

P.E.R.C. NO. 90-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LITTLE EGG HARBOR TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-68

AFSCME, COUNCIL 71, LOCAL 3304E,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by AFSCME, Council 71, Local 3304E against Little Egg Harbor Township. The grievance asserts that the Township violated its contractual obligation to maintain full medical coverage for employees who retire. The Commission finds that N.J.S.A. 40A:10-23 expressly, specifically and comprehensively precludes payment of medical insurance premiums for any retiree who does not meet that statute's conditions.

P.E.R.C. NO. 90-123

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LITTLE EGG HARBOR TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-68

AFSCME, COUNCIL 71, LOCAL 3304E,

Respondent.

Appearances:

For the Petitioner, Hierung & Hoffman, attorneys
(Thomas G. Gannon, of counsel)

For the Respondent, John P. Hemmy, Associate Director
AFSCME, District Council 71

DECISION AND ORDER

On April 26, 1990, Little Egg Harbor Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by AFSCME, Council 71, Local 3304E. The grievance asserts that the Township violated its contractual obligation to maintain full medical coverage for employees who retire.

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

Local 3304E is the majority representative of certain employees in the Township's public works department. The parties entered into a collective negotiations agreement effective June 1, 1987 through May 31, 1989. Article 16, Section 4 provided:

The Employer agrees to maintain full medical coverage for those employees retiring, effective in 1987.

The grievance procedure ends in binding arbitration.

Joseph Salvano, a sanitation driver, was the first employee to retire after the effective date of Article 16, Section 4. The employer refused to maintain full medical coverage for him, apparently because Salvano had not been employed for at least 15 years. Salvano filed a grievance which the employer denied. Local 3304E then demanded binding arbitration and this petition ensued.^{1/}

The Township asserts that N.J.S.A. 40A:10-23 preempts arbitration. Local 3304E responds that this statute does not apply because the Township does not participate in the State Health Benefits Program.

A statute will not preempt negotiations over an employment condition unless it fixes that condition expressly, specifically and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982). The statute must speak in the imperative, leaving nothing to the employer's discretion. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). Applying these preemptions tests, we hold that N.J.S.A. 40A:10-23 preempts arbitration of any claim by an employee who does not meet that law's requirements for payment of medical insurance premiums.

N.J.S.A. 52:14-17.25 et seq. establish the New Jersey State Health Benefits Program. N.J.S.A. 52:14-17.37 allows municipalities

^{1/} The parties have agreed to stay arbitration pending this decision.

to elect to participate in this program. The Township does not participate.

N.J.S.A. 40A:10-16 et seq. authorize municipalities to purchase group insurance plans. These sections, however, impose certain conditions and limitations on such contracts. N.J.S.A. 40A:10-22 authorizes the employer to continue insurance coverage for retired employees, subject to the requirements set forth in N.J.S.A. 40A:10-23. That section in turn provides:

Retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed to be adequate to cover the benefits, as affected by Medicare, of the retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of the older age classification; provided, however, that the total rate payable by a retired employee for himself and his dependents, for coverage under the contract and for Part B of Medicare, shall not exceed by more than 25% the total amount that would have been required to have been paid by the employee and his employer for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for Medicare benefits.

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 age of 62 or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.

This section is not limited to employers in the State Health Benefits Program. Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988); Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982).

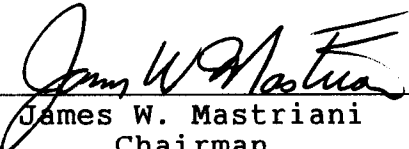
We agree with the Township that N.J.S.A. 40A:10-23 expressly, specifically and comprehensively precludes payment of medical insurance premiums for any retiree who does not meet that statute's conditions. Thus, Salvano cannot seek payment of his medical insurance premiums unless he retired on a disability pension, he worked more than 25 years with the employer, or he worked more than 15 years and reached the age of 62 or older.

Article 16, Section 4, however, is not wholly invalid. The employer does have discretion to pay medical insurance premiums to retirees meeting the conditions imposed by N.J.S.A. 40A:10-23. It may exercise that discretion through negotiations and bind itself to pay the premiums of eligible employees. State Supervisory.

ORDER

The request of Little Egg Harbor Township for a restraint of arbitration is granted to the extent the grievance seeks to require the employer to maintain full medical coverage for a retiree who does not meet the requirements of N.J.S.A. 40A:10-23.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. None opposed. Commissioners Smith and Ruggiero were not present.

DATED: Trenton, New Jersey
June 25, 1990
ISSUED: June 26, 1990