

P.E.R.C. NO. 2005-67

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Public Employer,

-and-

Docket No. SN-2005-056

BELMAR POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL NO. 50,

Employee Representative.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Borough of Belmar for inclusion in a successor collective negotiations agreement with Belmar Policemen's Benevolent Association, Local No. 50. The proposal concerns employment contributions for dependent coverage under the State Health Benefits Plan. During interest arbitration proceedings, a dispute arose as to whether the interest arbitrator could issue a finding concerning the Borough's proposal. The interest arbitrator referred the dispute to the Commission as a scope of negotiations issue. The Commission concludes that the proposal as written may not be submitted to interest arbitration because the language does not contain a contingency provision that addresses the uniformity concerns of N.J.S.A. 34:13A-18.

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 Public Employer, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (James L. Plosia, Jr., on the brief)

For the Employee Representative, Loccke & Correia, P.A., attorneys (Charles E. Schlager, Jr., on the brief)

DECISION

The collective negotiations agreement between the Borough of Belmar and Belmar Policemen's Benevolent Association, Local No. 50 expired on December 31, 2003. On April 13, 2004, the PBA petitioned for interest arbitration. The Borough did not file a response to the petition.

The PBA represents all sworn police officers, including captains, lieutenants, sergeants and patrol officers. On January 17, 2005, the Borough proposed the following changes to the contractual health benefits provision:

- b) Any employees currently enrolled in the SHBP traditional plan with dependent

coverage shall be required to pay 100% of the difference between the cost of dependent coverage in the State Health Benefits Plan's "NJ Plus" plan and the cost of dependent coverage for traditional coverage in the State Health Benefits Plan.

- c) All employees shall be required to contribute \$100 a month for the cost of dependent coverage for any plan in the State Health Benefits Plan equal to or more expensive than the cost of the NJ Plus dependent coverage in the State Plan. For plans which have less expensive dependent coverage than the NJ Plus plan, the employer will pay the month amount equal to \$100 per month subtracted by the difference between the NJ Plus dependent coverage and the lower cost dependent coverage plan. If the calculation yields a figure of zero or below, then no employee contribution will be required.

The PBA responded that the arbitrator did not have authority to issue a finding concerning the Borough's proposal. The arbitrator conducted a hearing on January 20, 2005. On February 10, the arbitrator notified us that the parties had agreed to stay their proceedings pending a final determination by us on the arbitrator's authority to issue findings regarding the State Health Benefits Program ("SHBP"). The arbitrator's referral has been docketed as a petition for scope of negotiations determination. We have received the parties' briefs before the arbitrator. On March 8, 2005, the Borough submitted a supplemental letter brief.

The PBA argues that N.J.S.A. 34:13A-18 bars the interest arbitrator from considering the Borough's proposal. That statute prohibits an interest arbitrator from issuing any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the SHBP.<sup>1/</sup> The PBA also argues that the SHBP requires an employer to pay the same proportion of the cost of dependent coverage for all employees and that awarding changes for this negotiations unit would violate that requirement.

The Borough argues that the SHBP uniformity requirement does not preclude an arbitrator from determining that the PBA should

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1/ The complete text of N.J.S.A. 34:13A-18 provides:

The arbitrator shall not issue any finding, opinion or order regarding the issue of whether or not a public employer shall remain as a participant in the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor, in the case of a participating public employer, shall the arbitrator issue any finding, opinion or order regarding any aspect of the rights, duties, obligations in or associated with the New Jersey State Health Benefits Program or any governmental retirement system or pension fund, or statutory retirement or pension plan; nor shall the arbitrator issue any finding, opinion or order reducing, eliminating or otherwise modifying retiree benefits which exist as a result of a negotiated agreement, ordinance or resolution because of the enactment of legislation providing such benefits for those who do not already receive them.

bear the costs for dependent coverage as permitted by the SHBP if and when the Borough achieves the required uniformity. It further argues that such a ruling does not affect any other group in the Borough, and that it must begin with some employee group in order to achieve uniformity; otherwise negotiations over the issue are effectively precluded.

In Middlesex Cty. v. PBA Local 152, 6 NJPER 338 (¶11169 App. Div. 1980), aff'g in part, rev'g in part, 5 NJPER 194 (¶10111 1979), the Appellate Division held that N.J.S.A. 34:13A-18 prohibited a PBA proposal for retiree health benefits under the SHBP from being submitted to interest arbitration. The Court reasoned that the prohibition embodied in N.J.S.A. 34:13A-18 was designed to prevent an interest arbitrator from awarding an increase in benefits that would bind the employer to provide that increased benefit to other units of employees. The Court was concerned that such an award would affect the benefits of employee groups who were not participants in the arbitration hearings or who were not eligible for interest arbitration.

N.J.A.C. 17:9-5.4 requires that SHBP employers electing to pay any portion of the cost of dependent coverage pay the same proportion of the cost of such dependent coverage for all employees covered in the program. In Borough of Oradell, P.E.R.C. No. 91-85, 17 NJPER 222 (¶22095 1991), we considered an employer's proposal to freeze its costs for dependent coverage.

We noted that the employer had to treat the cost of dependent coverage uniformly and held that an interest arbitration award granting the proposal in one unit would affect the rights of employees not participating in the interest arbitration proceedings. Accordingly, we concluded that N.J.S.A. 34:13A-18 precluded submitting the employer's proposal to interest arbitration.

However, our analytical framework developed further in 1994. In Ocean Tp., P.E.R.C. No. 95-12, 20 NJPER 331 (¶25172 1994), aff'd 21 NJPER 324 (¶26208 App. Div. 1995), we held that a proposal to increase the proportion of dependent coverage paid by employees was mandatorily negotiable given that the proposal also provided that co-payments would not be required until the employer met the uniformity requirements of the SHBP regulations. We noted that such a proposal was the only way that uniform co-payments for dependent coverage could be negotiated where an employer has more than one negotiations unit. The Appellate Division approved our analysis, reasoning that if a public employer could not negotiate over co-payment reductions contingent upon achieving the same reductions in other units, then the current co-pay levels would have to be maintained in perpetuity. 21 NJPER at 325.

We now apply Ocean Tp. to the facts of this case. As the Court observed in Middlesex Cty., N.J.S.A. 34:13A-18 was designed

to prevent an interest arbitrator from affecting the benefits of employees groups who are not participants in the arbitration proceeding. The contingency aspect of the type of proposal approved in Ocean Tp. - that a proposed change in benefits not take effect until the uniformity requirements of the health benefits statutory scheme have been met - addresses the concerns of N.J.S.A. 34:13A-18 in a way that permits labor and management to seek changes in health benefits without running afoul of any statutory uniformity requirements. However, the proposal submitted to the arbitrator does not contain the contingency provision the employer addresses. We therefore conclude that the proposal, as written, contravenes N.J.S.A. 34:13A-18 and N.J.A.C. 17:9-5.4 and may not be submitted to interest arbitration.

ORDER

The dependent coverage proposal of the Borough of Belmar is not mandatorily negotiable as written and may not be submitted to interest arbitration.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005  
Trenton, New Jersey  
ISSUED: April 28, 2005