

P.E.R.C. NO. 2009-21

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LUMBERTON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2009-002

LUMBERTON TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract clause in an expired collective negotiations agreement between the Lumberton Township Board of Education and the Lumberton Township Education Association. The Board asserts that the clause, which concerns retiree prescription and dental insurance coverage, is preempted and may not be included in a successor agreement. The Commission finds the contract clause is not mandatorily negotiable to the extent it applies to an employee who elects State-paid coverage. The Commission finds the clause to be mandatorily negotiable to the extent it applies to a retiree who does not elect State-paid coverage under the State Health Benefits Plan/School Employees Health Benefits Program.

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, Taylor, Whalen & Hybbeneth,  
consultants (Esther Strassman, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen, on the brief)

DECISION

\_\_\_\_\_ On July 21, 2008, the Lumberton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a declaration that an existing contract clause is preempted and may not be included in a successor agreement. The disputed provision concerns retiree prescription and dental insurance coverage. We find that the clause is mandatorily negotiable as to some retirees and not mandatorily negotiable as to others.

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

The Association represents all certified teaching staff and certain other staff. The parties' collective negotiations

agreement expired on June 30, 2008. The parties are in negotiations for a successor agreement.

Article 15 is entitled Insurance. The Board seeks removal of Section C, which provides:

Employees with twenty-five (25) years of service, who retire from the Lumberton Township School District pursuant to the provisions of the Teacher's Pension and Annuity Fund shall be provided family prescription and single dental insurance coverage at no cost to the employee to age 65; such coverage shall be consistent with paragraphs B and C. Employees hired on or after July 1, 1992 must have served at least twenty-five (25) years in the district.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

"The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations."

We do not consider the wisdom of the clause in question, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

[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]

N.J.S.A. 52:14-17.32f(2) provides that a qualified retiree from the Teachers' Pension and Annuity Fund and his or her dependents are eligible for State-paid coverage in the State Health Benefits Program ("SHBP") until June 30, 2008 and the School Employees Health Benefits Program ("SEHBP") beginning July 1, 2008. N.J.S.A. 18A:16-19 provides that a school board may assume the cost of retiree health benefits for employees who have retired after 25 years or more service, however, retired employees and dependents who have elected to take State-paid coverage under the SHBP are not eligible for employer-paid coverage.

A 1993 State Health Benefits Commission ("SHBC") decision held that SHBC guidelines barred employers from providing prescription drug and dental coverage to retirees who opted for State-paid coverage under the SHBP. The decision stated that the ruling applied whether or not the employer purchased the dental and prescription drug contracts through the SHBP. The Appellate Division affirmed the SHBC determination in an unpublished

decision. Hamilton Tp. Ed. Ass'n v. Hamilton Tp. Bd. of Ed., App. Div. Dkt. No. A-1421-93T1 (6/15/95).

We applied Hamilton in Northern Burlington Cty. Reg. Bd. of Ed., P.E.R.C. No. 2001-19, 26 NJPER 436 (¶31172 2000). There, we held that N.J.S.A. 18A:16-19 preempted arbitration of a grievance to the extent it sought restoration of, or reimbursement for, dental and prescription drug coverage for retirees who opted for State-paid coverage under the SHBP.

The Board argues that N.J.S.A. 18A:16-19 preempts Article 15C and asserts that nothing in the most recent amendments to the SHBP and or the creation of the SEHBP changes its preemptive effect.

The Association does not dispute the Board's assertion that the recent statutory amendments do not change the applicable case law. Instead, the Association responds that the parties are still in negotiations, that theirs is only a proposal, and that the scope petition impedes the negotiations process and is not ripe for consideration. The Association also argues that it has the right to propose that employees who do not opt for State-paid SHBP/SEHBP coverage may receive Board-paid prescription and dental coverage.

The Board replies that a negotiability determination will not prevent the parties' from continuing to negotiate other possible approaches and reach an agreement.

The level of health benefits is a mandatorily negotiable subject. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant pt. 6 NJPER 338 (¶11169 App. Div. 1980). However, all or part of a generally negotiable subject area may be set by statute or regulation and thereby removed from the scope of negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State Supervisory at 80-82.

N.J.S.A. 18A:16-19 preempts the parties from agreeing to Board-paid prescription and dental coverage for any retiree who elects State-paid coverage under the SHBP/SEHBP. Thus, Article 15C is not mandatorily negotiable to the extent it applies to an employee who elects State-paid coverage. It is mandatorily negotiable to the extent it applies to a retiree who does not elect State-paid coverage under the SHBP/SEHBP. With this guidance, we expect that the parties can reach an agreement over language for their successor agreement. See Manalapan Tp., P.E.R.C. No. 98-136, 24 NJPER 269 (¶29128 1998) (contract clause that required employer-payment of dental premiums for retirees was not mandatorily negotiable to the extent it required payment

for retirees who did not meet statutory age and service requirements; union proposal to limit the clause to only those retirees who met those requirements was mandatorily negotiable).

ORDER

Article 15C is not mandatorily negotiable to the extent it applies to an employee who elects State-paid retiree health coverage under the SHBP/SEHBP. Article 15C is mandatorily negotiable to the extent it applies to an employee who does not elect retiree health care coverage under the SHBP/SEHBP.

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