P.E.R.C. NO. 2012-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Petitioner,

-and- Docket No. SN-2011-066

UNITED PUBLIC EMPLOYEES
UNION, LOCAL NO. 1,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that language in an expired collective negotiations agreement between the Borough of Oakland and United Public Employees Union Local No. 1 is not mandatorily negotiable. The disputed clause addresses continued medical coverage for employees who have separated from employment with the Borough. The Commission holds that the clause is preempted by N.J.S.A. 40A:10-20.

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, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Jodi M. Schlegel, of counsel)

For the Respondent, Richard M. Greenspan, P.C., attorneys (Matthew P. Rocco, of counsel)

DECISION

On March 16, 2011, the Borough of Oakland petitioned for a scope of negotiations determination. The Borough seeks a determination that language in the most recent contract between it and the United Public Service Employees Union, cannot be maintained in its successor collective negotiations agreement, because that language is preempted by statute and therefore not mandatorily negotiable. The disputed clause addresses continued medical coverage for employees who have separated from employment with the Borough. We find that the challenged clause of the prior agreement, pertaining to employees who separate from Borough employment, conflict with, and are therefore preempted

by, a state statute and cannot be carried over into a new agreement.

The parties have filed briefs. The Borough has filed exhibits and the certification of the Borough Administrator. These facts appear.

The Union represents the Borough's non-supervisory, white collar employees. The parties' collective negotiations agreement expired on December 31, 2009 and was extended through December 31, 2010.

The disputed clause which appears in the expired contract as Article IX, Retirement and Separation, provides in pertinent part:

> A. Retiree Medical Coverage
>
> 1. Upon retirement or permanent separation from employment for those employees with ten (10) continuous years of service in the Borough, the Borough will continue the employee, spouse and eligible dependents, if the employee so chooses, in the medical plan at [the employee's] option subject to the following:
>
> (a) The employee will pay fifty (50%) percent of the cost of the "premium" as computed by the Borough.
>
> (b) If the employee is employed by a firm that offers a medical plan [the employee] must choose that plan; and upon the effective date of that plan, be removed from the Borough's plan.
>
> (c) This benefit shall cease when the employee reaches age sixty-five (65) or becomes eligible for Medicare, whichever occurs first.

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." In addition, we do not consider the wisdom of the contract language in question, 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, 404-405 (1982) states:

> [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.

Negotiations are preempted only when a statute or regulation fixes a term and condition of employment expressly, specifically and comprehensively. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982).

The Borough's petition asserts that N.J.S.A. 40A:10-20 preempts the continuation of Article IX, A. into a successor

contract to the extent it applies to employees who permanently separate from employment. That statute, entitled "Discontinuance of coverage; exception," provides:

> **The coverage of any employee, and of his dependents, if any, shall cease upon the discontinuance of his employment or upon cessation of active full-time employment in the classes eligible for coverage subject to such provision as may be made in any contract by his employer for limited continuance of coverage during disability, part-time employment, leave of absence other than leave for military service or layoff, and for continuance of coverage after retirement.**

In its initial brief, the Borough focused only on the language pertaining to permanent separation from employment for those employees with ten (10) continuous years of service. As the petition asserts only that continued coverage of workers after they leave Borough employment is preempted, we do not rule on other situations addressed by Article IX, Section A. Cf. Franklin Tp. Bd. Of Ed., P.E.R.C. No. 96-31, 21 NJPER 395 (¶26242 1995) (where scope petition challenged negotiability of merits of arbitration award, but not compensation awarded as a remedy, Commission would only decide issue raised by petition).

The Union counters that the article was mandatorily negotiable in toto.

Absent a preemptive statute or regulation, health insurance coverage for employees is a mandatorily negotiable term and condition of employment. See Willingboro Bd. of Ed. and

Employees Ass'n of Willingboro Schools, 178 N.J. Super. 477, 479 (App. Div. 1981), certif. den. 91 N.J. 545 (1982). That principle applies both to employer-provided health plans and programs, established by agreement, but administered by a majority representative with employer funds. See State and Council of New Jersey State College Locals, 336 N.J. Super. 167, 172 (App. Div. 2001).

We hold that employees who separate from employment with the Borough, are not within the exceptions listed in N.J.S.A. 40A:10-20. Such coverage under Article IX, Section A, is preempted and must be excised if that clause is carried over into the next agreement.[1/]

ORDER

Article IX, Section A is not mandatorily negotiable to the extent it would continue health coverage after separation from Borough employment in situations not within N.J.S.A. 40A:10-20.

BY ORDER THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel, Wall and Voos voted in favor of this decision. None opposed.

ISSUED: January 26, 2012

Trenton, New Jersey

1/ We do not decide how former employees who took such coverage will be affected. See Middletown PBA Local 124 v. Middletown Tp., 161 N.J. 361, 371-372 (2000) (Township equitably estopped from ending benefits to retiree, even though he did not meet conditions of N.J.S.A. 40A:10-23).