

P.E.R.C. NO. 95-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF KEANSBURG,

Petitioner,

-and-

Docket No. SN-95-28

COMMUNICATIONS WORKERS OF
AMERICA, LOCAL NO. 1032,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Communications Workers of America, Local No. 1032 against the Borough of Keansburg to the extent, if any, CWA seeks continued payment of health insurance premiums for retirees who do not meet at least one of the eligibility conditions of N.J.S.A. 40A:10-23.

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, James M. McGovern, Jr., P.C.,
attorneys (Robert S. Cosgrove, of counsel)

For the Respondent, Brotman & Graziano, attorneys
(Daniel J. Graziano, of counsel)

DECISION AND ORDER

On September 29, 1994, the Borough of Keansburg petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, Local No. 1032. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it notified certain retired employees that it would no longer pay for their health insurance coverage.

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

CWA represents the Borough's employees except for police officers. The parties entered into a collective negotiations

agreement effective from July 1, 1992 through June 30, 1994. The grievance procedure ends in binding arbitration. Article XIV provides health insurance benefits. Section 6 provides:

All employees hired after the signing of this contract shall accumulate twenty five (25) years continuous service to the Borough of Keansburg to be eligible for medical, hospitalization, dental, vision, prescription and any other future benefit program to be negotiated by the Union upon retirement.

Section 7 lists 31 retired employees and states that the Borough will provide them with "Hospitalization, Major Medical Insurance, Life Insurance Coverage, Family Dental Plan, Family Optometric Plan, and Family Prescription Plan and any other future benefit program upon retirement."

On February 1, 1994, the Borough Manager wrote letters to certain retired employees listed in Section 7 and notified them that effective June 1, 1994, the Borough would stop paying their health insurance premiums because they did not meet the eligibility conditions of N.J.S.A. 40A:10-23. The letters indicate that the Borough had been advised that it must stop paying premiums for all individuals who retired with "less than twenty-five (25) years of service or were age sixty two with fifteen (15) years of service with the Borough." Employees were notified of their COBRA rights and given the option of continuing on the employer's insurance plan at their own expense.

On April 18, 1994, CWA filed a grievance asserting that the Borough had violated Sections 6 and 7 by discontinuing

hospitalization payments for retirees. The Borough Manager denied the grievance, stating that the Borough had complied with the law in discontinuing these payments. CWA demanded arbitration and this petition ensued.

CWA argues that the Borough's letter misinterprets N.J.S.A. 40A:1-23 and that the statute permits payments for individuals who reach age 62 and have at least 15 years of service with the Borough. The Borough argues that a municipality can only pay premiums in accordance with the statutory conditions.

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 this grievance or any contractual defenses the Borough may have.

N.J.S.A. 40A:10-23 governs payments of health insurance benefits for retired employees of employers who do not participate in the State Health Benefits Plan. This statute provides, in part:

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired on a

disability pension or after 25 years' or more service with the employer, or have retired and reached the age of 62 or older with at least 15 years of service with the employer, including the premiums of their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.


We have held that N.J.S.A. 40A:10-23 expressly, specifically, and comprehensively precludes payment of medical premiums for any retiree who does not meet that statute's conditions. Morris Cty. Prosecutor, P.E.R.C. No. 91-120, 17 NJPER 346 (¶22155 1991); Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990). Thus, the Borough was required to stop paying premiums for any retiree who did not meet at least one of these three conditions: (1) retiring on a disability pension, (2) having 25 years' or more of service with the employer, or (3) having reached the age of 62 or older with at least 15 years of service with the employer. We thus restrain arbitration to the extent CWA seeks continued health insurance payments for retirees who do not satisfy at least one of these conditions. However, we decline to restrain arbitration to the extent that CWA claims that the Borough discontinued health insurance payments for any retirees who do meet at least one of these conditions.

ORDER

The request of the Borough of Keansburg for a restraint of binding arbitration is granted to the extent, if any, CWA seeks

continued payment of health insurance premiums for retirees who do not meet at least one of the eligibility conditions of N.J.S.A. 40A:10-23.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision.

DATED: March 24, 1995
Trenton, New Jersey
ISSUED: March 27, 1995