

P.E.R.C. NO. 2012-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF VOORHEES,

Petitioner,

-and-

Docket No. SN-2011-016

VOORHEES POLICE OFFICERS ASSOCIATION,
VOORHEES SERGEANTS ASSOCIATION AND
VOORHEES SENIOR OFFICERS ASSOCIATION OF
FOP LODGE 56 AND THE FRATERNAL ORDER OF
POLICE - NEW JERSEY LABOR COUNCIL,

Respondents.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Voorhees for a restraint of binding arbitration of a joint grievance filed by the Voorhees Police Officers Association, the Voorhees Sergeants Association, the Voorhees Senior Officers Association of FOP Lodge 56 and the Fraternal Order of Police - New Jersey Labor Council. The grievance asserts that the Township violated the present and past collective negotiations agreements between the parties, the Township Employee Manual and past practice when it unilaterally ceased reimbursing current retirees for increased prescription co-pays in the State Health Benefits program. 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, Wade, Long, Wood & Kennedy, LLC,
attorneys (Audra A. Pondish, of counsel)

For the Respondents, The Cushane Law Firm, attorneys
(Thomas A. Cushane, of counsel)

DECISION

On July 14, 2010, the Township of Voorhees petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a joint grievance filed by Voorhees Police Officers Association, Voorhees Sergeants Association and Voorhees Senior Officers Association of FOP Lodge 56 and the Fraternal Order of Police- New Jersey Labor Council. The grievance asserts that the Township violated the present and past collective negotiations agreements between the parties, the Township Employee manual and the parties' past practice when it unilaterally ceased reimbursing current retirees for increased

prescription co-pays in the State Health Benefits Program. We decline to issue a restraint of arbitration.

The parties have filed briefs and exhibits. The Township has filed a certification of the Township Administrator. The FOP has filed a certification of counsel for the purpose of attaching exhibits. These facts appear.

The Voorhees Township Police Officers Association ("POA"), NJFOP Labor Council represents all police officers employed by the Township. The Voorhees Township Sergeants Association ("SA") represents all sergeants employed by the Township and the Voorhees Police Senior Officers Association ("PSOA"), NJFOP Labor Council represents all senior officers in the rank of lieutenant, captain and deputy chief. The PSOA's and SA's most recent collective negotiations agreements are effective from January 1, 2006 through December 31, 2009. The POA's agreement is effective from January 1, 2009 through December 31, 2012. The grievance procedures end in binding arbitration.

Article II of the POA agreement is entitled "Negotiations Procedures", Article II Is entitled "Officers Rights and Privileges", Article XXIX is entitled "Miscellaneous" and Article XXV is entitled "Medical Benefits" and provides, in part:

The Township and the Association incorporate the existing ordinance and coverage providing medical benefits to any officer who retires from the Township and has completed twenty-five (25) years of service within the pension system as outlined by Township ordinance.

Article 7 is entitled Retirement, Separation, Death or Disability and provides:

Any members of the Police Department who shall retire after twenty-five years in the pension system shall continue to be enrolled with the Township's medical plan as per the practice of the Township.

Article 14 is entitled "Health Benefits" and Article 20 is a "Miscellaneous" provision.

Article 6 of the PSA agreement is entitled "Reirement" and provides:

Any member of the Police Department who shall retire after twenty-five (25) years in the pension system shall continue to be enrolled with the Townships medical plan as per the practice of the Township.

Article 15 is entitled "Health Benefits", Article 20 is "Miscellaneous" and Article 22 is entitled "Duration".

On April 13, 2010, the Township Administrator sent a letter to retirees of the Township advising that due to a reduction in State aid, effective July 10 the Township would no longer provide for reimbursement for prescription co-payments in excess of the co-payments provided through the State Health Benefits Program.

On May 11, 2010, the POA, SA and PSA filed a grievance alleging the Township's actions violated the provisions of the collective negotiations agreements cited above as well as the Township's Handbook and Policy to maintain retired employees

health benefits at the level they were when the officer retired. On July 14, 2010, the unions demanded binding arbitration. 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 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), permits arbitration 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 to have been violated is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

The Township argues that the FOP lacks standing to assert a claim on behalf of retired employees who are no longer part of

the collective negotiations unit and that retirement benefits are a permissive and not mandatory subject of negotiations which may be changed unilaterally.

The FOP responds it has standing to enforce the parties' current collective negotiations agreements, past practice and a 2008 settlement agreement between the parties that require the Township to maintain prescription co-pays at the same levels in effect at the time of the officer's retirement.

The parties' collective negotiations agreements contain provisions dealing with medical insurance for retirees. We have permitted a majority representatives to seek arbitration to enforce a contract on behalf of retired employees because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. Union City, P.E.R.C. No. 2011-73, 37 NJPER 165 (¶52 2011); 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). The FOP has a cognizable interest in ensuring that retired employees receive whatever retirement benefits were contracted for in the agreement that was in effect at the time an employee retired. That principle is different from the proposition, based on Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157, 92 S. Ct. 383, 30 L. Ed. 2d 341 (1971), that an employer is not under an obligation to negotiate

over benefits of already retired employees. Allied Chemical was an unfair practice case and not a scope of negotiations case.

As explained in Textile Workers of America v. Columbia Mills, Inc., 471 F. Supp. 527, 530-531 (N.D.N.Y 1978):

[T]he issue is not whether the Company must bargain with the Union over the benefits of retired employees, but rather whether the Company did, in fact, contractually commit itself to provide continuous insurance coverage for retirees for the duration of their natural lives. If the Company made such a commitment in the collective bargaining agreement it entered into with the Union, "then under accepted contract principles the union has a legitimate interest in protecting the rights of the retirees and is entitled to seek enforcement of the applicable contract provisions." United Steelworkers of America, AFL-CIO v. Canron, Inc., 580 F.2d 77, 80-81 (3d Cir. 1978) (footnote omitted).

The Township's assertions that the parties have not agreed to reimburse retirees or to arbitrate claims on behalf of retirees are questions of contractual arbitrability for the arbitrator or the courts. Ridgefield Park.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: September 22, 2011

Trenton, New Jersey