

P.E.R.C. NO. 2016-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLEMENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-041

CLEMENTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal made by the Clementon Education Association during negotiations for a successor agreement with the Clementon Board of Education is preempted by N.J.S.A. 18A:16-17.2. The Association proposes that bargaining unit members contribute 1.5% of base salary as their health benefits contribution after full implementation of Chapter 78. The Commission concludes that negotiations regarding health benefits contributions are preempted for year one and, if applicable, any additional years of a successor agreement until the parties' next agreement. The Commission further holds that thereafter, health benefits contributions become negotiable, albeit with full implementation levels serving as the status quo.

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, Parker McCay (Melissa M. Ferrara,
of counsel)

For the Respondent, Selikoff & Cohen (Keith Waldman, of
counsel)

DECISION

On December 22, 2014, the Clementon Board of Education (Board) petitioned for a scope of negotiations determination. The Board seeks a determination that a health benefits provision in the most recent collective negotiations agreement between it and the Clementon Education Association (Association) cannot be maintained in the successor agreement because it is preempted by statute. The subject provision sets forth that employee health benefit contributions will be made at 1.5% of base salary.

The Board filed a brief, exhibits and the certification of its Business Administrator. The Association filed a brief and exhibits.

The Association represents most certified personnel within the district. The Board and the Association are parties to a collective negotiations agreement with a term of July 1, 2011 through June 30, 2014 (the Agreement). Article XVII.A.1, Insurance Protection, states that "all staff members will contribute 1.5% of their salary towards health and prescription coverage...."

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).

A brief summary of the negotiations landscape regarding employee health benefits contributions is pertinent to place this dispute in perspective. In 2010, negotiations over the level of health benefit contributions was first preempted by the enactment of P.L.2010, c.2. Chapter 2 required all public employees to contribute 1.5% of base salary towards health care. N.J.S.A. 18A:16-17. In 2011, P.L.2011, c.78 was enacted requiring a four-year tiered implementation of health care contributions based on employees' earning levels. N.J.S.A. 52:14-17.28(c). While Chapter 78 became effective June 28, 2011, the date that it actually impacted public employees varied. For those employees represented by a majority representative, the trigger date for implementation of Chapter 78 was tied to the expiration of the collective negotiations agreement. Hence, once a collective negotiations agreement expired after June 28, 2011, the four-year tiered implementation began. N.J.S.A. 18A:16-17.1 (a) and (c).

In the instant dispute, employees began making health benefit contributions at 1.5% of their base salary pursuant to the agreement preceding the most recently expired agreement.

Upon expiration of that agreement, and in accordance with Chapter 78, employees began the four-year tiered implementation on July 1, 2011.^{1/} Implementation of employee contribution levels at Tier 4 of Chapter 78 began on July 1, 2014, the first year of the successor agreement that the parties are currently negotiating. The Board argues that Article XVII.A.1 is preempted by the following part of Chapter 78 which addresses successor contract negotiations:

A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract. . . .

* * *

After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

[N.J.S.A. 18A:16-17.2; emphasis added]

The Association's response focuses on the second paragraph of N.J.S.A. 18A:16-17.2 quoted above which it contends supports

^{1/} The record does not reflect why Article XVII.A.1 was retained in the Agreement after Chapter 78 was implemented.

that once full implementation of Tier 4 is completed, employee contribution levels then become negotiable.

Reading the above quoted parts of the statute in pari materia, N.J.S.A. 18A:16-17.2 expressly, specifically and comprehensively sets forth that health benefit contribution levels become negotiable in the "next collective negotiations agreement after . . . full implementation" of the four-tiered level of employee contributions is achieved. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982).

Therefore, depending on the length of the successor agreement that the Board and the Association agree to, Article XVII.A.1 may be preempted by N.J.S.A. 18A:16-17.2. For example, if the parties agree to a contract with a one-year term, Article XVII.A.1 would be preempted by N.J.S.A. 18A:16-17.2 from July 1, 2014 to June 30, 2015, the final year of employee contributions at Tier 4 levels. However, it would not be preempted in the "next" agreement when employee contribution levels become negotiable. Alternatively, if the parties agree to a multi-year successor agreement, the express language of N.J.S.A. 18A:16-17.2 would preempt Article XVII.A.1 for the first year of the successor agreement as well as any additional years in the agreement until the "next" agreement when employee contribution levels would become negotiable.

N.J.S.A. 18A:16-17.2 also expressly, specifically and comprehensively sets out that Tier 4 levels of employee contributions shall constitute the status quo once employee contribution levels become negotiable when it states that "negotiations concerning contributions for health care benefits [shall be conducted] as if the full premium share was included in the prior contract. . . ." Bethlehem, 91 N.J. at 44. Therefore, Article XVII.A.1 is also preempted to the extent it sets forth 1.5% of base salary as the status quo for negotiations once employee contribution levels become negotiable.^{2/}

ORDER

Article XVII.A.1 is preempted by N.J.S.A. 18A:16-7.2 for year one of the successor agreement between the Clementon Board

2/ We also note that our analysis is supported by Local Finance Notice 2011-20R, Section VII, Other Health Benefit-Related Elements, which states, in pertinent part, as follows:

2) The law provides directive language that affects the negotiations of CNAs after full implementation of the health benefit contribution. . . . Once the fourth year has been completed (100% of the required contribution has been paid for a year), the law provides that:

a. Negotiations for the next contract shall be conducted as if the full contribution was part of the previous contract.

* * *

c. Once [there is] full implementation, the contribution structure is negotiable, starting from the point of full implementation.

[LFN 2011-20R, pg. 11 - 12; emphasis added]

of Education and Clementon Education Association and, if applicable, any additional years for the successor agreement until the next agreement when employee contribution levels become negotiable. The Association's contract proposal is also preempted by N.J.S.A. 18A:16-7.2 to the extent it sets out 1.5% of base salary as the status quo for negotiations once employee contribution levels become negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: August 13, 2015

Trenton, New Jersey