

P.E.R.C. NO. 2006-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Petitioner,

-and-

Docket No. SN-2006-064

MIDDLETOWN TOWNSHIP P.B.A.
LOCAL 124,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Middletown for a restraint of binding arbitration of a grievance filed by Middletown Township P.B.A. Local 124. The grievance asserts that the Township violated the parties' current and previous contracts when it required Medicare-eligible retirees to pay the full cost of health insurance coverage under Medicare Part B. The Commission concludes that health benefits for future retirees are mandatorily negotiable so long as the benefit sought is not preempted by statute or regulation. The Commission finds that the employer's discretion to pay for the cost of retiree health benefits is not preempted and may be exercised through negotiations. The Commission further holds that the PBA may legally seek to enforce alleged contractual obligations on behalf of retired employees as well as current employees because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored.

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.

P.E.R.C. NO. 2006-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MIDDLETOWN,

Petitioner,

-and-

Docket No. SN-2006-064

MIDDLETOWN TOWNSHIP P.B.A. LOCAL 124,

Respondent.

Appearances:

For the Petitioner, Dowd & Reilly, attorneys (Bernard M. Reilly, on the brief)

For the Respondent, Klatsky, Sciarrabone & De Fillippo, attorneys (David J. De Fillippo, on the brief)

DECISION

On March 3, 2006, the Township of Middletown petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Middletown Township P.B.A. Local 124. The grievance asserts that the Township violated the parties' current and previous contracts when it required Medicare-eligible retirees to pay the full cost of health insurance coverage under Medicare Part B.

The parties have filed briefs and exhibits. The Township did not file a reply brief. These facts appear.

The PBA has represented the Township's police officers below the rank of sergeant for approximately 30 years and has entered into a series of collective negotiations agreements with the

Township. The parties' current agreement is effective from January 1, 2004 through December 31, 2007. The grievance procedure ends in binding arbitration.

Article XV is entitled Surgical and Health Plans. Section A requires the Township to provide health coverage at no cost to the employees. Section B provides that the Township will provide at no cost to the employees a health plan as described in general and of a quality and continuing series of benefits at least equal to those provided by the New Jersey State Health Benefits Program, Blue Cross/Blue Shield and New Jersey Major Medical and 14/20 Series - Rider J. Section D requires the Township to provide a prescription drug plan with co-pays. Section F permits the Township to change carriers provided benefits are similar. Subsections 1 and 2 provide:

1. Pursuant to NJSA 40A:10-21 through 25, the employer agrees to pay for and provide such medical and health benefits as enumerated in Sections A, B and D of this Article to all employees who have retired.
2. The employer shall pay for surviving spouse's medical and health benefits for three (3) years immediately after the death of an active and currently employed employee, and for eighteen (18) months immediately after the death of a retired employee.

The Township has provided health benefits to retirees and their dependents for approximately 30 years. It asserts that eligible retirees have been required to enter Medicare Part B and

pay for that coverage and that this longstanding practice was known to PBA officials. The PBA asserts that PBA contracts dating back to 1978 have guaranteed retirees free health benefits and have never conditioned those benefits on a retiree's enrolling in Medicare or paying any Medicare premiums.^{1/}

On January 4, 2006, the PBA's president filed a grievance stating that he had just learned that the Township was requiring Medicare-eligible retirees to enroll in Medicare and pay Part B premiums and asserting that the Township was thus violating Article XV of the current contract and its obligations under predecessor contracts. The grievance further asserts that the Township had imposed these requirements without negotiations or the PBA's knowledge or consent. The PBA demanded that the Township reimburse all retirees for premiums paid to date and satisfy the full cost of Medicare coverage.

^{1/} The PBA has submitted contracts covering these years: 1978-79, 1982-84, 1985-87, 1988-90, 1991-92, 1993-95, 1996-99, and 2000-03. The 2000-03 contract has the same language as in Article XV, Section F of the current contract. In contracts before the 2000-03 contract, the comparable section states that "the employer agrees to provide such benefits enumerated in Sections A, B, and D of this Article to all employees who have retired." The PBA has also submitted excerpts from various contracts covering the Township's white and blue collar employees. Those contracts provide that after a retiree turns 65, the Township will reimburse for eligible medical and health expenses not paid by Medicare.

The Township responded that the PBA does not have standing to file the grievance because it represents only the current sworn officers, not retirees. The PBA then demanded arbitration. Its demand reiterated the contentions in the grievance. The demand added that Section B of Article XV obligated the Township to provide its retirees with benefits at least equal to those under the traditional plan offered by the State Health Benefits Program and that plan called for reimbursing all Medicare-eligible employees for their premiums. This petition ensued.

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 merits of the grievance or any contractual defenses the employer may have. _

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [Id. at 92-93; citations omitted]

Arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers. No statute or regulation is asserted to preempt the benefit claimed by the PBA.

Health benefits for future retirees are mandatorily negotiable as long as the benefit sought is not preempted by

statute or regulation. See Essex Cty. Sheriff, P.E.R.C. No. 2006-86, 32 NJPER 164 (¶73 2006), and cases cited therein. Health benefits for current retirees are not mandatorily negotiable, but are permissively negotiable. See Borough of Bradley Beach, P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999). Compare Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971). The employer's discretion to pay for the cost of retiree health benefits under N.J.S.A. 40A:10-23 is not preemptive and may be exercised through negotiations. Essex Cty. Sheriff.

The Township asserts that the PBA does not have standing to pursue a grievance on behalf of current retirees. Bradley Beach and New Jersey Turnpike Auth., P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005), rejected similar arguments. The PBA has represented the Township's police officers for many years and has negotiated several contracts on their behalf. It may legally seek to enforce alleged contractual obligations on behalf of retired employees as well as current employees because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. Id. Public employers and majority representatives may agree to exclude grievances involving retirees from an arbitration clause, but whether they have done so is a contractual issue outside our jurisdiction. Ridgefield Park.

Citing Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987), Spina v. Consolidated Police and Firemen's Pension Fund, 41 N.J. 391 (1964), and other cases, the Township also argues that retiree health benefits should not be considered purely a matter of contract or property right. But none of the cited cases suggested that the contractual rights or expectations of employees were irrelevant and Gauer itself emphasized the compensatory nature of such benefits and required the employer to continue coverage. See also In re Morris School Dist. Bd. of Ed., 310 N.J. Super. 332 (App. Div. 1998), certif. den. 156 N.J. 407 (1998) (employees' contractual right to accumulated sick leave compensation upon retirement could not be retroactively bargained away absent a knowing waiver). Whether this form of compensation has been granted or can be altered depends substantially on what contractual agreement has been reached. An arbitrator may therefore determine whether the Township has agreed to pay the health insurance premiums of current as well as future retirees and whether it has done so unconditionally or has reserved a power to make changes. Finally, the Township has not established any specific statutory or factual basis supporting a claimed right to act unilaterally regardless of whatever contractual commitments it may have made. Contrast Spina (Legislature could constitutionally amend pension eligibility

requirements to address insolvency of fund). We accordingly decline to restrain arbitration.

ORDER

The request of the Township of Middletown for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: June 29, 2006

Trenton, New Jersey