

P.E.R.C. NO. 2004-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WOODCLIFF LAKE,

Petitioner,

-and-

Docket No. SN-2003-76

P.B.A. LOCAL 206,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Woodcliff Lake for a restraint of binding arbitration of a grievance filed by P.B.A. Local 206. The grievance alleges that the Borough violated the parties' agreement by terminating its payment of health insurance premiums for the surviving spouse of a retired police officer. The Commission finds that N.J.S.A. 52:14-17.38, cited by the Borough as preemptive, permits the Borough to enter into an agreement to pay SHBP premiums for surviving spouses of eligible retirees. An arbitrator can decide whether the Borough made such an agreement. The Commission also concludes that N.J.S.A. 34:13A-18 does not preempt arbitration of this grievance since that statute applies only to interest arbitration, not grievance arbitration.

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, Ruderman & Glickman, P.C.,
attorneys (Mark S. Ruderman, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Merick H. Limsky, on the brief)

DECISION

On June 30, 2003, the Borough of Woodcliff Lake petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local 206. The grievance alleges that the Borough violated the parties' agreement by terminating its payment of health insurance premiums for the surviving spouse of a retired police officer.

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

The PBA represents police officers employed by the Borough. The parties' collective negotiations agreement is effective from January 1, 1999 through December 31, 2004. The grievance procedure ends in binding arbitration.

Article XI is entitled Health Insurance. It provides:

The Employer will maintain Blue Cross and Blue Shield hospitalization and surgical insurance policies (including Rider J), and Major Medical insurance, as heretofore provided, for the benefit of the Employee. The Employer agrees to continue such coverage for the Employee and his/her spouse after retirement, provided the Employee has a minimum of twenty-five (25) years of service with the Employer. Retiree coverage shall be terminated upon re-employment, if the Employee gains coverage through his new employment.

The Borough participates in the State Health Benefits Program ("SHBP") and pays certain premiums for health insurance coverage pursuant to N.J.S.A. 52:14-17.38. On November 18, 2002, the Borough notified the PBA that it had terminated SHBP premium payments for the widow of a retired police officer.

On November 20, 2002, the PBA filed a grievance with the police chief alleging that this termination violated the parties' agreement. The Borough denied the grievance. On April 21, 2003, the PBA demanded arbitration.

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.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates 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 parties agree that the availability of health insurance is ordinarily a mandatorily negotiable employment. See, e.g., Stratford Bd. of Ed., P.E.R.C. No. 94-65, 20 NJPER 55 (¶25019 1993). However, negotiations or arbitration over a particular benefit may be preempted if a statute or regulation specifically, expressly, and comprehensively establishes that employment condition and eliminates the employer's discretion to vary it.

Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330 (1989);
Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38,
44 (1982).

The Borough argues that N.J.S.A. 52:14-17.38 and N.J.S.A. 34:13A-18 both preempt arbitration of this dispute. We disagree.

As amended by Chapter 88 of the Laws of 1974, N.J.S.A. 52:14-17.38b(1) authorizes local employers, upon adopting a resolution and submitting it to the Division of Pensions, to pay SHBP premiums for eligible retirees and their dependents and spouses. As amended by Chapter 436 of the Laws of 1981, N.J.S.A. 52:14-17.38b(1) also authorizes local employers, by resolution, to pay the SHBP premiums for surviving spouses and dependents of eligible retirees. As amended by Chapter 48 of the Laws of 1999, N.J.S.A. 52:14-17.38b(2) specifies that local employers may obligate themselves to pay premiums under N.J.S.A. 52:14-17.38b(1) by means of a binding collective negotiations agreement.

N.J.S.A. 52:14-17.38 authorizes an employer to enter into a negotiated agreement requiring it to pay the SHBP premiums of surviving spouses of eligible retirees. Such agreements are permitted rather than preempted. We do not have jurisdiction to decide whether the Borough made such an agreement. We specifically decline to consider the Borough's allegations

concerning a November 7, 2002 memorandum; those allegations bear on the contractual merits.

The question under N.J.S.A. 52:14-17.38 is not whether the employer could negotiate an agreement to pay SHBP premiums for surviving spouses, but whether it can implement that agreement without adopting a resolution and submitting it to the Division of Pensions. The Borough asserts that it has adopted a Chapter 88 resolution, but it has not yet adopted a Chapter 436 resolution and therefore cannot pay the premiums for surviving spouses.^{1/} The arbitrator can determine whether the Borough agreed to pay the premiums for surviving spouses. If it did, the arbitrator may then determine what remedy is appropriate.

N.J.S.A. 34:13A-18 prohibits an interest arbitrator from issuing any finding, opinion, or order regarding the issue of whether a public employer remains an SHBP participant or regarding any aspect of the rights, duties, obligations in or associated with the SHBP. By its terms, this statute applies only to interest arbitration, not grievance arbitration. In Borough of Bradley Beach, P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999), we rejected an argument that N.J.S.A. 34:13A-18 required restraining arbitration of a grievance asserting that a


^{1/} It cites an October 16, 2002 letter from an SHBP Pensions and Benefits Specialist allegedly confirming that it has not adopted a Chapter 436 resolution. However, it has not submitted a copy of that letter so we do not consider its alleged contents.

surviving spouse was entitled to health care coverage.^{2/} We do so in this case as well.

ORDER

The request of the Borough of Woodcliff Lake for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003

^{2/} The Borough has not asserted that an agreement negotiated pursuant to N.J.S.A. 52:14-17.38b(2), requiring SHBP premium payments for one group of employees, cannot be implemented unless the Borough pays SHBP premiums for all other Borough employees. We noted that question in Bradley Beach. See also Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 324, 327 (¶30140 1999) (noting, but not deciding, that the 1999 amendment to N.J.S.A. 52:14-17.38 may have eliminated any uniformity requirement in premium payments). We need not consider that question further now.