

P.E.R.C. NO. 2008-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGENFIELD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-2008-018

BERGENFIELD EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission determines that a clause in a collective negotiations agreement between the Bergenfield Board of Education and the Bergenfield Education Association is not preempted by State Health Benefits Program regulations. The Association sought a determination that SHBP regulations preempt a prescription premium sharing clause in the parties' current collective negotiations agreement. The Commission finds that a new law supersedes existing SHBP regulations and allows local employers to negotiate over sharing the cost of coverage. That law also permits implementation of premium sharing clauses in existing agreements.

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, Fogarty & Hara, attorneys
(Stephen R. Fogarty, of counsel; Rosa Elfant Rickett
and Janet L. Parmelee, on the brief)

For the Petitioner, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel and on the brief)

DECISION

On September 21, 2007, the Bergenfield Education Association petitioned for a scope of negotiations determination. The Association seeks a determination that State Health Benefits Program ("SHBP") regulations preempt a prescription premium-sharing clause in the collective negotiations agreement between the Association and the Bergenfield Board of Education. We find that the clause is not preempted.

The parties have filed briefs and exhibits. The Board has submitted the affidavit of its superintendent. These facts are undisputed.

The Association represents certified teaching personnel and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2006 through June 30, 2009.

The parties' prior agreement provided for a \$1000 annual cap on the employer's contribution to prescription coverage. Article 16.C provided:

C. The Association shall eliminate the current prescription plan and shall cap the Board's payment of additional premiums (difference in premium with and without stand-alone prescription plan) (Board will enter the State Health Benefits Plan) to permit employees to submit their prescription claims to the SHBP to the extent such claims are eligible for reimbursement under said plan. The Board's payment of additional premium for each employee shall never be more than it was required to pay for prescription coverage on July 1, 1992. Any increase in premium greater than the Board's July 1, 1992 cost shall be paid by the employees. The amount as of July 1, 1992 was \$783.24 per annum per employee. Effective July 1, 2001, the cap will be \$900. Effective July 1, 2002, the amount will increase to \$1,000. The parties acknowledge that the cost increase in the cap has been shared by both the Board and the employees.

This section remained unchanged in the current 2006-2009 agreement.^{1/}

^{1/} The Board states that the following sentence was inadvertently omitted from that agreement: "The Board's payment of additional premium for each employee shall never be more than it was required to pay for prescription coverage on July 1, 1992."

In January 2007, the SHBP imposed rate increases that exceeded the \$1,000 annual cap the Board had agreed to pay and certain employees were therefore required to contribute a portion of the premium, depending on the type and extent of coverage. Employees could change plans during the open enrollment period in October 2007.

On January 2, 2007, the parties met to discuss the increases. The Board agreed to defer the employees' contributions until July 1 and to retain an insurance consultant to request proposals for health care coverage with lower annual premiums to avoid employee contributions. Due to the Board's negative experience rating, no other health care provider sought to insure the employees. This petition ensued.^{2/}

The Association argues that Article 16.C is preempted by N.J.A.C. 17:9-2.1. That regulation provides:

For local participating employers, each eligible employee shall be eligible to enroll for coverage without cost to the employee; and each employee's eligible dependents shall be eligible for enrollment provided that the charges for such coverage shall be paid by the employee as required by the employer.

^{2/} Scope of negotiations petitions are generally limited to negotiability disputes that arise during negotiations or when a union seeks binding arbitration. But N.J.A.C. 19:13-2.2(a)(4)(iv) permits us to entertain a scope of negotiations petition under special circumstances like these where the Association asserts that specific legislation mandates the conclusion that the provision is an illegal subject for collective negotiations. Cinnaminson Bd. of Ed., P.E.R.C. No. 78-11, 3 NJPER 323 (1977).

For employees of the State and local participating employers, the employee and any dependents must enroll in the same plan.

However, on April 3, 2007, the Governor signed P.L. 2007, c. 62 into law, and on June 25, the Deputy Director for Benefit Operations at the State Health Benefits Commission issued a letter to local employers explaining that the new law supersedes existing SHBP regulations, but that formal modification of the regulations "is several months away." The letter explains that local employers may now negotiate over sharing the cost of coverage by negotiations unit and employers may negotiate limits on payments by the employer. The letter also states that employee cost-sharing arrangements that could not be implemented because of the former SHBP restrictions can now be implemented. Thus, the recent statutory amendment supersedes N.J.A.C. 17:9-2.1, since it specifically permits SHBP-participating employers to negotiate for employee contributions toward the cost of prescription coverage. Berkeley Tp., P.E.R.C. No. 2008-8, 33 NJPER 214 (¶78 2007).

The Association also argues that the new amendment applies only to future agreements. It maintains that our holding in Berkeley applied to negotiations for a successor agreement, and not an existing previously illegal contract article. The Association contends that P.L. 2007, c. 103, approved on June 28, 2007, supports its position. This law provides, in part:

The obligations of any employer to pay the premium or periodic charges for health benefits coverage provided under the School Employees' Health Benefits Program Act, sections 31 through 41 of P.L. 2007, c. 103 (C.52:14-17.46.1 through C.52:14-17.46.11) may be determined by means of a binding collective negotiations agreement, including any agreement in force at the time the employer commences participation in the School Employees' Health Benefits Program.

The Association argues that since the School Employees Health Benefits Program will not be operational until July 1, 2008, any agreement containing a premium-sharing clause under that program cannot take effect until that date.

The June 25, 2007 letter issued by the Deputy Director for Benefit Operations specifically addresses the issue of previously negotiated premium sharing for all local employers, including school districts. It provides, in part:

Since existing bargaining agreements cannot be unilaterally abandoned by the employer, the benefits of Chapter 62 may not be realized until future contract negotiations. However, should the employer have existing agreements which contain employee cost-sharing arrangements that could not formerly be implemented because of SHBP restrictions, those agreements may now be applicable.

Thus, a statute permits premium sharing under the currently applicable SHBP. Should the employer enter the School Employees' Health Benefits Program, its statutory provision will apply.

ORDER

Article 16.C is not preempted.

BY ORDER OF THE COMMISSION

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

ISSUED: February 28, 2008
Trenton, New Jersey