

P.E.R.C. NO. 2008-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF BAYONNE,

Petitioner,

-and-

Docket No. SN-2007-073

P.B.A. LOCAL 7,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the City's request for a restraint of binding arbitration sought by P.B.A. Local 7. The PBA contests a change in co-payments for NJPLUS and HMOs administered pursuant to the State Health Benefits Program. The Commission grants the request for a restraint because an arbitrator cannot order a roll-back of SHBP co-pay levels.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Robert J. Merryman, on the brief)

For the Respondent, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Donald B. Ross, Jr., on the brief)

DECISION

On May 31, 2007, the City of Bayonne petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration sought by P.B.A. Local 7. The PBA contests a change in co-payments for NJPLUS and HMOs administered pursuant to the State Health Benefits Program ("SHBP"). We grant the City's request because an arbitrator cannot order a roll-back of SHBP co-pay levels.

The parties have filed briefs and exhibits. The City has submitted the certification of its administrator, Terrence Malloy. These facts are undisputed.

The PBA represents all police officers below the rank of sergeant. The parties' collective negotiations agreement is effective from January 1, 2003 through December 31, 2008. The grievance procedure ends in binding arbitration.

Article 7 of the agreement is a retention of benefits clause.

Article 9 is entitled Health Insurance. It provides:

Section 1. The City shall continue to provide and pay for health insurance coverage under the New Jersey State Health Benefits for each employee and his eligible dependents.

Section 2. The City may change carriers so long as the benefit levels are equal to or better than the current coverage. Should the City consider changing the Health Insurance program, it shall obtain from the proposed new health provider a letter guaranteeing that the level of benefits and dollar reimbursement will be at least equal in every respect to the present plan. This letter must be on company stationary and signed by an officer of the organization. A copy of this letter and all relevant documents shall be provided to the PBA sixty (60) days prior to implementation of the plan.

Effective January 1, 2007, the SHBP increased office visit co-payments from \$5.00 to \$10.00 for NJPLUS and the HMOs. On May 2, the PBA demanded arbitration of the "unilateral changes in certain co-pays under insurance program, including co-payments for physician visits." This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.  
[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Arbitration will be permitted if the subject of a dispute involving police or firefighters 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 (¶1111 App. Div. 1983). Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), bars arbitration only if the agreement alleged to have been violated is preempted or would substantially limit government's policymaking powers.

Our decision in Rockaway Tp., P.E.R.C. No. 2008-21, 33 NJPER 257 (¶96 2007), app. pending App. Div. Dkt. No. A-001628-07T2, governs this dispute. There, we stated that an arbitrator cannot order the employer to continue the previous co-pay levels for NJ PLUS and HMO office visits since the State Health Benefits Commission ("SHBC") has exercised its authority to set higher

levels. Accordingly, we restrained binding arbitration over that issue in Rockaway and do so here. We permitted other claims to proceed to arbitration in Rockaway, but those claims are not before us in this case.

We reject the PBA's argument that State of New Jersey, P.E.R.C. No. 2000-36, 26 NJPER 12 (¶31001 1999), commands a different result. That case assumed, but did not decide, that the State and CWA could have entered into negotiated agreements specifying co-payments for Dental Plan Organizations, a form of supplemental benefits. But that case also repeated our holding in State of New Jersey, P.E.R.C. No. 99-40, 24 NJPER 522 (¶29243 1998), that the SHBC had the authority to set co-pays for basic benefits, which include NJPLUS and HMO co-payments.

ORDER

The request of the City of Bayonne for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan and Joanis voted in favor of this decision. Commissioner Watkins recused himself. None opposed. Commissioner Fuller was not present.

ISSUED: January 24, 2008

Trenton, New Jersey