

P.E.R.C. NO. 92-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-91-19

DISTRICT 1199J,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by District 1199J against the County of Hudson. The grievance asserts that the County violated the parties' collective negotiations agreement when it discontinued paid medical insurance for retirees who do not have 25 years of credited service in a state or locally-administered retirement system. The Commission finds that N.J.S.A. 52:14-17.38 does not permit State Health Benefits Plan participants to pay for health insurance for retirees who do not have 25 years or more of service credited in a retirement system or to establish a separate fund for some of its employees. The Commission further finds that an arbitrator cannot order an employer to leave the State Health Benefits Plan to enforce an agreement with one negotiations unit to maintain a level of benefits illegal under the Plan.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-91-19

DISTRICT 1199J,

Respondent.

Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys
(Stephen E. Trimboli, of counsel)

For the Respondent, Balk, Oxfeld, Mandell,
and Cohen, attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On October 10, 1990, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by District 1199J. The grievance asserts that the County violated the parties' collective negotiations agreement when it discontinued paid medical insurance for retirees who do not have 25 years of credited service in a state or locally-administered retirement system.

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

District 1199J represents the County's blue and white collar employees, excluding supervisors and certain other types of employees. There are approximately 1800 employees in the unit. The

parties' agreement covers July 1, 1989 to June 30, 1992. The grievance procedure ends in final and binding arbitration of certain disputes. Article 22, Section 6 provides, in part:

The County shall, during the term of this Collective Bargaining Agreement, be obligated to provide health insurance only to those retirees who retire after January 1, 1987 and have 25 or more years of service as defined in Recommendation No. 4 in the Fact-Finder's report of September 9, 1985....

The fact-finder recommended that "the County provide Blue Cross and Blue Shield effective on January 1, 1987 for employees with at least ten years of service who retire after January 1, 1987." But he questioned whether the County could provide the benefit to employees with less than 25 years of membership in the pension system and added that if the County could not, his recommendation should be modified to conform with the County's lawful authority.

The County participates in the State Health Benefits Plan ("SHBP"). N.J.S.A. 52:14-17.38, also known as Chapter 88, provides that a participating employer:

may pay the premium or periodic charges for the benefits provided to a retired employee and his dependents covered under the program, if such employee retired from a State or locally-administered retirement system on a benefit based on 25 years or more of service credited in such retirement system.... [Emphasis added]

On May 11, 1990, John M. Carroll of the Division of Pensions of the Department of the Treasury wrote a letter to the County's Director of Personnel. It stated, in part:

Chapter 88 permits public employers to agree to pay for the cost of coverage of those former employees whose retirement benefits are based upon 25 or more years of credited service in a state or locally-administered pension fund.... Originally[,] State Law prohibited payment by municipal employers of the cost of health coverage for retirees. Gradually, the law was amended to permit payment under certain circumstances. In 1977, the court ruled that employers participating under the State Health Benefits Program...cannot legally pay for the coverage of employees except under the provisions [of] Chapter 88.

The letter directed the County to certify that it would comply with Chapter 88 or stop paying, either directly or by reimbursement, for retirees' health insurance.

The County had been paying for medical insurance for retirees with 25 years of service with the County. But after the letter it stopped paying for medical insurance for retirees whose retirement benefits were not based upon 25 or more years of credited service in a pension fund.^{1/} The freeholders approved this action.

District 1199J filed a grievance. The Personnel Director denied it, asserting that N.J.S.A. 52:14-17.38 prohibited paying for a retiree's health benefits unless the retiree had 25 or more years of credited service in a state or locally-administered retirement system. District 1199J demanded binding arbitration. This petition ensued.

The County contends that N.J.S.A. 52:14-17.38 preempts arbitration. District 1199J argues that the County is equitably

^{1/} Persons who retire on disability pensions continue to receive coverage.

estopped from withholding coverage; N.J.S.A. 52:14-17.38 sets a minimum benefit; the County can establish a separate insurance fund for employees not covered by the SHBP; and the County can withdraw from the SHBP.

At the outset of our analysis, we stress our narrow jurisdiction. 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]

We thus do not consider the merits of the grievance or any contractual defenses. Nor do we consider District 1199J's equitable estoppel claim. Hudson Cty., P.E.R.C. No. 90-6, 15 NJPER 495 (¶20203 1989).

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a subject is mandatorily negotiable if:

(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 central question is whether N.J.S.A. 52:14-17.38 preempts arbitration. Arbitration will be preempted if that statute "speaks in the imperative" and leaves nothing to the employer's discretion. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978); see also Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982). We agree with the County that N.J.S.A. 52:14-17.38 does not permit SHBP participants to pay for health insurance for retirees who do not have 25 years or more of service credited in a retirement system or to establish a separate fund for some of its employees. See New Jersey PBA v. New Jersey State Health Benefits Comm'n, 153 N.J. Super. 152, 156-57 (App. Div. 1977). We will restrain arbitration to the extent the grievance seeks to have the employer remain in the SHBP yet provide benefits conflicting with SHBP requirements.

District 1199J argues, however, that the County has promised to provide a certain level of health benefits and that an arbitrator can enforce that promise by requiring the County to withdraw from the SHBP.^{2/} But District 1199J has not alleged that the County expressly agreed that it would provide this benefit by withdrawing from the SHBP. The issue before us, therefore, is

^{2/} N.J.S.A. 40A:10-23 authorizes non-SHBP employers to pay for medical insurance for retirees with 25 years or more of service with the employer, or who reached the age of 62 or older with at least 15 years of service with that employer.

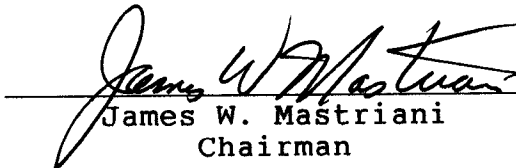
narrow: can an arbitrator order an employer to leave the SHBP to enforce an agreement with one negotiations unit to maintain a level of benefits illegal under the SHBP? We believe that the answer is no.

A SHBP employer must provide the same benefits to all its eligible employees. An interest arbitrator cannot issue any finding, opinion or order regarding SHBP participation or SHBP rights, duties and obligations. N.J.S.A. 34:13A-18. Allowing an interest arbitrator to adopt a proposal affecting one group would change the benefits of all other groups, represented by other organizations or unrepresented. Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988). Similarly, if a grievance arbitrator were to order the County to leave the SHBP, the County would be forced to change the level of benefits for all other County employees. Under these circumstances, we restrain binding arbitration of this aspect of the grievance.

ORDER

The County's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: November 25, 1991
Trenton, New Jersey
ISSUED: November 26, 1991