]

The concern present in Bernards Tp. is also present here: an interest arbitration award granting the proposal in one unit would affect the rights of employees not participating in the interest arbitration proceedings. We conclude that N.J.S.A. 34:13A-18 and Bernards Tp. preclude submitting the employer's medical cost proposal to interest arbitration.

ORDER

The Borough of Oradell is restrained from submitting its proposal freezing medical costs to interest arbitration.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 28, 1991
ISSUED: March 28, 1991