P.E.R.C. NO. 2000-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNCIL OF NEW JERSEY STATE
COLLEGE LOCALS, AFT, AFL-CIO,

Petitioner,

-and- Docket No. SN-99-30

STATE OF NEW JERSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal made by the Council of New Jersey State College Locals, AFT, AFL-CIO, during negotiations for a successor agreement with the State of New Jersey is mandatorily negotiable. The Council represents adjunct faculty at the State colleges. The Council's proposes that the State contribute a specified amount to a union health and welfare fund for purposes of providing health benefits to fund participants. The Commission concludes that no statute or regulation bars negotiations over the proposed benefit. The Commission further holds that under Teamsters Local 331 v. Atlantic City, 191 N.J. Super. 404 (Ch. Div. 1981), aff'd o.b. 191 N.J. Super. 394 (App. Div. 1983), a public employer may legally make payments to a union-administered health insurance fund.

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, Tomar, Simonoff, Adourian, O'Brien, Kaplan, Jacoby & Graziano, P.C., attorneys (Mary L. Crangle, on the brief)

For the Respondent, John J. Farmer Jr., Attorney General (Mary L. Cupo-Cruz, Senior Deputy Attorney General, on the brief)

DECISION

On November 6, 1998, the Council of New Jersey State College Locals, AFT, AFL-CIO petitioned for a scope of negotiations determination. The Council seeks a determination that a proposal it submitted during negotiations for a successor agreement with the State of New Jersey is mandatorily negotiable.

The parties filed briefs and exhibits. They also filed supplemental briefs and argued orally at our request. These facts appear.

The Council represents adjunct faculty at the State colleges. The Council and the State are parties to a collective negotiations agreement that expired on June 30, 1999. The parties are in negotiations for a successor agreement.

The Council has submitted the following negotiations proposal:

> The State shall contribute to a UNION Health and Welfare Fund established and administered by the UNION, an amount equal to ___% of the earnings of each and every member of the adjunct bargaining unit for the purpose of providing health benefits to Fund participants.

The Council explains that this benefit, if granted, would be available to all members of the negotiations unit.

The State told the Council that the proposal was non-negotiable and reiterated its position in writing. This petition ensued.

Invoking the preemption doctrine under State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978), the State asserts that it may pay for employee health insurance benefits only through the State Health Benefits Program (SHBP) and adjunct faculty are ineligible for SHBP coverage. It relies on the State Health Benefits Program Act, N.J.S.A. 52:14-17.25 et seq., and eligibility regulations adopted by the State Health Benefits Commission (SHBC). The State also argues that public policy and the State constitution bar channeling public money to a private entity, such as a union health and welfare fund, that can spend such funds without being accountable to the State.

The Council asserts that health benefits coverage is a mandatorily negotiable subject and that its proposal is not preempted by any SHBP statute or regulation. The Council concedes that adjunct faculty are not full-time employees and are not

covered by the SHBP. But it asserts that no statute or regulation prevents these employees from seeking to have part of their compensation channeled to a union health and welfare fund to be used to pay premiums for non-SHBP health insurance, purchased at group rates.

N.J.S.A. 34:13A-5.3 requires negotiations over "terms and conditions of employment." Local 195, IFPTE v. State, 88 N.J. 393 (1982), contains the standards for determining what is a term and condition of employment requiring negotiations:

> [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. [Id. at 404-405]

Health insurance has been held to be a mandatorily negotiable term and condition of employment. Willingboro Bd. of Ed. and Employees Ass'n of Willingboro Schools, 178 N.J. Super. 477, 479 (App. Div. 1981); cf. Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140, 149-150 (1987); Weiner v. Essex Cty., 262 N.J. Super. 270, 286 (Law Div. 1992). It is one of the primary benefits received by employees and has one of the strongest

effects on their welfare. The high cost of individual health insurance policies makes an employee's ability to secure coverage at group rates especially significant. Employees not covered by the SHBP can use their compensation to purchase health insurance individually. They can also pool their contributions to purchase insurance collectively at a lower rate. This proposal is one way to address the employee interest of receiving health insurance coverage at an affordable cost.

The employer does not argue that a negotiated agreement would significantly interfere with the delivery of its services or any educational policy determinations. In addition, because the adjunct faculty will not be receiving benefits through the SHBP, their claims would have no bearing on the SHBP's experience rates or actuarial projections. An employer's interest in not providing health insurance is a budgetary one tied to the cost of providing employee benefits. That budgetary interest is a legitimate concern, but may be addressed and protected through the collective negotiations process. Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 594 (1980).

An otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by a statute or regulation. However, the mere existence of a statute or regulation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the statute or regulation fixes a term and

condition of employment "expressly, specifically and comprehensively." Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." Local 195, 88 N.J. at 403-404. The issue is not whether a statute authorizes a benefit, but whether a statute prohibits negotiations. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989).

It is clear to us that SHBP statutes and regulations preempt negotiations over any proposal that would include adjunct faculty in the SHBP. Given N.J.S.A. 52:14-17.26 and N.J.A.C. 17:9-4.2(a)(1), they are ineligible for such coverage because they do not work at least 35 hours per week. But the fact that adjunct faculty are ineligible to receive health insurance benefits within the SHBP does not establish that they cannot negotiate for health insurance benefits outside the SHBP. We thus reject reliance on cases addressing requirements for SHBP eligibility or contesting SHBP actions. See, e.g., State of New Jersey, P.E.R.C. No. 99-40, 24 NJPER 522 (¶29243 1998).

The employer asserts that the Legislature intended that any State worker ineligible to participate in the SHBP could not receive any form of employer-subsidized health insurance outside of the SHBP. However, no statute or regulation expressly, specifically or comprehensively bars such a subsidy. Nor can we

find anything in the statute or its legislative history to suggest that the SHBP is the exclusive and uniform mechanism through which State employees may receive health insurance benefits or that there is an express legislative plan to uniformly withhold health benefits from State employees ineligible under the SHBP.[1/] We decline the employer's invitation to infer such a bar where the statute does not express one.

Cases construing SHBP statutes and regulations do not suggest that employees ineligible for SHBP coverage cannot receive any form of employer-paid health insurance outside the SHBP. To the contrary, in Rutgers Council of AAUP Chapters v. Rutgers, the State University, 298 N.J.Super. 442 (App. Div. 1997), certif. den. 153 N.J. 48 (1998),[2/] an Appellate Division panel held that same-sex partners of covered employees did not come within the SHBP's definitions of spouse or dependent and thus could not receive coverage through the SHBP. But the Court added:

> [P]laintiffs do not appear to be barred from utilizing the collective bargaining process to seek supplemental private plan coverage for dependents who may not qualify under the SHBP. [Id. at 462]

1/ Premium payments for State employees no longer need be uniform. In 1996, the Legislature amended the SHBP to provide that the obligations of the State to pay premiums or periodic charges for health benefits coverage may be determined by means of a collective negotiations agreement. N.J.S.A. 52:14-17.28b. Different negotiations units may now have different premium contribution schemes.

2/ N.J.S.A. 52:14-17.26 provides that for SHBP purposes, a Rutgers employee is deemed to be a State employee.

We recognize this statement is dictum, but we have found no countervailing authority holding that the Legislature meant to prohibit negotiations over comparable health insurance benefits.

In sum, no statute or regulation bars negotiations over the proposed benefits. Applying the Supreme Court's preemption tests, we conclude that the Council's proposal is not preempted.

The State further argues that this benefit is not negotiable because it would funnel public money to a private entity lacking public accountability. That argument was rejected in Teamsters Local 331 v. Atlantic City, 191 N.J. Super. 404 (Ch. Div. 1981), aff'd o.b. 191 N.J. Super. 394 (App. Div. 1983). There, the Court upheld the legality of a public employer making payments to a union- administered health insurance fund. 191 N.J. Super. at 409.3/

3/ Union-administered health and welfare funds are common, both in private and public employment. See Hardin, The Developing Labor Law at 871 (3d ed. 1992). See, e.g., Grondorf Field and Black Co. v. NLRB, 107 F.3d 882 (D.C. Cir. 1997)(private employer's unilateral imposition of its own health and welfare plan to supplant union-administered fund, partially supported by employer contributions, violated duty to bargain); District Council 33, AFSCME, AFL-CIO v. City of Philadelphia, 517 Pa. 401 (1988)(city's agreement to make health insurance payments to health and welfare fund was enforceable); Kerrigan v. City of Boston, 361 Mass. 24 (1972)(payments to health and welfare fund were within school committee's powers; claim that committee's power to fix teachers' compensation did not include payment to third persons for the teachers' benefit was rejected); Local 456, IBT v. Town of Cortlandt, 68 Misc. 2d 645, 327 N.Y.S. 2d 143 (N.Y. Sup. 1971)(municipality may contract to make payments to a union welfare fund).

The Court found that the municipality had a right to enter into a collective negotiations agreement providing for compensation and that making contributions to the union health and welfare fund was a lawful substitute for the payment of direct compensation. Id. at 411. No problem was presented by the fact that payments were to be made directly rather than circuitously from the city, to the employees, to the fund. Ibid.[4/]

The State argues that Teamsters is distinguishable because Atlantic City was a local employer that did not participate in the SHBP. But that distinction is not material to the Court's holding that payments to a union-sponsored health insurance plan are a lawful substitute for direct compensation. Id. at 411.

For these reasons, we hold that this health benefits proposal is mandatorily negotiable. The employer is not required to accept this proposal, Hunterdon at 338, but it must negotiate over it.

4/ N.J.S.A. 52:14-15.9a authorizes State employees to have the employer deduct the cost of group health insurance premiums from their compensation.

ORDER

The health benefits proposal submitted by the Council of New Jersey State College Locals, AFT, AFL-CIO is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: August 26, 1999
Trenton, New Jersey
ISSUED: August 27, 1999