

P.E.R.C. NO. 2023-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN,

Petitioner,

-and-

Docket No. SN-2023-008

TEAMSTERS LOCAL 469,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City's request for a restraint of binding arbitration of a grievance contesting the discontinuation of health insurance opt-out payments. The Commission finds that N.J.S.A. 40A:10-17.1 preempts arbitration over whether to provide health insurance waiver opt-out payments, that the City made the payments for the final year it provided the program, and that the City passed a resolution and notified the union that it would be discontinuing the opt-out payment program effective 2017.

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. 2023-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN,

Petitioner,

-and-

Docket No. SN-2023-008

TEAMSTERS LOCAL 469,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Robert J. Merryman, of counsel)

For the Respondent, Kroll, Heineman, Ptasiewicz & Parsons, attorneys (Seth B. Kennedy, of counsel)

DECISION

On September 20, 2022, the City of Linden (City) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 469 (Local 469). The grievance asserts that the City violated the parties' collective negotiations agreement (CNA) by failing to pay health insurance opt-out benefits to those unit employees who waived the City's health insurance coverage. The City filed a brief, exhibits and the certification of its Labor Relations Specialist,

Allan C. Roth, Esq. Local 469 filed a brief.<sup>1/</sup> These facts appear.

Local 469 represents all full-time employees and permanent part-time white collar employees who work 20 or more hours per week in the titles listed in Appendix A of the CNA. Local 469 also represents all full-time and permanent part-time blue collar employees who work 20 or more hours per week in the titles listed in Schedule A of the CNA. The City and Local 469 are parties to a CNA in effect from January 1, 2020 through December 31, 2023. The grievance procedure ends in binding arbitration.

Article 11, Section G of the white collar agreement provides in pertinent part:

G. Waiving Health Insurance Coverage

Employees, who receive health care benefits as a dependant of another individual may waive the City's health insurance coverage and will be entitled to an annual cash payment in accordance with the provision of the section noted below:

1. The annual cash payment will be \$4,000.00 or twenty-five (25%) of the cost of the premium for said benefits, whichever is less, payable on or about December 20, of each year that the employee has waived the City's health coverage. In the event that the employee has not been employed for a full calendar year, the aforementioned payment will be prorated.

---

<sup>1/</sup> Local 469 did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

The same language is contained in the blue collar agreement in Article 10, Section F. A waiver clause providing for payment for waiving health insurance coverage has been in the contract for both the white and blue collar units since at least 2002.

On October 18, 2016, the City passed a resolution ending the program of paying health insurance waivers for all City employees who waive coverage. Each of the City's unions were notified orally through their shop stewards. Due to the fact that employees had waived coverage in 2016 in anticipation of receiving a waiver payment in December, the City paid employees for the waiver of coverage in 2016. The City made no health insurance waiver payments after 2016.

Roth certifies that from 2017 forward, employees individually or through their respective unions requested the health benefit waiver payment, but that all requests were denied and no funds were paid. During negotiations for a new contract in 2017, Local 469 raised the issue of payments for waiving health insurance. Roth discussed with the unions that the health benefits waiver payments were not negotiable. In March 2018, Local 469 filed a grievance challenging the City's decision to stop making payments to unit employees who had waived health benefits. On March 18, 2018, Roth denied the grievance noting that the law provided that payments for health waivers were solely at the City's discretion.

On May 16, 2022, Local 469 filed a grievance challenging the City's decision not to make payments to employees who waived health insurance coverage, which was again denied. On August 15, Local 469 submitted a Request for Submission of a Panel of Arbitrators. This petition ensued.

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. 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.

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

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

The City asserts that arbitration must be restrained because the decision of whether and when to allow health insurance waiver payments is preempted by N.J.S.A. 40A:10-17.1. It argues that the City's 2016 decision to cease its health insurance waiver payment program is specifically precluded from collective negotiations pursuant to N.J.S.A. 40A:10-17.1.

Local 469 asserts that, while collective negotiations over the issue of whether to offer a health insurance waiver payment program are preempted by N.J.S.A. 40A:10-17.1, the implementation of the program, if offered, is arbitrable. It argues that because the CNA still contains the waiver payment language, the City's putative termination of the program in 2016 did not formally notify the union that the waiver program was eliminated.

Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave

nothing to the discretion of the public employer.” State v. State Supervisory Employees Ass’n, 78 N.J. 54, 80-82 (1978).

N.J.S.A. 40A:10-17.1 provides in pertinent part:

The decision of a county, municipality or contracting unit to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process.

[emphasis added.]

The Commission has held that N.J.S.A. 40A:10-17.1 and identical statutory language in N.J.S.A. 52:14-17.31a preempt collective negotiations and arbitration over whether to provide health insurance waiver opt-out payments.<sup>2/</sup> See, e.g., Town of Westfield, P.E.R.C. No. 2018-12, 44 NJPER 144 (¶42 2017); State of New Jersey, P.E.R.C. No. 2014-78, 40 NJPER 547 (¶177 2014) (health insurance waiver payment proposals were non-negotiable); Clinton Tp., P.E.R.C. No. 2013-33, 39 NJPER 212 (¶70 2012) (arbitration restrained because the statute “clearly preempts the subject matter area regarding the payment of stipends for waiving coverage”); and Hillsborough Bd. of Ed., P.E.R.C. No. 2005-54, 31 NJPER 99 (¶43 2005) (“decision of municipalities and counties to permit waivers and the amount of consideration are not negotiable”).

---

<sup>2/</sup> N.J.S.A. 52:14-17.31a is identical in all relevant respects to N.J.S.A. 40A:10-17.1, but concerns health insurance waivers and opt-out payments for employees of public employers in the State Health Benefits Plan.

The instant case is analogous to Town of Westfield, in which the parties' CNA contained a provision for health insurance waiver payments, but the Town Council voted to end the program, effective the following year. Finding that "N.J.S.A. 40A:10-17.1 clearly preempts opt-out payments for waiving coverage in the Town's health insurance plan" we held that the union could not arbitrate over the Town's decision to end the waiver program. Westfield, 44 NJPER at 146. Here, as in Westfield, we find that N.J.S.A. 40A:10-17.1 preempts arbitration over the City's decision to end its health insurance waiver payment program because the statute expressly provides that the public employer's decision of how much payment to provide for waivers "shall not be subject to the collective bargaining process."

Furthermore, this case is distinguishable from the City of Orange Tp., P.E.R.C. No. 2019-37, 45 NJPER 325 (¶86 2019) and Somerville Bor., P.E.R.C. No. 2021-11, 47 NJPER 199 (¶44 2020) cases cited by Local 469. In those cases, arbitration was not restrained over disputes about the implementation of health insurance opt-out payments for years in which the employer had chosen to offer the waiver program. In City of Orange Tp., the Commission held that, in a given year in which the employer has already exercised its discretion under N.J.S.A. 40A:10-17.1 and/or N.J.S.A. 52:14-17.31a to accept health insurance waivers in exchange for an annual opt-out payment, arbitration over the



employer's alleged failure to properly effectuate payment for that year is not preempted. In Somerville, the grievance contested the employer's alleged improper denial of health insurance waiver payments based on a misunderstanding over whether the grievant's spouse's health insurance was through the SHBP. The Commission held that, as the employer had indisputably provided a health insurance waiver payment program during the years in question, the union could arbitrate over whether the grievant was improperly denied payment under the program.

Here, by contrast, the City announced its elimination of the health insurance waiver payment program via resolution in 2016 and communicated such to the unions. Significantly, the record indicates that in December 2016, the City paid Local 469's employees their waiver payments for the year 2016. Local 469 does not dispute that the City made the health insurance opt-out payments for 2016. The City again maintained the non-negotiability of health insurance waiver payments during collective negotiations in 2017 and when it denied a grievance in 2018 seeking payment for waiving health insurance. Under these circumstances, the City exercised its non-negotiable discretion under N.J.S.A. 40A:10-17.1 to not offer a health insurance waiver payment beginning in the year 2017 after apparently fulfilling its obligations under the program for its final year in 2016. Local 469 has not supplied any evidence to suggest that the City

has reinstated the health insurance waiver payment program in any year subsequent to 2016. Therefore, unlike in City of Orange Tp. and Somerville, there is no arbitrable issue concerning the implementation of a health insurance waiver payment program; Local 469's grievance is fully preempted.

ORDER

The request of the City of Linden for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: March 30, 2023

Trenton, New Jersey