

P.E.R.C. NO. 2006-78

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EVESHAM MUNICIPAL UTILITIES  
AUTHORITY,

Respondent,

-and-

Docket No. SN-2006-054

TEAMSTERS LOCAL UNION NO. 676,

Petitioner.

SYNOPSIS

\_\_\_\_\_The Public Employment Relations Commission determines the negotiability of a retiree health benefits proposal that Teamsters Local Union No. 676 seeks to include in a successor contract with the Evesham Utilities Authority. The employer argues that negotiations over this issue is preempted by the State Health Benefits Program (SHBP) statute. The Commission concludes that the SHBP specifically grants an employer the discretion to provide retiree health benefits and a union an opportunity to negotiate the apportionment of premium payments between the employer and retiree.

\_\_\_\_\_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 Respondent, Edward A. Kondracki, LLC, attorney,  
on the brief

For the Petitioner, Willig, Williams & Davidson,  
attorneys (Laurence N. Goodman, on the brief)

DECISION

On February 3, 2006, Teamsters Local Union No. 676 petitioned for a scope of negotiations determination. The Union seeks a determination concerning a dispute with the Evesham Municipal Utilities Authority over the negotiability of retiree health benefits.

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

The Union represents the MUA's blue collar employees, excluding office employees, supervisors, and management. The parties' most recent collective negotiations agreement is effective from April 1, 2003 through March 31, 2006. The

grievance procedure ends in binding arbitration. During successor contract negotiations, the parties were unable to resolve three issues. They agreed to submit the contract to the membership for ratification and continue to negotiate over the three issues. They also agreed to submit the three issues to arbitration if they remained unresolved as of June 28, 2005.

The parties continued negotiations and on March 5, 2005, the Authority's executive director sent the Union a letter stating the following:

As you know, the Authority recently enrolled in the New Jersey State Health Benefits Plan ("SHBP") for health coverage for all employees. The portion of the SHBP statute dealing with post-retirement health benefits, as it applies to the Authority, is found at N.J.S.A. 52:14-17.38. After recently reviewing that statute with our counsel, we have determined that the Teamster's request that the Authority provide post-retirement health benefits to all union employees is a non-negotiable issue.

In August 2005, the Union demanded arbitration on the three unresolved issues.

On January 6, 2006, the parties reached an agreement on all issues except retiree health benefits. As part of the January 6 agreement, the Union agreed to file a scope petition over the negotiability of that issue. This petition ensued. Arbitration has been postponed pending this petition.

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."

We do not consider the wisdom of granting retiree health benefits, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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]

Neither party has submitted specific language that has been proposed or is in dispute. The scope petition states the issue as: "The amount, if any, of the employer's contribution for retiree health benefits for current employees who participate in the State Health Benefits Plan." In the demand for arbitration,

the issue is framed as: "the extent to which bargaining unit employees will receive Post-Retirement Health Benefits."

The Union argues that health benefits for future retirees are mandatorily negotiable and that the amount of the employer's contribution for retiree health benefits is negotiable because the Legislature amended the SHBP (N.J.S.A. 52:14-17.38) to provide that retiree health benefits may be determined by means of a collective negotiations agreement.

The MUA argues that the SHBP statute preempts negotiations. It asserts that it has sole discretion to decide whether to provide retiree health benefits; who will be eligible; whether there will be different classes of employees with different age or service requirements; and whether coverage will extend to dependants, prior retirees, surviving spouses and Medicare reimbursement. It concludes that it cannot be required to negotiate over the apportionment of premium costs between employer and employee until those initial, non-negotiable determinations have been made.

Health benefits for current employees upon retirement are mandatorily negotiable unless preempted. Woodcliff Lake Borough, P.E.R.C. No. 2004-24, 29 NJPER 489 (¶153 2003). To preempt an otherwise mandatorily negotiable term and condition of employment, a statute or regulation must fix the employment condition "expressly, specifically and comprehensively." Council

of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982); see also Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982).

As amended by Chapter 88 of the Laws of 1974, N.J.S.A. 52:14-17.38b(1) authorized 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 48 of the Laws of 1999, N.J.S.A. 52:14-17.38b(2) now 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. Because N.J.S.A. 52:14-17.38 authorizes an employer to enter into a negotiated agreement requiring it to pay the SHBP premiums for qualified retirees, it permits rather than preempts negotiations.

While the MUA argues that the initial decision to provide retiree health benefits is a non-negotiable discretionary matter, employment conditions over which an employer has discretion are precisely the matters over which negotiations are required. In discussing preemption, our Supreme Court stated:

[S]tatutes and regulations concerning terms and conditions of public employment which do not speak in the imperative, but rather permit a public employer to exercise a certain measure of discretion, have only a limited preemptive effect on collective negotiation and agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978)]

The limited preemptive effect refers to the fact that agreements cannot exceed minimum or maximum benefits set by statute or regulation.

Here, the SHBP specifically grants an employer the discretion to provide retiree health benefits and a union an opportunity to negotiate the apportionment of premium payments between employer and retiree. Compare Frankford Tp. Bd. of Ed., P.E.R.C. No. 98-60, 23 NJPER 625 (¶28304 1997) (employer's discretion under SHBP regulation to determine the number of hours considered to be full-time for purposes of SHBP eligibility may be exercised through negotiations); Pemberton Tp., P.E.R.C. No. 2000-5, 25 NJPER 369 (¶30159 1999) (employer's discretion under statute to define the minimum period of service with the employer for purposes of eligibility for retiree health benefits does not preempt negotiations over how that discretion is exercised).

Thus, a public employer that participates in the SHBP plan may negotiate for health benefits upon retirement for its current employees. The statutory requirement that the employer adopt and submit an appropriate resolution prescribed by the State Health Benefits Commission is not a condition preempting the duty to negotiate. This condition may be met consistent with that duty. If an employer agrees to pay retiree health benefits, it will be obligated to adopt and submit a resolution to put its agreement into effect. See Atlantic Cty., P.E.R.C. No. 95-66, 21 NJPER 127

(¶26079 1995). Absent a concrete proposal, we do not consider any of the other negotiability issues raised in the employer's brief.

ORDER

The subject of health benefits upon retirement is mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: April 27, 2006

Trenton, New Jersey