

P.E.R.C. NO. 2009-19

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ROCKAWAY,

Petitioner,

-and-

Docket No. SN-2007-054

FRATERNAL ORDER OF POLICE,  
LODGE NO. 31,

Respondent.

SYNOPSIS

The Public Employment Relations Commission, pursuant to an Order on Motion for Temporary Remand from the Appellate Division, considers the request of the Township of Rockaway to supplement the record to include the collective negotiations agreements of its other negotiations units. The Township also asks the Commission to consider the possible effects an arbitration award may have in regards to these agreements and that arbitration be restrained. The Fraternal Order of Police, Lodge 31 opposes these requests. The Commission grants the request to supplement the record and considers the collective negotiations agreements. However, the Commission reaffirms its initial decision declining to restrain binding arbitration.

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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Appearances:

For the Petitioner, Laufer, Knapp, Dalena, Trimboli &  
Cadicina, attorneys (Fredric M. Knapp, on the brief)

For the Respondent, Loccke Correia Schlager Limsky &  
Bukosky, attorneys (Lauren P. Sandy, on the brief)

DECISION

Pursuant to a Order on Motion for a Temporary Remand from the Appellate Division, the Township of Rockaway has asked that the record in this matter be supplemented to include the collective negotiations agreements of its other negotiations units. The Township also requests that we consider the possible effects a grievance arbitration award may have in regards to these agreements and that we restrain arbitration. The Fraternal Order of Police, Lodge No. 31 opposes the requests. We grant the

Township's request to supplement the record and reaffirm our initial decision declining to restrain binding arbitration.<sup>1/</sup>

The FOP filed a grievance alleging that the Township violated the parties' collective negotiations agreement when it implemented co-pay increases established by the State Health Benefits Commission ("SHBC") for NJPLUS and HMO office visits and thereby allegedly violated a contractual obligation to provide medical benefits equal to or better than the existing plan. The Township filed a scope of negotiations petition seeking a restraint of binding arbitration. We declined to restrain arbitration on whether there was a change in the negotiated level of benefits. P.E.R.C. No. 2008-021, 30 NJPER 257 (¶96 2007). We held that an arbitrator may determine whether the parties made such an agreement and whether the employer violated the agreement, but an arbitrator cannot order the employer to continue the previous co-pay levels since the SHBC has exercised its authority to set higher levels. We did not decide whether an arbitrator could issue a remedial order requiring the Township to reimburse employees for the higher co-pay expenses. We concluded that should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued, the

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<sup>1/</sup> On October 8, 2008, pursuant to authority granted to him by the full Commission, the Chairman denied the Township's requests that the Commission adjourn the arbitration proceeding in light of the temporary remand and for a stay of the Commission's decision pending appeal.

Township may re-file its scope petition. The Township appealed our decision and the appeal is now subject to this temporary remand.

The Township asserts that should a grievance arbitrator render an award that requires the Township to select a private insurance carrier for the FOP, the Township will also be required to withdraw membership from the State Health Benefits Program ("SHBP") for all its other negotiations units. It further asserts that any unilateral attempt by it to change health insurance carriers would be subject to challenge by its other negotiations units.

The FOP responds that the Township could have entered these contracts into the record during the initial proceedings before us. It further responds that consideration of the other contracts does not change the negotiability and arbitrability of health benefits.

It is undisputed that the Township's other employees participate in the SHBP. It is also undisputed that participation by all of a local employer's employees is a prerequisite to participation in the SHBP. N.J.A.C. 17:9-2.1 (for local participating employers, each eligible employee shall be eligible to enroll for coverage).<sup>2/</sup> The contracts that the

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<sup>2/</sup> N.J.A.C. 17:9-5.4, a regulation cited by the Township, requires a resolution before participating employers may  
(continued...)

Township seeks to include in the record simply reflect that fact. Under these circumstances, we grant the Township's request to include the contracts in the record. Having done so, we reaffirm our initial decision.

The arbitrator in this case may or may not find a contractual obligation to maintain co-pay levels. And the arbitrator may or may not find a contractual violation. If the arbitrator finds a contractual violation and orders the employer to make employees whole through reimbursement, that may be inconsistent with the employer's obligations as a participant in the SHBP. The Township has submitted a letter from the Director of the Division of Pensions and Benefits. That letter states that the Township has no legal authority to reimburse any out-of-pocket costs, but the letter cites no statute, regulation or SHBC action prohibiting reimbursement. The Director's letter also states that the termination of an employer's participation is the most powerful tool the SHBC has to ensure compliance with the rules and regulations governing the program. It does not, however, specify under what circumstances, if any, the SHBC will terminate an employer's participation. Perhaps the SHBC will not

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2/ (...continued)  
provide retiree health benefits. That resolution is separate from the resolution required to be submitted to enroll current employees in the SHBP. A copy of that resolution can be found on the SHBC web site at:  
<http://www.state.nj.us/treasury/pensions/epbam/exhibits/pdf/hb0077.pdf>

permit the Township to remain a participant and reimburse employees for a difference in co-pays. Perhaps it will permit the Township to reimburse and remain a participant pending the next round of negotiations when the contract can be conformed to the higher co-pays. Perhaps the Township would rather change providers than incur a reimbursement obligation. Nothing obligates the Township to remain a participant in the SHBP. Local employers are not required to participate in the SHBP and can withdraw from the SHBP at any time consistent with their obligations under existing collective negotiations agreements. New Jersey School Bds. Ass'n v. State Health Benefits Comm'n, 183 N.J. Super. 215, 218, 224 (App. Div. 1981). The contracts of the other collective negotiations units that are now in the record may require the Township to maintain a certain level of benefits, but the other unions cannot require the Township to continue participation in the SHBP. That is because although the level of health benefits is mandatorily negotiable, the choice of health benefit providers is a managerial prerogative not subject to mandatory negotiations. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981).

The Township's reliance on Middlesex Cty. v. PBA Local 152, 6 NJPER 338 (¶11169 App. Div. 1980), is misplaced. First, the case involved interest arbitration and a statute limiting the authority of an interest arbitrator. N.J.S.A. 34:13A-18. This

case involves grievance arbitration and is not covered by that statute.

Second, Middlesex involved retiree health benefits which, at the time, had to be provided to all retirees under uniform conditions, whether the employer participated in the SHBP or not. See N.J.S.A. 52:14-17.38 (SHBP employers); N.J.S.A. 40A:10-23 (non-SHBP employers).<sup>3/</sup> If the PBA in Middlesex had been awarded retiree health benefits in interest arbitration, statutory uniformity requirements would have required the benefit to be extended to employees over whom the interest arbitrator did not have jurisdiction. Here, the Township could decide to leave the SHBP consistent with its obligations under existing collective negotiations agreements. New Jersey School Bds. Ass'n v. State Health Benefits Comm'n.

Third, nothing in the record suggests that the FOP is seeking to have an arbitrator order the Township to leave the SHBP. The FOP instead seeks reimbursement for the expenses in meeting the higher co-pays. We need not decide at this juncture whether an arbitrator can issue a remedial order requiring the

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3/ In Borough of Emerson, P.E.R.C. No. 2005-068, 31 NJPER 125 (¶53 2005 ), we adopted the logic of Shelbrick v. Mayor & Tp. Committee of Middletown Tp., App. Div. Dkt. No. A-1079-90T1 (10/10/91), and held that interest arbitrators may consider union or management proposals that seek to change, for the negotiations unit involved in the proceeding, a non-SHBP employer's payment obligation with respect to retiree health insurance premiums.

employer to reimburse employees for those expenses. As we stated in our initial decision, should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued, the Township may re-file its scope petition. Any speculation about possible remedies is premature.

ORDER

The request to supplement the record is granted. The order denying the request for a restraint of binding arbitration is reaffirmed.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Joanis and Watkins voted in favor of this decision. None opposed. Commissioners Branigan and Fuller were not present.

ISSUED: October 30, 2008

Trenton, New Jersey