P.E.R.C. NO. 2001-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PISCATAWAY,

Petitioner,

-and- Docket No. SN-2001-10

AFSCME, COUNCIL 73, LOCAL 3274,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Piscataway for a restraint of binding arbitration of a grievance filed by AFSCME, Council 73, Local 3274. The grievance alleges that the Township violated the parties' collective negotiations agreement by failing to notify employees of a rate change in health benefits and failing to negotiate over health benefits. The Commission concludes that N.J.S.A. 26:2J-29 does not expressly, specifically, or comprehensively prohibit employers from agreeing to pay the full cost of HMOs.

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, Abrams, Gran, Hendricks, Reina & Rosenberg, P.C., attorneys
(C. Douglas Reina, on the brief)

For the Respondent, Alice Weisman, attorney, AFSCME, Council 73

DECISION

On August 23, 2000, the Township of Piscataway petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 73, Local 3274. The grievance alleges that the Township violated the parties' collective negotiations agreement by failing to notify employees of a rate change in health benefits and failing to negotiate over health benefits.

The parties have filed briefs and exhibits. These facts appear.

AFSCME represents certain clerical and technical employees employed by the Township. The Township and AFSCME are parties to a collective negotiations agreement effective from

January 1, 1997 through June 30, 2002. The grievance procedure ends in binding arbitration.

Article IX is entitled Health Benefits Package. It states that the Township will provide a health benefits package that includes hospitalization, medical, major medical, prescription and dental insurance to all full-time employees in the bargaining unit. It provides for reimbursement to any employee who chooses not to accept health insurance, provided that employee is covered by other health insurance.

Although the parties' agreement mentions only the indemnity plan administered by Blue Cross and Blue Shield, pursuant to N.J.S.A. 26-2J-29, the Township also offers employees the opportunity to select an alternative health benefits plan. Aetna/US Healthcare is one of the optional plans.

Aetna notified the Township that the premium rates would be raised effective July 1, 2000. The monthly rate for family coverage would increase from $529.30 to $616.60 and the rate for single coverage would increase from $193.30 to $225.20. This rate increase raised the cost for Aetna/US Healthcare coverage above the level of the Blue Cross and Blue Shield Indemnity Plan by $39.69 for family coverage and $14.59 for single coverage.

On May 12, 2000, the Township advised employees covered by Aetna/US Healthcare that effective July 1, 2000, they would be responsible for paying the difference between the cost of the Aetna coverage and the traditional Blue Cross and Blue Shield

Indemnity Plan. An open enrollment period was established from May 17 through June 16, 2000 for employees wishing to change to another HMO or to the traditional Blue Cross and Blue Shield Plan to avoid the additional cost. Only one employee elected to maintain coverage under the Aetna/US Healthcare plan.

On June 9, 2000, AFSCME filed a grievance contesting the rate increase without negotiations. The Township denied the grievance. AFSCME filed an unfair practice charge with the Commission. The Director of Unfair Practices advised the parties that this issue could be resolved through the grievance procedure and deferred the charge to arbitration. AFSCME demanded arbitration and this petition ensued.

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 contractual merits of the grievance or any contractual defenses the employer may have. We agree with the Township that questions concerning the timeliness of the grievance are to be addressed in arbitration.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable:

> [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]

The Township asserts that N.J.S.A. 26:2J-29 prohibits it from paying an amount for HMO coverage greater than the amount paid for traditional coverage. That statute provides:

> Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organization; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer.

AFSCME asserts that health benefits are mandatorily negotiable terms and conditions of employment and that the Township had an obligation to negotiate over the rate increases. It further asserts that N.J.S.A. 26:2J-29 may not even be applicable to these employees since they are not within the State Health Benefits Plan, and even if it is applicable, nothing in the statute prohibits the Township from negotiating over increases.

In Bridgewater Tp., P.E.R.C. No. 95-28, 20 NJPER 399 (¶25202 1994), aff'd 21 NJPER 401 (¶26245 App. Div. 1995), we rejected the employer's defense that N.J.S.A. 26:2J-29 preempts a public employer's agreement to pay the full cost of HMO coverage, even when the cost of that coverage exceeds the cost of the employer-sponsored basic health plan. This section was part of a larger statutory scheme authorizing HMOs. We found that the underlined language protected employers, at the time of the statute's passage in 1973, from being obligated to pay more for an HMO than they had already contracted to pay for other health insurance. N.J.S.A. 26:2J-1 et seq. The Legislature did not, however, expressly, specifically, or comprehensively prohibit employers from agreeing to pay the full cost of HMOs. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982); State of New Jersey, P.E.R.C. No. 2000-12, 25 NJPER 402 (¶30174 1999) aff'd ___ N.J. Super. ___ (App. Div. 2001); see also Borough of Glassboro, P.E.R.C. No. 95-37, 21 NJPER 32 (¶26021 1994).

Accordingly, we decline to restrain binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Muscato was not present.

DATED: January 25, 2001
Trenton, New Jersey
ISSUED: January 26, 2001