

P.E.R.C. NO. 2011-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Petitioner,

-and-

Docket No. SN-2011-014

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL NO. 1197,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Edison for a restraint of binding arbitration of a grievance filed by the International Association of Fire Fighters Local No. 1197. The grievance challenges 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 IAFF argued that the contract is 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.

P.E.R.C. NO. 2011-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EDISON,

Petitioner,

-and-

Docket No. SN-2011-014

INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS LOCAL NO. 1197,

Respondent.

Appearances:

For the Petitioner, DeCotiis, Fitzpatrick and Cole,
LLP, attorneys (Louis N. Rainone, of counsel)

For the Respondent, Kroll Heineman, LLC, attorneys
(Raymond G. Heineman, of counsel)

DECISION

On September 2, 2010, the Township of Edison petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by International Association of Fire Fighters Local No. 1197 (IAFF). The grievance challenge the application of P.L. 2010, c. 2 and the Township's deducting an amount equal to 1.5% of base salary towards the cost of medical insurance benefits. We decline to restrain binding arbitration.

The parties have filed briefs and exhibits. The Township has filed a certification from its Business Administrator. These facts appear.

The IAFF represents firefighters, firefighter/EMTs and firefighter/inspectors. The parties entered into a collective negotiation agreement with a grievance procedure that ends in binding arbitration.

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.

Article 3 of the parties' 2005-2009 agreement is entitled Duration. It provides:

Section 1. This agreement shall be in effect as of January 1, 2005 and shall remain in full force and effect until December 31, 2009. It shall automatically be renewed from year to year thereafter, unless either party to this agreement shall have notified the other in writing at least one hundred and thirty five (135) days prior to the anniversary date of this agreement, that it wishes to renegotiate the agreement or parts thereof.

In the event that such notices are given, negotiations shall begin no later than ninety (90) days prior to the anniversary date. If the present agreement expires before a new agreement is reached, the terms of this

agreement shall remain in full force and effect until the employees are covered by a subsequent agreement.

Section 2. In the event the parties have not achieved a mutually satisfactory agreement by February 3, 2010 the parties will file a joint request in writing, for the appointment of a mediator with the Public Employee Relations Commission [sic] as spelled out by the appropriate law. The aforementioned date for filing may be extended by mutual agreement of both parties.

The parties have engaged in successor contract negotiations but have not yet reached an agreement. The Township has applied P.L. 2010, c. 2 and is deducting 1.5% of base salary from employees receiving health care coverage.

On June 14, 2010, the IAFF filed a grievance claiming that the Township is barred from deducting the 1.5% health care contribution because the agreement is extended pursuant to Article 3, Section 1. On June 30, the IAFF filed for interest arbitration. This petition ensued.

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).

The employer argues that because the parties' collective negotiations agreement expired on December 31, 2009, it was required by statute to implement the 1.5% contribution. The IAFF responds that an arbitrator can determine whether Article 3 extends the life of the agreement until a successor agreement is negotiated and whether the employer violated the agreement by implementing deductions. The Township replies that the IAFF should be estopped from claiming that the agreement has not expired because both parties have commenced negotiations for a successor agreement. The Township points to the IAFF's petition to initiate interest arbitration which specifies December 31, 2009 as the termination date of the current agreement. The Township also points to the opinion of a Superior Court Law

Division Judge on an application for interim relief and temporary restraints in a challenge to P.L. 2010, c. 2. New Jersey State Firefighters' Mutual Benevolent Ass'n v. State of New Jersey, Dkt. No. MER-L-1004-10 (5/21/2010). In that decision, the Judge stated that the "intent of the parties and the objective language of a collective negotiations agreement determine the agreement's effective date and expiration date." Slip opinion at 39.

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 agreement expires.

The IAFF argues that the parties' agreement has not expired because the parties agreed to extend the duration of their agreement beyond the nominal termination date. The employer disagrees. This raises an issue of contract interpretation best suited for an arbitrator. If the parties' agreement expired on December 31, 2009 or some other time before May 21, 2010, P.L. 2010, c. 2 applies and the employer will not have violated the agreement by applying it. If the parties's agreement does not expire until a successor agreement is executed, P.L. 2010, c. 2 would not be applicable until the first day of the new agreement, whether that agreement was reached voluntarily 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. Any new agreement or award must include an employee contribution of at least 1.5% of base salary.

The IAFF may thus legally arbitrate its claim that the parties' agreement had not expired as of May 21, 2010 and, if true, that the employer violated that agreement by initiating a health benefits contribution of 1.5% of base pay.

We note that by operation of law, the Township must maintain terms and conditions of employment established by agreement or practice during the hiatus period between agreements. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). That requirement, however, does not preclude application of P.L. 2010, c. 2. To find a contract violation, the arbitrator must find that the agreement had not expired by May 21, 2010, not simply that the terms of the agreement were required to be continued.

ORDER

The request of the Township of Edison for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Kregel and Voos voted in favor of this decision. Commissioners Fuller and Watkins voted against this decision. Chair Hatfield abstained.

ISSUED: November 23, 2010

Trenton, New Jersey