

P.E.R.C. NO. 2024-38

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. SN-2024-016

PBA LOCAL 44,

Respondent.

SYNOPSIS

The Commission grants the Township of Maplewood's scope of negotiations petition seeking a restraint of binding arbitration of PBA Local 44's grievance challenging the Township's denial of a member's application for a health benefit waiver payment. The Commission finds that a regulation promulgated by the State Health Benefits Commission preempts the issue when a local employer (like the Township) participates in the State Health Benefits Program (SHBP), and an employee waiving that coverage (like the grievant) receives alternate coverage (through the employer of a spouse or domestic partner) that is also under the SHBP. The Commission finds the regulation speaks in the imperative, expressly, specifically, and comprehensively operating to bar non-State local employers who participate in the SHBP from making waiver payments to employees whose other eligible coverage is through the SHBP.

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, Lavery, Selvaggi, Abromitis & Cohen, attorneys (Richard W. Wenner, of counsel; Wade T. Baldwin, on the brief)

For the Respondent, Marc D. Abramson & Associates Inc. (Marc D. Abramson, on the brief)

DECISION

On September 28, 2023, the Township of Maplewood (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the PBA Local 44 (PBA). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) and current Employee Handbook when it refused to provide the grievant with payment for waiving health insurance benefits (waiver payment).

The Township filed briefs, exhibits and the certification of its counsel, Wade T. Baldwin. The PBA filed a brief, exhibits and the certification of the grievant. These facts appear.

The PBA represents all patrolmen in the Township's Police

Department. The Township and PBA are parties to a CNA in effect from January 1, 2020 through December 31, 2023. The grievance procedure ends in binding arbitration. The CNA provides that employees and their eligible family members are entitled to full coverage for major medical insurance under the New Jersey State Health Benefit Program (SHBP). The CNA contains no language expressly addressing the subject of health benefit waiver payments.

The grievant is a Detective in the Maplewood Township Police Department. The Township and the grievant certify that the grievant's spouse is a public employee who is currently insured through the SHBP. The grievant certifies that while his wife was employed by the Township, the grievant declined healthcare coverage and was covered under his wife's policy. The grievant further certifies that his wife left her employment with Maplewood on August 1, 2022, and that the family continued being covered by his wife at her new place of employment. The grievant further certifies that his wife's current employer is a New Jersey township where she is currently enrolled in the SHBP.

The Township certifies that for the fiscal year 2023, the grievant applied for a health insurance waiver pursuant to the following provision in the Township's Employee Handbook:

If an employee has medical coverage under a plan other than through the Township of Maplewood and elects to withdraw from the Township plan, the Township will pay the

employee \$2000 less statutory deductions.

This payment will be made by December 1 of each year the employee opts out. If an employee wishes to take advantage of this option, he or she needs to complete a Health Care Benefits Waiver Form and attach proof of alternate medical coverage, such as a health plan identification card. Once this form is completed, the employee needs to complete the State Health Benefits Plan form indicating that the employee is withdrawing coverage. This form is available at the Business Administrator's Office. This election is good for one year and the Health Care Benefits Waiver Form will need to be submitted annually if the employee wants to continue in the program. However, if the employee loses the other health coverage, the employee needs to be re-enrolled in the Township plan as soon as the coverage lapses. In that event the employee needs to complete Part 3 of the Health Care Benefits Waiver Form and submit it to the Business Administrator's Office. In the case where the employee is enrolled in the Township's plan for a portion of the year, the payment will be pro-rated for the portion of the year that the employee did not have health benefits from the Township. If the employee still has alternative coverage but wishes to continue the Township's coverage in the future, the employee will need to wait until annual open enrollment period.

If an employee elects to withdraw from the Township plan for a partial year, whether through initiating the waiver after January 1 or through termination of the waiver prior to December 31, that year's payment will be pro-rated equivalent to the portion of the year the employee was employed and subject to the waiver.

The Township denied the waiver payment. On February 9, 2023, the grievant submitted a grievance contesting the Township's denial. On February 27, the Interim Township

Administrator issued a letter denying the grievance (on asserted grounds of "improper process," "no contract violation," and "not a subject of bargaining") but also reversing the denial of the waiver payment, stating, in pertinent part:

After reviewing the grievance and associated documentation, I am denying the grievance but shall reverse our decision to [not] pay you the health insurance waiver as outlined in the employee handbook. The initial denial of the waiver was due to the language on the state form which stated that a waiver was not possible if coverage was being obtained through another individual also covered by the state plan. After reviewing the state documentation and associated laws, we are unable to find any language that codifies the statement on the form. Since the language on the form is apparently unjustified, we revert back to the language in the employee handbook.

. . .

Again, although the grievance is denied for the [other stated] reasons, . . . we will still adhere to the employee handbook and grant you the waiver you requested.

On March 27, after consultation with the Township's labor counsel, the Interim Township Administrator issued a revised denial via e-mail, denying the requested waiver payment for fiscal year 2023 or any previous year, based upon guidance from Local Finance Notice (LFN) 2016-10, published by the Department of Community Affairs, Division of Local Government Services. A copy of LFN 2016-10 was attached to the email.

On April 3, 2023, the grievance was advanced to the Township Committee Level. The Committee denied the grievance on April 18.

On April 20, the Interim Business Administrator sent a letter to the grievant indicating the Committee's denial. On June 5, the PBA filed a Request for Submission of a Panel of Arbitrators. In its statement identifying the grievance to be arbitrated, the PBA claimed the Township's denial of the waiver payment violated the CNA at Articles V (Retention of Benefits), VII (Discrimination or Coercion), and XI (Rules and Regulations)^{1/}, as well as the current Employee Handbook. This petition ensued.

In a scope of negotiations determination, the Commission's 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.

^{1/} Article V states, in pertinent part, "all working conditions under which the officers are presently operating shall be maintained and continued by the Employer during the term of this Agreement." Article VII prohibits "discrimination, interference or coercion by the Employer" against employees "because of membership in the PBA." Article XI requires that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated and discussed with the majority representative prior to being established."

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

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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.

Arbitration is permitted if the subject of the grievance 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). Thus, if a grievance is either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically and comprehensively. *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). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The Township argues that negotiations are preempted by N.J.S.A. 52:14-17.31 and N.J.S.A. 52:14-17.31a which, respectively, prohibit multiple coverage in the SHBP and state that an employer's decision to provide payments for waiving SHBP coverage shall not be subject to the collective bargaining process. The Township also relies on LFN 2016-10, which tracks those statutory provisions and further states that an employee cannot receive a waiver payment if the employer is in the SHBP and the alternate coverage available to that employee (through a spouse or domestic partner, for example) is also under the SHBP

or the School Employees Health Benefit Program.

The PBA argues that the grievance deals with the failure of the Township to adhere to its own unilaterally adopted waiver policy. It concedes that the subject of waiver payments is not mandatorily negotiable. The PBA further concedes that N.J.S.A. 52:14-17.31a "expressly, specifically and comprehensively prohibits the opt-out coverage from being under the SHBP," but it argues that requirement is not applicable to local employers. The PBA argues that the applicable statutes here are under Title 40A, N.J.S.A. 40A:10-16, et seq., which cover county and municipal employers. The PBA argues that waiver payment eligibility under Title 40A only requires that "other" health care coverage be available to the employee but, unlike Title 52, it does not specifically prohibit other coverage under the SHBP.

Upon a thorough review of the parties' submissions and the applicable law and regulations, we find the issue of waiver payments when the alternate coverage is under the SHBP is preempted by N.J.A.C. 17:9-1.7. We grant the Township's scope of negotiations petition, and we restrain binding arbitration, in light of a clear regulatory prohibition against waiver payments when an employee waives coverage because of other SHBP coverage.

N.J.A.C. 17:9-1.7 is entitled "Employer Incentives for Non-enrollment in the SHBP." It states as follows:

- (a) Except as allowed by N.J.S.A. 52:14-17.31a, an employer shall not offer a

financial enticement of cash or anything else of value to an employee who elects not to enroll or to terminate enrollment in the SHBP.

(b) Any participating local employer, other than the State, is allowed to pay an employee an incentive to waive coverage if that employee is eligible for other health coverage.

1. For waivers filed on or after May 21, 2010 (the effective date of P.L. 2010, c. 2), the incentive shall not exceed \$ 5,000 or 25 percent of the amount saved by the employer because of the employee's waiver of coverage, whichever is less.

2. For waivers filed before May 21, 2010 (the effective date of P.L. 2010, c. 2), the incentive may be up to 50 percent of the amount saved by the employer.

© The employee may enroll immediately into the program if the other coverage or the waiver ends, for any reason, including, but not limited to, the retirement or death of the spouse or divorce. The employee must repay, on a pro rata basis, any amount received, which represents an advance payment for a period of time during which coverage is resumed.

(d) To waive coverage or resume coverage that has been waived, an employee must notify his or her employer, and both must notify the SHBP in writing by submitting a Coverage Waiver/Reinstatement for State Employees if employed by the State of New Jersey, or a Coverage Waiver/Reinstatement for Local Government/Educational Employees if employed by a local government or local education entity.

(e) If the member is waiving coverage because of other SHBP or SEHBP coverage, no monetary incentive is allowed.

(f) No general resolution is required for the adoption of the waiver incentive, since the employer's certifying officer must sign each individual waiver application.

(g) An employee who waives coverage under this section is not precluded from continuing coverage into retirement.

[N.J.A.C. 17:9-1.7 (emphases added).]

Preliminarily, we note that in their initial submissions, neither party here cited the above regulation or made argument about it. On January 9, 2024, the parties were directed to file supplemental briefs addressing whether N.J.A.C. 17:9-1.7(e) preempts this matter. Supplemental briefing was completed by January 30. The PBA's position is that it is not preemptive because the regulation "derives its authority" from Title 52, and reiterates its argument that Title 40A controls here, not Title 52. The Township's position is that it does preempt negotiations because N.J.A.C. 17:9-1.1, et seq., regulates the SHBP for all public employees in the State of New Jersey.

We agree with the Township. N.J.A.C. 17:9-1.1, et seq., are regulations promulgated under Title 52 by the State Health Benefits Commission to administer the SHBP. See, N.J.S.A. 52:14-17.27(a). N.J.A.C. 17:9-1.8 defines SHBP-eligible public employers to include "local employers" such as counties and municipalities. N.J.A.C. 17:9-1.7(b) explicitly grants to "[a]ny participating local employer, other than the State," the discretion to offer waiver payments to employees. N.J.A.C. 17:9-

1.7(e) explicitly prohibits the grant of a waiver payment to any member who "is waiving coverage because of other SHBP or SEHBP coverage."^{2/} Here, the Township, as a municipality, is a "local employer" that participates in the SHBP. It is not disputed that the grievant waived healthcare coverage from the Township and is currently covered under the SHBP plan of his wife's employer.

As applied to these facts, we find the meaning and preemptive effect of N.J.A.C. 17:9-1.7 is plain. That is, it speaks in the imperative, expressly, specifically and comprehensively operating to bar non-State local employers who participate in the SHBP from making waiver payments to employees whose other eligible coverage is through the SHBP. We further note that LFN 2016-10 is fully consistent with the regulations. See, LFN 2016-10 ("[I]f the local unit is in SHBP, and the alternate coverage is also under SHBP . . . , the employee cannot receive a waiver payment.")

As such, N.J.A.C. 17:9-1.7 preempts the Township from issuing a waiver payment to the grievant under the policy set forth in its Employee Handbook.

ORDER

The request of the Township of Maplewood for a restraint of binding arbitration is granted.

^{2/} Section (e) of N.J.A.C. 17:9-1.7 has been in effect since November 7, 2016. See, 48 N.J.R. 784(a), 48 N.J.R. 2387(a).

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Kushnir, and Papero voted in favor of this decision. None opposed. Commissioner Higgins was not present.

ISSUED: February 29, 2024

Trenton, New Jersey