

P.E.R.C. NO. 2011-73

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-2010-085

PATROLMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 8,

Respondents.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Union City for a restraint of binding arbitration of a grievance filed by Patrolmen's Benevolent Association, Local 8. The grievance asserts that the City unilaterally increased prescription co-pays for retired employees. The Commission holds that a majority representative may seek to enforce a contract on behalf of retired employees in arbitration because it has a cognizable interest in ensuring that retired employees receive whatever retirement benefits were contracted for in the last agreement before retirement.

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, O'Toole, Fernandez, Weiner, Van Lieu, attorneys (Juan C. Fernandez, of counsel, Kenneth B. Goodman on the brief)

For the Respondents, Oxfeld Cohen, attorneys (Sanford R. Oxfeld of counsel; Randi Doner April on the brief)

DECISION

On April 27, 2010, the City of Union City petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Patrolmen's Benevolent Association Local 8. The grievance asserts that the City unilaterally increased prescription co-pays for retired employees. We decline to issue a restraint of arbitration.

The parties filed briefs, exhibits and certifications.<sup>1/</sup>

The following facts are derived from the parties' briefs and the

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<sup>1/</sup> On June 4, 2010, a Commission designee issued an interlocutory decision denying the City's application for a temporary restraint of arbitration. I.R. NO. 2010-24, 36 NJPER 196 (¶76 2010).

Arbitrator's findings of fact. Local 8 represents rank-and-file police officers. The parties' collective negotiations agreement is effective from January 1, 2008 through December 31, 2012. The grievance procedure ends in binding arbitration.<sup>2/</sup>

Article XXVI of the Local 8 contract describes the medical insurance offered to unit employees. Article XXVI.A.3.e. of the Local 8 contract describes prescription co-pay coverage offered to retired employees as follows:

Prescription Drug Program - the prescription drug program shall require a five (\$5.00) dollar co-payment charge for each brand name prescription effective November 1, 1993. Generic drugs shall not require a co-payment.

In late November or early December 2009, the City increased prescription drug co-pays for all retired officers to \$5.00 for generic brand and \$10.00 for name brand prescriptions.<sup>3/</sup>

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2/ The City did not file a scope of negotiations petition for the identical grievance filed by PBA, Local 8A Superior Officers' Association. Local 8 and Local 8A's grievances on this matter were consolidated and, on November 19, 2010, Arbitrator John J. Harper sustained the grievances. The City was ordered to reimburse retirees who were required to pay increased co-pays after the November/December 2009 change. The City petitioned both the arbitrator and the Commission to temporarily stay the award pending the resolution of this scope of negotiations petition. On December 8, the arbitrator declined the City's request to stay the award. By letter dated January 21, 2011, the Commission informed the City that it does not have jurisdiction to stay an arbitrator's award absent a scope of negotiations determination and any appeal of an award must be made to the courts.

3/ In January 2010, Local 8 and Local 8A filed unfair practice  
(continued...)

On March 30, 2010, Local 8 filed a grievance with the Commission alleging that the parties' collective negotiations agreement requires prescription drug co-pays for retirees remain at the level in force when the officer retired.

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 grievance 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

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3/ (...continued)  
charges alleging that the City unilaterally increased prescription medication co-payments for retirees. On March 25, the Director of Unfair Practices administratively dismissed the charges.

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. No preemption issue is presented.

The City argues that retirees are not employees within the meaning of the Act and as such the matter is outside of the

Commission's jurisdiction. The PBA responds that this matter is legally arbitrable as it is seeking to enforce the loss of contractual benefits to retirees. The PBA further asserts that the past practice of the parties has been that prescription co-payments for retirees were frozen at the level in existence at the time of retirement.

The parties' collective negotiations agreement contains a provision dealing with prescription drug co-pays and payment of insurance premiums for retirees. We have allowed majority representatives to seek arbitration to enforce a contract on behalf of a retired employee because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. Middletown Tp., P.E.R.C. No. 2006-102, 32 NJPER 244 (¶101 2006); New Jersey Turnpike Auth., P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005). Local 8 has a cognizable interest in ensuring that retired employees receive whatever retirement benefits were contracted for in the last agreement before retirement.

The City's assertions regarding the contractual arbitrability of this matter are outside of our scope of negotiation jurisdiction, as is the issue of whether a past practice existed relating to prescription co-payments for retirees. Ridgefield Park.

ORDER

The City of Union City's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners, Bonanni, Eaton, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Eskilson was not present.

ISSUED: April 28, 2011

Trenton, New Jersey