P.E.R.C. NO. 2013-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF MORRISTOWN,

Petitioner,

-and- Docket No. SN-2011-017

PBA LOCAL 43,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Town of Morristown for a restraint of binding arbitration of a grievance filed by PBA Local 43. The grievance challenges the Town's deduction off 1.5% of base salary towards the cost of dental insurance for a police officer who waived basic health benefits. The Commission restrains arbitration except to the extent the grievance alleges that the deductions exceeded the cost of the dental premium.

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, DeCotiis, Fitzpatrick & Cole, attorneys, (Louis N. Rainone, of counsel and on the brief; Melisssa Gonzales, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel and on the brief)

DECISION

The Town of Morristown has petitioned for a scope of negotiations determination seeking to restrain binding arbitration of a grievance filed by PBA Local 43. The grievance challenges the Town's deduction of an amount equal to 1.5% of base salary towards the cost of dental insurance for a police officer who had waived the right to receive basic health insurance benefits. We restrain arbitration except to the extent the grievance alleges that the deductions exceeded the cost of the dental premiums.

The parties have filed briefs, exhibits and certifications. These facts appear.

The PBA represents the Town's police. The Town and the PBA are parties to a collective negotiations agreement effective from January 1, 2005 through December 31, 2009. On May 25, 2010, the parties entered into a memorandum of agreement (MOA) to establish the terms of a successor contract. Article XX addresses Insurance Coverage.[1/] Section B covers dental insurance coverage. It provides that the Town will pay for the cost of dental care, to the extent that the premiums do not exceed 1.25% of employee base salaries. If the premium goes over that amount, the excess costs are borne by the PBA. Paragraph 4 of the MOA amends Article XX as follows: "Effective May 29, 2010, employees shall contribute to the cost of Health Benefits in accordance with the provisions of Chapter 2, P.L. 2010."

The Town then began deducting 1.5 per cent of base salary from employees represented by the PBA to apply toward the cost of health insurance premiums. Detective Sergeant Michael Buckley had waived basic health insurance coverage, and only had dental insurance coverage through the Town. The Town began deducting 1.5 per cent of Buckley's base salary to apply toward the cost of the dental insurance premiums. According to the PBA President, the total yearly deduction from the Buckley's salary is $1,460.94 while the actual cost of the dental premium is $1,348.44.

1/ The Town does not participate in the State Health Benefits Program (SHBP).

On June 14, 2010, Buckley filed a grievance asserting that P.L. 2010 c. 2 required 1.5 per cent contributions for health insurance and prescription coverage but not for dental insurance premiums. The grievance claims that the deductions violated Article XXII.B.

On June 28, 2010, the business administrator denied the grievance. He referred to Local Finance Notice (LFN) 2010-12 issued by the Department of Community Affairs (DCA). The business administrator asserted that the deduction of 1.5 per cent of Buckley's salary for dental insurance coverage was consistent with the LFN. On July 8, the PBA demanded arbitration. This petition ensued.[2/]

This dispute is limited to the issue of payroll deductions for dental care only and does not involve any controversy about when the 1.5% law could be applied, in general, to employees represented by the PBA. Contrast County of Essex, P.E.R.C. No. 2012-9, 38 NJPER 142 ¶39 2011).

Statutes and administrative regulations that address terms and conditions of employment that are normally mandatorily negotiable are relevant to a scope of negotiations determination. To be preemptive, a statute or regulation must speak in the

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2/ It is undisputed that the Town had authority, beginning on the effective date of P.L. 2010, c.2, to commence payroll deductions of 1.5 per cent of employee base salary for officers who had their primary health insurance coverage provided through the Town.

imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The parties concur that the Commission must determine whether the subject matter of the grievance is preempted. These statutes and a document issued by the Department of Community Affairs have been cited by the parties in support of their respective positions.

Section 14 of P.L. 2010, c. 2, effective May 21, 2010 and codified as N.J.S.A. 40A:10-21, provides in part:

> b. Commencing on the effective date of P.L. 2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, employees of an employer shall pay 1.5 percent of base salary, through the withholding of the contribution from the pay, salary or other compensation, for health care benefits coverage provided pursuant to N.J.S. 40A:10-17, notwithstanding any other amount that may be required additionally pursuant to subsection a. of this section for such coverage. This subsection shall apply also when the health care benefits coverage is provided through an insurance fund or joint insurance fund or in any other manner. This subsection shall apply to any agency, board, commission, authority, or instrumentality of a local unit.

The statute referenced above, N.J.S.A. 40A:10-17, provides:

> Any local unit or agency thereof, herein referred to as employers, may:

> a. Enter into contracts of group life, accidental death and dismemberment, hospitalization, dental, medical, surgical, major medical expense, or health and accident insurance with any insurance company or companies authorized to do business in this State, or may contract with a nonprofit hospital service or medical service or dental service corporation with respect to the benefits which they are authorized to provide respectively. The contract or contracts shall provide any one or more of such coverages for the employees of such employer and may include their dependents;
>
> b. Enter into a contract or contracts to provide drug prescription and other health care benefits, or enter into a contract or contracts to provide drug prescription and other health care benefits as may be required to implement a duly executed collective negotiation agreement, or as may be required to implement a determination by a local unit to provide such benefit or benefits to employees not included in collective negotiations units;

On May 18, 2010, the Department of Community Affairs (DCA) issued Local Finance Notice (LFN) 2010-12, on the impact of P.L. 2010, c. 2 on SHBP and non-SHBP local unit benefit programs.[3/] Attached to the notice are Frequently Asked Questions, including:

> 2. What "health insurance" is the contribution based on?
>
> For SHPB employers, the coverage is for Medical and/or prescription drug plan. The 1.5% contribution does not apply to dental,

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3/ The FAQs are divided into separate headings, some of which indicate they pertain to a specific group of employees or type of employer (e.g. retirees or employers who are SHBP participants). The FAQs pertinent to this case apply to all local employers.

> vision, or, if provided locally, other health related coverage.
>
> For non-SHBP employers, the full range of health benefits is covered (N.J.S.A. 40A:10-17), major medical, prescription, dental, vision, etc.
>
> * * *
>
> 20. What if an employee waives a portion of their benefits (i.e., waives health benefits but opts for prescription coverage only)? Are they still required to pay the full 1.5% contribution?
>
> The legislative intent leads to a requirement that the full 1.5% should be deducted regardless of the employee's specific coverage. Under no circumstances should the 1.5% contribution exceed the cost of the selected coverage.

As framed by the Town, the present dispute involves whether the 1.5% contribution applies to an employee who receives only "minor" health coverage from an employer that does not participate in the SHBP. The Town argues that the reference in N.J.S.A. 40A:10-21(b) to health insurance benefits does not exclude dental or other minor health insurance coverage. It further asserts that LFN 2010-12, covers the dispute raised by the grievance and mandates 1.5% deductions for dental coverage.

The PBA responds that the Town ignores that N.J.S.A. 40A:10-21(b) refers to N.J.S.A. 40A:10-17 and notes that section (a) of that law lists a variety of insurance coverages that public employers may provide for their employees. The PBA reasons that if the Legislature intended that the 1.5% deduction would apply

to all those coverages, N.J.S.A. 40A:10-21 would have explicitly so provided. The PBA questions the validity and accuracy of the information contained in LFN 20-12 and disputes whether DCA's Division of Local Government Services has authority to interpret P.L. 2010, c.2.[4/] It contends that N.J.S.A. 40A:10-21 does not preempt its agreement with the Town regarding dental premiums and can be enforced through binding arbitration.

Initially, we note that the Town has neither disputed the PBA president's certification that the 1.5% deductions from Buckley's paycheck exceed the annual cost to the Town of dental coverage for him, nor acknowledged that LFN 2010-12, FAQ 20, expressly provides that 1.5% deductions can not exceed premium costs. Thus, to the extent the grievance challenges alleged excess premium deuctions, it is arbitrable.[5/] See N. Hunterdon-Vorhees Reg. Bd. of Ed., P.E.R.C. No. 2012-36, __ NJPER ___ (¶_____ 2012) (where employees were already paying 10% of health

4/ The PBA asserts that there is no legislative basis for the distinction made by Q & A #2 in LFN 2010-12. That section asserts that for SHBP employers, the 1.5% deduction is limited to primary health insurance and prescription coverages but no optional coverages such as dental. But the same section opines, citing N.J.S.A. 40A:10-17, that non-SHBP employers must apply the deduction to "the full range of health benefits."

5/ The 1.5% law requires payment through payroll deductions. Whether the PBA can reimburse employees for all or part of dental premiums is not before us. Cf. State and Council of New Jersey State College Locals, 336 N.J. Super. 167, 171-172 (App. Div. 2001)

insurance costs, grievance asserting employer improperly stacked statutorily-mandated 1.5% on top of that amount could be submitted to arbitration).

In exercising our scope of negotiations jurisdiction and applying the preemption test, we are often required to construe statutes or regulations that do not directly pertain to the Employer-Employee Relations Act. See Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 316-317 (1979). And, only statutes and administrative regulations can preempt otherwise negotiable terms and conditions of employment. See Middlesex Cty. Prosecutor and Prosecutor's Detectives and Investigators and PBA Local 214, 255 N.J. Super. 333, 337 (App. Div. 1992).

LFN 2010-12 is DCA's interpretation of amendments, made by L. 2010, c. 2, to Title 40A statutes. That agency has a role in the implementation of those laws and must gauge their impact on local government. Cf. Application of Saddle River, 71 N.J. 14, 24 (1976) (agency's reading of a statute it enforces is entitled to great weight). We have no basis to construe the amendments differently than the reading provided by the DCA. Ultimately, statutory construction and the discernment of legislative intent are issues within the jurisdiction of an appellate court. N.J. Tpk. Auth. and PERC and AFSCME, 150 N.J. 331, 351-352 (1997) holds that a court need not defer to an agency's resolution of purely legal questions, nor can an agency interpret a statute to

give it greater effect than statutory language permits. Based on the DCA's interpretation, we conclude that a non-SHBP municipality may apply the 1.5% law to an employee who has chosen to waive basic health insurance and only take dental care coverage. Accordingly, that issue may not be submitted to binding grievance arbitration.

ORDER

The request of the Town of Morristown for a restraint of binding arbitration is granted except to the extent the grievance asserts that salary deductions exceeded the cost of the dental care premium.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Bonanni and Wall recused themselves.

ISSUED: September 6, 2012

Trenton, New Jersey