

P.E.R.C. NO. 2011-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SOUTH ORANGE VILLAGE,

Petitioner,

-and-

Docket No. SN-2011-004

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 12,

Respondent.

TOWNSHIP OF SOUTH ORANGE VILLAGE,

Petitioner,

-and-

Docket No. SN-2011-005

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL NO. 12A SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the requests of the Township of South Orange Village for restraints of binding arbitration of grievances filed by the Policemen's Benevolent Association No. 12 and the Policemen's Benevolent Association, Local No. 12A, Superior Officers Association. The grievances challenge the application of P.L. 2010, c. 2 and the Township's deduction of an amount equal to 1.5% of base salary towards the cost of medical insurance benefits. The Township argued that the grievance is preempted by the statute. The unions argued that the contracts are not expired and therefore the statute does not apply. The Commission holds that the dispute concerns a matter of contract interpretation outside its scope of negotiations jurisdiction. If the arbitrator finds that the contract is expired, the new statute will apply.

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, Post, Polak, Goodsell, McNeill &
Strauchler, P.A., attorneys (Steven C. Rother, of
counsel)

For the Respondents, Loccke, Correia, Schlager, Limsky
& Bukosky, attorneys (Marcia J. Tapia, of counsel)

DECISION

On July 30, 2010, the Township of South Orange Village
petitioned for two scope of negotiations determinations. The
employer seeks restraints of binding arbitration of grievances
filed by Policemen's Benevolent Association, Local No. 12 (PBA)

and Policemen's Benevolent Association, Local No. 12A Superior Officers Association (SOA). The grievances challenge the application of P.L. 2010, c. 2 and the employer's deducting an amount equal to 1.5% of base salary towards the cost of medical insurance benefits. We decline to restrain arbitration.

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

The PBA represents patrol officers excluding superior officers holding the rank of sergeant and above. The SOA represents certain superior officers. The parties entered into collective negotiations agreements with grievance procedures that end in binding arbitration.

Article XXXVIII, Term and Renewal, of both agreements provides, in relevant part:

This Agreement shall have a term from January 1, 2004 through December 31, 2007. If the parties have not executed a successor agreement by December 31, 2007, then this Agreement shall continue in full force and effect until a successor agreement is executed.

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

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even

whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

[Id. at 154]

Thus, we do not consider the merits of the grievances or any contractual defenses the employer may have.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

[Id. at 92-93; citations omitted]

Arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. 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 v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

P.L. 2010, c. 2, enacted on March 22, 2010, became effective on May 21, 2010. It provides that:

Commencing on the effective date of P.L.2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer other than the State shall pay 1.5 percent of base salary, through the withholding of the contribution, for health benefits coverage provided under P.L.1961, c.49 (C.52:14-17.25 et seq.), notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement or the modification of payment obligations.

The New Jersey Department of Community Affairs, Division of Local Government Services has issued a Local Finance Notice. The Frequently Asked Questions section asks this question:

Our collective negotiations agreement expired last year and has not been settled. Will these employees be required to contribute the 1.5% contribution after May 21st?

The Notice provides this answer:

If the new agreement is not ratified by May 21st, those employees will be required to pay the 1.5% contribution for health coverage. If the new agreement is ratified before May 21st, those employees will not be required to pay the 1.5% contribution until the expiration of the agreement. Employers in this situation should consult with labor counsel to review the implications of this provision in their circumstances, and pay specific attention to agreements that already include employee contributions to health benefit costs.

The employer argues that because the parties' collective negotiations agreements expired on December 31, 2007, it was required by statute to implement the 1.5% contribution. The unions respond that an arbitrator can determine whether Article XXXVIII extends the life of the agreement until a successor agreement is negotiated and whether the employer violated the agreement by implementing deductions. The employer replies that Article XXXVIII is merely a reflection of an employer's obligation to maintain the status quo after the expiration of a contract as expressed in NLRB v. Katz, 369 U.S. 736 (1962). The employer argues that should the unions refuse to accede to a 1.5% contribution or should an interest arbitrator do likewise, the will of the Legislature will be frustrated.

The Legislature has spoken. Local government employees must begin contributing at least 1.5% of base salary upon the expiration of any collective negotiations agreement in effect on May 21, 2010. By operation of that statute, unit members will be required to make contributions when their collective negotiations agreements expires.

The status quo doctrine endorsed by NLRB v. Katz does not mandate that collective negotiations agreements continue in effect. The doctrine simply requires that terms and conditions of employment established by agreement or practice continue during the hiatus period between agreements. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978).

The unions argue that the parties' contracts have not expired because the parties agreed that they would continue until a successor contract is executed. The employer disagrees. This raises an issue of contract interpretation best suited for an arbitrator. If the parties' contracts expired on December 31, 2007, P.L. 2010, c. 2 applies and the employer will not have violated the contract by applying it. If the parties's contracts do not expire until a successor contract is executed, P.L. 2010, c. 2 would not be applicable until the first day of the new contracts, whether those contracts are reached by agreement or through interest arbitration. We do not decide this contract

question. We simply decide that nothing in P.L. 2010, c. 2 controls the answer to that question.

The employer's concerns that the unions could refuse to accede to a 1.5% contribution or an interest arbitrator could refuse to award the contribution is unfounded. Any new agreement or award must include an employee contribution of at least 1.5% of base salary.

The unions may thus legally arbitrate their claim that the parties' agreements remain in full force and effect until the execution of new agreements and, if true, that the employer violated that agreements by initiating a health benefits contribution of 1.5% of base pay.

ORDER

The request of the Township of South Orange Village for restraints of binding arbitration are denied.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Voos voted in favor of this decision. Commissioner Watkins voted against this decision. Commissioner Colligan recused himself. Chair Hatfield abstained.

ISSUED: November 23, 2010

Trenton, New Jersey