

P.E.R.C. NO. 2008-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BERKELEY,

Respondent,

-and-

Docket No. SN-2007-007

BERKELEY TOWNSHIP POLICE S.O.A.,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds mandatorily negotiable a modification to a contractual health benefits provision to include premium sharing for dependent coverage sought by the Township of Berkeley during successor contract negotiations with Berkeley Township Police S.O.A. The Commission had held in a prior decision that the proposal was not negotiable because it was preempted by a State Health Benefits Program regulation requiring any employer who elected to pay any portion of the cost for dependent coverage to pay the same proportion of the cost of such coverage for all employees. P.E.R.C. No. 2007-25, 32 NJPER 344 (¶144 2006). After the Township appealed the decision, a statute was enacted permitting parties to negotiate employee contributions to the cost of SHBP coverage by negotiations unit. The Appellate Division granted the Commission's motion for a temporary remand to allow the parties to present argument concerning the impact of the new legislation. Given the new law, the Commission concludes that the regulation no longer preempts negotiations over premium sharing for dependent coverage.

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, Eric M. Bernstein & Associates,
LLC, attorneys (Eric Martin Bernstein, on the brief)

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

DECISION

The Township of Berkeley is negotiating a successor contract with the Berkeley Township Police S.O.A. and seeks to modify a contractual health benefits provision to include premium sharing for dependent coverage. In a prior decision, we held that the proposal was not negotiable because it was preempted by a State Health Benefits Program ("SHBP") regulation requiring any employer who elected to pay any portion of the cost for dependent coverage to pay the same proportion of the cost of such coverage for all employees. P.E.R.C. No. 2007-25, 32 NJPER 344 (¶144 2006). After the Township appealed our decision, a statute was enacted that permits parties to negotiate employee contributions to the cost of SHBP coverage by negotiations unit. See P.L.

2007, c. 62. The Appellate Division granted our motion for a temporary remand to allow the parties to present argument concerning the impact of the new legislation. Given the new law, we conclude that the regulation no longer preempts negotiations over premium sharing for dependent coverage.

The Township relies on its briefs to the Appellate Division. The SOA maintains that the preemptive regulation remains in force.

After the passage of the new law, the Deputy Director for Benefit Operations at the State Health Benefits Commission issued a letter to local employer certifying officers. That letter explains that the new statute supersedes the existing regulation, but modification of that regulation "is several months away." Letter to Certifying Officers, June 25, 2007, at www.state.nj.us/treasury/pensions. The letter explains that local employers may now negotiate over sharing the cost of dependent coverage by negotiations unit and that the same percentage cost need no longer apply to all. Finally, the letter states that employee cost-sharing arrangements that could not be implemented because of SHBP restrictions can now be implemented.

A regulation will normally preempt negotiations, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978), and at the time we issued P.E.R.C. No. 2007-25, the regulation on dependent coverage did preempt negotiations. However, we will

not find that this regulation continues to preempt negotiations given a new statute superseding that regulation and the SHBC announcement that it will take a few months to go through the regulatory process to conform the regulation to the new statute. Parties are free to negotiate cost-sharing arrangements for dependent coverage under the SHBP.

ORDER

The negotiations proposal of the Township of Berkeley is now mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: August 9, 2007

Trenton, New Jersey