

P.E.R.C. NO. 2004-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-2004-63

PATERSON POLICE PBA LOCAL 1,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Paterson for a restraint of binding arbitration of a grievance filed by a police officer represented by Paterson Police PBA Local 1. The grievance asserts that the City violated the parties' collective negotiations agreement when it refused to pay the health insurance premiums of police officers who retired with 25 years of creditable service for pension purposes but without 25 years of service with the City. The Commission concludes that the parties may legally agree to have a grievance arbitrator determine what contractual agreement they made concerning health insurance premiums and whether the employer violated the agreement. The Board may raise any alleged violations of the uniformity requirement of N.J.S.A. 40A:10-23 in the Superior Court.

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, Dorf & Dorf, attorneys
(Christopher J. Vaz, on the brief)

For the Respondent, Law Offices of Mark C. Rushfield
(Mark C. Rushfield, on the brief)

DECISION

On April 20, 2004, the City of Paterson petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by a police officer represented by Paterson Police PBA Local 1. The grievance asserts that the City violated the parties' collective negotiations agreement when it refused to pay the health insurance premiums of police officers who retired with 25 years of creditable service for pension purposes but without 25 years of service with the City.

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

Local 1 represents all sworn police officers employed by the City. Its negotiations unit excludes superior officers. The most recent collective negotiations agreement was effective from August 1, 1998 to July 31, 2003; the parties are negotiating a new contract. The grievance procedure ends in binding arbitration.

Article 31 is entitled Health and Welfare Benefits. Section 31.2 provides:

Retired Employees: Employees who retire on a paid pension shall be covered by the City's medical-hospital benefit plan currently in effect for active employees, and the City shall pay the full cost of such coverage including dependents at the time of retirement, until the retiree dies.^{1/}

Article 5 is entitled Police Officer's Rights. Section 5.1 provides, in part, that the City "shall not discriminate against any employee with respect to hours, wages, or any other terms or conditions of employment. . . ." According to the PBA, these sections have appeared in substantially the same form in all contracts since 1976.

James B. Bishop was a police officer employed by the City for less than 25 years. Bishop, however, had 25 years of pensionable service. On May 13, 2003, Bishop filed a grievance asserting that the City violated sections 31.2 and 5.1 when it

^{1/} Section 31.3.2 conditions paid prescription drug coverage upon "25 years or more continuous service with the City, or after 15 years of continuous service and [reaching] age 62."

informed him that he would not be covered by the City's medical benefits plan. The grievance alleged that other officers had had their health benefit premiums paid although they had been employed for less than 25 years with the City; the grievance named two such officers. The grievance sought the immediate resumption of paid health benefits. The grievance was denied.

On June 2, 2003, Local 1 demanded arbitration. The demand raised the same issues as the grievance. This petition ensued.

The City asserts that N.J.S.A. 40A:10-23 mandates that health insurance premiums for its retired employees be paid "under uniform conditions" for all its employees.^{2/} Its attorney

2/ N.J.S.A. 40A:10-23 provides, in part:

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees a. who have retired on a disability pension or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of up to 25 years with the employer at the time of retirement, such period to be determined by the employer and set forth in an ordinance or resolution as appropriate or c. who have retired and reached the age of 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of up to 25 years of service with the employer at the time of retirement, such period of service to be determined by the employer, and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with

(continued...)

has submitted a certification stating that employees in several other negotiations units are not entitled to have their premiums paid upon retirement unless they have worked for the City for at least 25 years or reached age 62 after working at least 15 years with the City. The City submitted a reply certification from a former assistant personnel director. She stated that the City has consistently required 25 years of service with it to qualify for retiree benefits with these exceptions: (1) a police officer who transferred laterally to the City from another appointing authority and was credited for his service with that employer; (2) officers who retired pursuant to an Early Retirement Incentive program; and (3) all officers who had creditable years of military service.

The PBA contends that N.J.S.A. 40A:10-23 authorizes an employer to agree to pay health insurance premiums for retirees who, like Bishop, have at least 25 years of pensionable service and that under our case law, the "uniform conditions" requirement in N.J.S.A. 40A:10-23 will not preempt arbitration of a grievance asserting that an employer has made such an agreement.

2/ (...continued)

the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe. . . .

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 the grievance or any contractual defenses the employer may have. Nor do we determine what the past practice has been concerning retiree health premiums for police officers without 25 years of City service.

The parties agree that this health benefits issue is mandatorily negotiable and legally arbitrable unless N.J.S.A. 40A:10-23 preempts arbitration by mandating the denial of this grievance. See, e.g., Borough of Watchung, P.E.R.C. No. 2000-93, 26 NJPER 276 (¶31109 2000) (health benefits are mandatorily negotiable unless a statute or regulation preempts negotiations). Preemption of a grievance involving a negotiable subject will not be found unless a statute or regulation speaks in the imperative by fixing an employment condition and eliminating the employer's

discretion to vary it through negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

There is no dispute that the grievant has the statutorily-required 25 years of pension credit needed to be eligible for retiree health benefits. At issue instead is the requirement that payment of premiums be under uniform conditions.

This case does not involve a negotiations proposal, but rather a grievance asserting that the parties agreed to pay premiums for all retirees with 25 years of pensionable service. The City responds that the parties did not have such an agreement and that the PBA is really trying to change the status quo and create a new benefit that would in turn cause a violation of the uniformity requirement. The City's uniformity concern requires a grievance arbitrator to determine in the first instance what agreement the parties made and whether the City violated that agreement. The City may prevail in its claim that the grievance lacks merit and thus its uniformity concern will be mooted. If instead the arbitrator determines that the parties had agreed to grant the claimed benefit and the award contains a remedy allegedly inconsistent with the statute's uniformity clause, the employer may file an action in the Superior Court seeking to vacate that award. N.J.S.A. 2A:24-8. As our case law holds, the Superior Court is the proper forum for determining whether an employer's overall health benefits system complies with N.J.S.A.

40A:10-23. Essex Cty. Sheriff, P.E.R.C. No. 97-26, 22 NJPER 362, 364 (¶27190 1996); City of Newark, P.E.R.C. No. 93-57, 19 NJPER 65 (¶24030 1992); cf. Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987); Fair Lawn Ret. Police v. Bor. of Fair Lawn, 299 N.J. Super. 600 (App. Div. 1997), certif. den. 151 N.J. 75 (1997).^{3/}

ORDER

The request of the City of Paterson for a restraint of binding arbitration of the Bishop grievance is denied.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: June 24, 2004
Trenton, New Jersey
ISSUED: June 25, 2004

3/ In Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988), an interest arbitrator was being asked to award a new benefit that would have affected employees over whom the arbitrator had no jurisdiction. In this case, by contrast, a grievance arbitrator is simply being asked to determine what benefits already exist by agreement and the Superior Court must determine, if necessary, whether the City's existing agreements and arrangements violate the uniformity clause.