

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,  
Petitioner,  
-and- Docket No. SN-2012-016  
JERSEY CITY POLICE  
SUPERIOR OFFICERS' ASSOCIATION,  
Respondent.

CITY OF JERSEY CITY,  
Petitioner,  
-and- Docket No. SN-2012-019  
JERSEY CITY POLICE  
OFFICERS' BENEVOLENT ASSOCIATION,  
Respondent.

CITY OF JERSEY CITY,  
Petitioner,  
-and- Docket No. SN-2012-020  
JERSEY CITY PUBLIC EMPLOYEES,  
INC., LOCAL 246,  
Respondent.

CITY OF JERSEY CITY,  
Petitioner,  
-and- Docket No. SN-2012-021  
JERSEY CITY INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS, LOCAL 1066,  
Respondent.

CITY OF JERSEY CITY,  
Petitioner,  
-and- Docket No. SN-2012-022  
JERSEY CITY INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS, LOCAL 1064,  
Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the requests of the City of Jersey City for a restraints of binding arbitration of grievances filed by the Jersey City Police Superior Officers' Association, the Jersey City Police Officers' Benevolent Association, the Jersey City Public Employees Inc., Local 246, the Jersey City International Association of Firefighters, Local 1066, and the Jersey City International Association of Firefighters Local 1064. The grievances all challenge unilateral changes made by the City to the health care coverage of retired.

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. 2013-38

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Respondent.

Appearances:

For the Petitioner, William C. Matsikoudis, Corporation Counsel (Terri Keller, Assistant Corporation Counsel, on the brief)

For the Jersey City Police Superior Officers' Association, Loccke, Correia, Linsky & Bukosky, attorneys (Lauren Sandy, of counsel and on the brief)

For the Jersey City Police Officers' Benevolent Association, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, of counsel and on the brief)

For the Jersey City Public Employees, Inc., Local 246, Paul W. Mackey, attorney

For the Jersey City International Association of Fire Fighters, Local 1066, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel and on the brief)

For the Jersey City International Association of Fire Fighters, Local 1064, Cohen Leder, Montalbano & Grossman, attorneys (Bruce D. Leder, of counsel)

DECISION

Between November 7 and December 6, 2011, the City of Jersey City filed five petitions for scope of negotiations determination with the Public Employment Relations Commission. The City seeks to restrain binding arbitration of grievances filed by the majority representative organizations of five separate collective

negotiations units of Jersey City employees. The grievances challenge unilateral changes made by the City in the health care coverage of retired City employees.

On January 20, 2012, the City filed a request for interim relief seeking an interim restraint of arbitration pending a final Commission decision on the scope of negotiations petitions. The City's application was denied by a Commission designee in City of Jersey City, I.R. No. 2012-16, 38 NJPER 384 (¶130 2012).

Based upon the reasoning set forth in I.R. No. 2012-16 and in Voorhees Tp. and Voorhees Police Officers Association, Voorhees Sergeants Association and Senior Officers Association of FOP Lodge 56 and FOP, NJ Labor Council, P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd 2012 N.J. Super. Unpub. LEXIS 2046, 39 NJPER \_\_\_\_ (¶\_\_ App. Div. 2012), we decline to restrain arbitration.

All parties rely on the briefs, exhibits and certifications filed in support of, or in opposition to, the City's application for interim relief. These facts appear.

The City's most recent agreements with all unions except Local 246 cover the period from January 1, 2009 through December 31, 2012. The City-Local 246 agreement has a term of July 1, 2008 through June 30, 2011. All contracts have language relating to health care coverage for retirees.

At issue is the City's decision to change the health coverage of retirees from the Traditional Plan to a Direct Access Plan. According to the City, an eligible retiree could remain in the Traditional plan by paying the difference between the premium for the Traditional Plan and the Direct Access plan. When the City implemented this change the various unions filed grievances and demanded arbitration. This petition ensued.

As in all scope of negotiations cases where an employer seeks to restrain binding arbitration of a grievance, our task is limited. 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. 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.

Thus, we do not consider the merits of the grievances or any contractual defenses the employer may have. We do not determine whether, as alleged by the City, that the Direct Access coverage is superior to the Traditional Plan, nor do we construe any of the contracts to assess whether they guarantee a specific level of benefits to retirees.

We have held that a grievance filed by a majority representative organization seeking adherence to past and present contract terms relating to benefits that employees, who are now retired, are receiving, is mandatorily negotiable and arbitrable. See Voorhees. We have so ruled in cases involving public safety employees as in Voorhees, and where the issue involves the benefits of a retired civilian employee. See New Jersey Turnpike Auth., P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005).

On August 28, 2012, subsequent to the filing of the City's petitions, the Appellate Division of the Superior Court affirmed our ruling in Voorhees. Distinguishing between an attempt of a union to negotiate improved benefits of already retired employees and a union's efforts to preserve negotiated benefits embodied in present or past agreements, the Court states:

The FOP has a strong interest in vindicating the rights of its retired members. Consequently, PERC's determination that the FOP has standing to pursue the grievance at issue is not arbitrary, capricious, or unreasonable, nor is it inconsistent with existing law.

The Township's argument that it need not negotiate with the FOP on the issue of co-payments for retired police officers is beside the point as far as this appeal is concerned. The grievance seeks to enforce what the FOP contends are the Township's obligations under prior and existing [collective bargaining agreements]. It does not seek to compel the Township to bargain on the issue for future contracts. As the record demonstrates and as determined by PERC, the Township did negotiate and reach an

agreement with respect to retiree health benefits in the past. Consequently, whether the Township is required to bargain on the issue in the future does not govern the issue of whether it must comply with the CBAs in which the FOP contends it has already bargained and agreed to make the payments.

Whether the prior and current CBAs at issue require the Township to continue the supplemental prescription reimbursement program and whether such an agreement was ultra vires at the time they were entered into are matters for determination through the arbitration process.

[2012 N.J. Super. Unpub. LEXIS 2046, at 7-9]<sup>1/</sup>

The negotiability issues framed by these grievances are indistinguishable from the subject matter considered by the Appellate Division in Voorhees which found the dispute to be negotiable and arbitrable.<sup>2/</sup> The grievances may be submitted to binding arbitration.

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1/ In a footnote the Court observes:

We express no view on the issue of future contracts or with respect to the interpretation of the CBAs involved in this appeal.

2/ Peterson v. Township of Raritan, 418 N.J. Super. 125 (App. Div. 2011), is not inconsistent with the same Court's ruling in Voorhees or our determination today. Peterson, a retired employee, filed suit on his own arguing that the terms of the agreement in force when he retired barred his former employer from changing the health benefits he had as a retiree. In that case, the Court had jurisdiction to examine and interpret the contract, a function that here, and in Voorhees, will be performed by an arbitrator. The Peterson court concluded that the terms of the contract in effect when he retired did not mandate that he remain in the Traditional Plan without cost after retirement. 418 N.J. Super. at 136.





ORDER

The requests of the City of Jersey City for restraints of binding arbitration are denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 19, 2012

Trenton, New Jersey