

P.E.R.C. NO. 91-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON

Petitioner,

-and-

Docket No. SN-90-64

DISTRICT 1199J, NUHHCE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by District 1199J, NUHHCE against the County of Hudson. The grievance asserts that the County violated the parties' collective negotiations agreement when it limited insurance coverage during unpaid leaves of absence. The Commission finds that the subject matter of the dispute is preempted.

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Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys
(Stephen E. Trimboli, of counsel;
James J. McGovern, III, on the brief)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

DECISION AND ORDER

On March 29, 1990, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by District 1199J, NUHHCE. The grievance asserts that the County violated the parties' collective negotiations agreement when it limited insurance coverage during unpaid leaves of absence.

The parties have filed documents and briefs. These facts appear.

District 1199J represents the County's blue and white collar non-supervisory employees, with certain exceptions. The parties entered into a contract effective from July 1, 1989 to June 3, 1992. The grievance procedure ends in binding arbitration.

The County participates in the New Jersey State Health Benefits Program ("SHBP"). In 1989, the County's Personnel Director received a letter from the Chief of the Health Benefits Bureau of the Department of Treasury. The letter explained the leave of absence procedure to be followed by SHBP participants. It stated:

Coverage of an eligible employee and dependents during any period of authorized leave of absence without pay shall terminate on the first of the month following the month for which no salary was paid. However, local employers participating in the programs may pay for the coverage up to a three month maximum period of time for those employees enrolled in the program who are granted an approved leave of absence for illness. The employee, by making prepayments to the employer, may extend the coverage for an additional nine months.

The maximum time an employee may extend coverage is a total of twelve months for approved sick leave and a maximum of nine months for leave of absence for non-illness. The employer who elects to pay for the first three months of coverage for an employee on sick leave may not discriminate against any employee or group of employees.

On December 4, 1989, the Personnel Director issued a memorandum entitled "Health Benefits Coverage for Employees on Leaves of Absence." The memorandum stated:

An employee on an approved unpaid medical leave-of absence due to personal illness, will be continued on health benefits coverage AT COUNTY EXPENSE for up to three months. Coverage may also be continued beyond three months and up to an additional nine months, provided the EMPLOYEE PREPAYS TO THE COUNTY, the cost of health benefits coverage.

An employee on an approved unpaid personal leave-of-absence may continue health benefits coverage for him/or herself and his/her covered dependents for up to nine months provided the

EMPLOYEE PREPAYS TO THE COUNTY the cost of health benefits coverage. If an employee on personal leave does not arrange for continued coverage, he or she will be dropped from coverage effective the first of the month following the beginning of the leave.

On December 28, 1989, District 1199J submitted a class action grievance. The grievance asserted that the memorandum violated a past practice of providing health benefits throughout any unpaid leaves and a contractual provision on insurance.

The County denied the grievance and District 1199J demanded binding arbitration.

The County asserts that SHBP statutes and regulations compelled it to restrict health benefits during unpaid leaves and preempted negotiations. District 1199J argues that these statutes and regulations set minimum standards and do not preempt negotiations over more generous benefits.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) states the test for determining negotiability:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405].

The parties do not dispute that health insurance benefits are mandatorily negotiable unless preempted by a statute or regulation. We thus focus on the preemption issue, without considering the contractual merits. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

Negotiations will not be preempted unless a statute or regulation leaves no room to alter an employment condition by fixing it specifically, expressly and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Ass'n, 91 N.J. 38 (1982). If a statute or regulation sets a minimum level of benefits, the parties may negotiate over more generous benefits. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

Certain statutes, N.J.S.A. 52:14-17.25 et seq., and regulations, N.J.A.C. 17:9-1 et seq., govern SHBP participants. N.J.S.A. 52:14-17.32(a) provides:

The basic coverage and the major medical coverage of any employee, and of his dependents, if any, shall cease upon the discontinuance of his term of office or employment or upon cessation of active full-time employment subject to such regulations as may be prescribed by the commission for limited continuance of basic coverage and major medical coverage during disability, part-time employment, leave of absence or layoff....

The State Health Benefits Commission has not provided for a limited continuance of benefits during unpaid leaves. Instead N.J.A.C. 17:9-7.2(c)(1) provides:

Leave of absence without pay: The coverage of an eligible employee and of an employee's dependents

during any period of authorized leave of absence without pay shall terminate on the last day of the second coverage period following the last payroll period or month for which the employee received a salary payment; except that coverage of such employee and such employee's dependents may be continued by such employee, provided that the employee shall pay in advance the total charge required for the employee's coverage and coverage of the employee's dependents during such period of authorized leave of absence without pay; provided that no period of continued coverage, as provided above, shall exceed a total of 20 bi-weekly payroll periods, or nine months, during which the employee receives no pay.

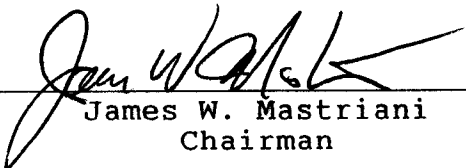
N.J.S.A. 52:14-17.32d provides that the coverage of any eligible State employee on an unpaid leave due to illness shall be continued for a period of "as much as 3 months." This exception has been extended to local employees as well. See N.J.S.A. 52:14-17.36.

The cited statutes and regulations do not simply set minimum standards. Instead they set the only standards. The County was therefore compelled to take the actions described in the December 4, 1989 memorandum. We hold that negotiations over this dispute was preempted and we restrain arbitration.

ORDER

The request of the County of Hudson for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson, Reid and Ruggiero voted in favor of this decision. Commissioners Smith and Bertolino voted against this decision.

DATED: September 27, 1990
Trenton, New Jersey
ISSUED: September 28, 1990