

P.E.R.C. NO. 2012-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Petitioner,

-and-

Docket No. SN-2011-076

PBA LOCAL 164,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Oakland for a restraint of binding arbitration of a grievance filed by PBA Local 164. The grievance asserts that the Borough violated the parties' current and former collective negotiations agreements when it unilaterally increased the cost of health benefits for previously retired employees. The Commission holds that the grievance is not preempted and the PBA has standing to challenge the changes in health benefits for retirees.

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. 2012-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF OAKLAND,

Petitioner,

-and-

Docket No. SN-2011-076

PBA LOCAL 164,

Respondent.

Appearances:

For the Petitioner, Cleary, Giacobbe, Alfieri, Jacobs, LLC, attorneys (Gina L. Anton, of counsel)

For the Respondent, Loccke, Correia, Limsky & Bukosky, attorneys (Lauren P. Sandy, of counsel)

DECISION

On April 6, 2011, the Borough of Oakland petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by PBA Local 164. The grievance asserts that the Borough violated the parties' current and former collective negotiations agreements when it unilaterally increased the cost of health benefits for previously retired employees. We decline to issue a restraint of binding arbitration.

The Borough filed a brief and exhibits. The PBA filed a brief in opposition to the petition. The Borough did not file a reply. The following facts appear.

PBA Local 164 represents all officers, sergeants, lieutenants and captains employed by the Borough in the Police Department. The parties' most recent collective negotiations agreement has a duration from January 1, 2007 through December 31, 2010. The grievance procedure ends in binding arbitration. Article X, Subsection D is entitled Retirement Benefits and provides:

The Borough agrees to continue medical, dental and prescription coverage for each officer and his/her eligible dependents upon said officer's retirement provided that such officer has completed twenty-five (25) years of service as recognized by the Police and Fire Retirement System of the State of New Jersey and has served in a full-time capacity for the Borough of Oakland not less than fifteen (15) years. This coverage shall be provided until such time that the retiree and spouse are individually covered by Medicare. At such time, Medicare will become the primary carrier and the Borough of Oakland will become the secondary insurance carrier. If the officer dies prior to becoming eligible for Medicare, the officer's spouse and eligible dependents will continue to receive the medical, dental and prescription coverage until the date upon which said officer would have become eligible for Medicare. If the officer's spouse remarries before the date upon which said officer would have become eligible for Medicare, the spouse's benefits would be discontinued, however, the eligible dependents would continue to receive the benefits until the date upon which said officer would have become eligible for medicare so long as they remain eligible to receive such benefits in accordance with the terms of the plan retained by the Borough.

The parties' January 1, 1983 through December 31, 1985 agreement provides that "the Borough agrees to pay the premiums for group health coverage for members of the bargaining unit when they retire, until such time as they qualify for Medicare coverage."

The parties' January 1, 1986 through December 31, 1988, January 1, 1989 through December 31, 1992, January 31, 1996 through December 31, 1998, and January 1, 1999 through December 31, 2001 agreements provide:

the Borough agrees to continue medical and prescription coverage for each officer and his eligible dependents upon said officer's retirement until the officer's sixty-fifth (65th) birthday. If said retiree wishes to continue coverage after his sixty-fifth (65th) birthday, he shall pay the pro-rata difference of the premium payment for such coverage.

The parties' January 1, 2002 through December 31, 2006 and January 1, 2007 through December 31, 2010 agreements provide:

the Borough agrees to continue medical, dental, and prescription coverage for each Officer and his/her eligible dependents upon said Officer's retirement provided that such Officers has completed 25 years of service as recognized by the Police and Fire Retirement System of the State of New Jersey and has served in a full-time capacity for the Borough of Oakland for not less than fifteen (15) years. This coverage shall be provided until such time that the retiree and spouse are individually covered by Medicare. At such time, Medicare will become the primary carrier and the Borough of Oakland will become the secondary insurance carrier.

On January 12, 2011, the Borough passed Resolution 11-45 establishing monthly premium contributions for all retirees regardless of when they retired. On December 8, 2010, the PBA filed a grievance objecting to the new premiums on behalf of current employees and retirees. On January 25, 2011, the PBA demanded binding arbitration. 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.

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.

As a general rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the

regulation fixes a term and condition of employment "expressly, specifically and comprehensively." Council, 91 N.J. at 30. The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." In re IFPTE Local 195 v. State 88 N.J. 393, 403-04 (1982), quoting State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80(1978). If the legislation, which encompasses agency regulations, contemplates discretionary limits or sets a minimum or maximum term or condition, then negotiation will be confined within these limits. Id. at 80-82. See N.J.S.A. 34:13A-8.1. Thus, the rule established is that legislation "which expressly set[s] terms and conditions of employment...for public employees may not be contravened by negotiated agreement." State Supervisory, 78 N.J. at 80.

The Borough argues that the grievance is preempted by N.J.S.A. 40A:10-23 because the terms and conditions of health benefits for retired employees have changed throughout the years and do not meet the uniformity requirements in the statute and that the Borough has a managerial prerogative to institute the new premiums.

The PBA responds that the grievance is legally arbitrable as the question to be determined by the arbitrator is whether the PBA and Borough had contractually agreed to maintain a certain level of benefits for retirees.

N.J.S.A. 40A:10-23 provides:

Retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed to be adequate to cover the benefits, as affected by Medicare, of the retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of the older age classification; provided, however, that the total rate payable by a retired employee for himself and his dependents, for coverage under the contract and for Part B of Medicare, shall not exceed by more than 25% the total amount that would have been required to have been paid by the employee and his employer for the coverage maintained had he continued in office or active employment and he and his dependents were not eligible for Medicare benefits.

The employer may, in its discretion, assume the entire cost or a portion of the cost of such coverage and pay all or a portion of the premiums for employees a. who have retired on a disability pension, or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or c. who have retired and reached age 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.

The Borough argues that because the retiree health benefits for officers are dependent upon when they retired, they violate the uniformity provisions of the statute and therefore arbitration should be restrained. Whether an ordinance authorizing retiree health premiums complies with the uniformity or other requirements of N.J.S.A. 40A:10-23 is a question for the courts. Ridgefield Park. The cases relied upon by the Borough involved negotiations proposals that a party sought to include in interest arbitration and not the validity of the employer's overall retiree health benefits system. See Borough of Pemberton, P.E.R.C. No. 2000-5, 25 NJPER 369 (¶30159 1999); Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 369 (¶30159 1999); Cf. Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987); Fair Lawn Ret. Police v. Bor. of Fair Lawn, 299 N.J. Super. 600, 605-606 (App. Div. 1997), certif. denied 151 N.J. 75 (1997); Wolfersberger v. Bor. of Pont Pleasant, 305 N.J. Super. 46 (App. Div. 1996), aff'd o.b. 152 N.J. 40 (1997).

The Borough also relies on Morris Cty. Sheriff's Office and Cty. of Morris and PBA Local 298, P.E.R.C. No. 2010-16, 35 NJPER 348 (¶117 2010), recon. den. P.E.R.C. No. 2010-52, 36 NJPER 24 (¶11 2010), rev'd 418 N.J. Super. 64 (App. Div. 2011) for its argument that it has a managerial prerogative to unilaterally change retiree health benefits because it must protect public finances. We decline to restrain arbitration based on Morris

Cty. as that case did not involve the unilateral change of contractual terms and conditions of employment that effect compensation, but was limited to ending what the Court viewed as an unnecessary overtime practice.

The Borough also states in its petition that the PBA does not have standing to pursue a grievance on behalf of retired employees. The Borough has appeared to abandon this argument as it did not brief the issue. We have consistently permitted majority representatives to seek arbitration to enforce a contract on behalf of retired employees as they have a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. Tp. of Voorhees, P.E.R.C. No. 2012-3, __ NJPER __ (¶__ 2011), app. pend.; Union City, P.E.R.C. No. 2011-73, 37 NJPER 165 (¶52 2011); Middletown Tp., P.E.R.C. No. 2006-102, 32 NJPER 244 (¶101 2006); New Jersey Turnpike Auth., P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005).

ORDER

The request of the Borough of Oakland for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: April 26, 2012

Trenton, New Jersey