

P.E.R.C. NO. 2017-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

READINGTON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-075

READINGTON TOWNSHIP
ADMINISTRATORS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Board for a restraint of binding arbitration of a grievance contesting the Board's failure to pay 100% of the premium cost of dental coverage for unit members after changing to a private health insurance carrier. The Commission finds that the Board has a managerial prerogative to select a private health insurance carrier and that Chapter 78 preempts negotiations regarding employee contributions for dental benefits when a public employer is not a participant in the School Employees' Health Benefits Program.

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, Fogarty & Hara, attorneys
(Stephen R. Fogarty, on the brief)

For the Respondent, New Jersey Principals and
Supervisors Association, attorneys (Carol R.
Smeltzer, on the brief)

DECISION

On May 27, 2016, the Readington Township Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Readington Township Administrators' Association (Association). The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) when it stopping paying 100% of the premium cost of dental coverage for unit members after changing to a private health insurance carrier.

The Board filed a brief, exhibits, and the certification of its Superintendent of Schools (Superintendent). The Association

filed a brief, exhibits, and the certification of its President. The Board also filed a reply brief. These facts appear.

The Association represents all principals, vice principals, directors, and supervisors employed by the Board. The Board and the Association are parties to a CNA in effect from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration.

Article X of the CNA, entitled "Health Insurance," provides in pertinent part:

B. The Board shall pay one-hundred percent (100%) of the premium cost of dental coverage for the administrator and his/her dependent(s) in accordance with the level of benefits provided by the Board on June 30, 2001.

The Superintendent certifies that from July 1, 2014 through May 30, 2015, the Board provided health insurance coverage to its employees through the School Employees' Health Benefits Program (SEHBP). Accordingly, the Board withheld employee contributions pursuant to Chapter 78 based upon the cost of medical and prescription drug coverage while dental coverage was excluded. The Superintendent certifies that on March 25, 2015, the Board passed a resolution terminating its participation in the SEHBP and moved to a private health insurance carrier effective June 1. As a result, the Board began including the cost of dental coverage when withholding employee contributions pursuant to Chapter 78.

The Association President certifies that pursuant to the terms of the CNA, the Board is required to pay "100% of the premium cost of dental coverage" for unit members. She certifies that the Board complied with this contractual obligation throughout the time it participated in the SEHBP. However, the Board began requiring employee contributions for dental coverage after unilaterally terminating participation in the SEHBP and selecting a private health insurance carrier without negotiations. The Association President certifies that as a result, the benefits provided to unit members were diminished. The Association argues that Chapter 78 does not require the Board to utilize a private insurance carrier. Accordingly, the Association seeks to arbitrate "whether the Board breached the [parties'] agreement by changing insurance carriers necessitating . . . employee[] contributions toward dental insurance premiums." If a violation is found, the Association contends that an "arbitrator [could] determine how the Association's members will be made whole for the change in the level of health benefits."

On June 9, 2015, the Association filed a Level 1 grievance. On October 7, the Association filed a Level 2 grievance claiming that the Board violated the parties' CNA when it stopping paying 100% of the premium cost of dental coverage after changing to a private health insurance carrier. The Board denied the grievance on November 5. On March 17, 2016, the Association filed a

Request for Submission of a Panel of Arbitrators. This petition ensued.

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. 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 contractual merits of the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

As in Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), app. pending, 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 benefits contributions were first preempted by the enactment of P.L.2010, c.2 (Chapter 2). Chapter 2 required all public employees to contribute 1.5% of base salary toward health benefits. N.J.S.A. 18A:16-17. In 2011, P.L.2011, c.78 (Chapter 78) was enacted and required a four-year tiered implementation of health benefits contributions based upon employees' earning levels and the cost of coverage. N.J.S.A. 52:14-17.28c. Notably, "cost of coverage" is defined as:

[T]he premium or periodic charges for medical and prescription drug plan coverage, but not for dental, vision, or other health care, provided under the State Health Benefits Program or the School Employees' Health Benefits Program; or the premium or periodic charges for health care, prescription drug, dental, and vision benefits, and for any other health care benefits, provided pursuant to P.L.1979, c.391 (C.18A:16-12 et seq.), N.J.S.40A:10-16 et seq., or any other law by a local board of education, local unit or agency thereof, and including a county college, an independent State authority as defined in section 43 of P.L.2011, c.78 (C.52:14-17.34a), and a local authority as defined in section 44 of P.L.2011, c.78 (C.40A:5A-11.1), when the employer is not a

participant in the State Health Benefits Program or the School Employees' Health Benefits Program.

[N.J.S.A. 52:14-17.28c (emphasis added)]

While Chapter 78 became effective on June 28, 2011, the date of its implementation varied. For those employees represented by a majority representative, the four-year tiered implementation began upon expiration of an existing collective negotiations agreement. N.J.S.A. 18A:16-17.1(a) and (c). Despite the fact that Article X of the parties' prior and present CNA provides that unit members will contribute no less than 1.5% of base salary towards the premium cost of health benefits pursuant to Chapter 2, we presume that employees began the four-year tiered implementation of Chapter 78 with respect to medical and prescription drug coverage on July 1, 2011.^{1/} N.J.S.A. 18A:16-17.1(a) and (c). However, unit members were not subject to Chapter 78 contributions with respect to the premium cost for dental, vision and other health care benefits at that time because the Board provided health insurance benefits to its employees through the SEHBP. N.J.S.A. 52:14-17.28c. It is undisputed that the parties' CNA was controlling with respect to

^{1/} Neither party has provided information regarding when the Board began the implementation of Chapter 78 employee contributions for medical and prescription drug coverage. However, the effective dates for the parties' prior CNAs was July 1, 2008 through June 30, 2011 and July 1, 2011 through June 30, 2014.

dental coverage until the Board changed to a private health insurance carrier on June 1, 2015.

The Commission has held that “[a]n employer’s choice of health insurance carriers is not mandatorily negotiable so long as the negotiated level of benefits is not changed.” Rockaway Bor. Bd. of Ed., P.E.R.C. No. 2010-9, 35 NJPER 293 (¶102 2009) (citing City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981)). “Once an employer and a union agree upon a level of benefits, the employer has discretion to choose a health insurance carrier, and the employer is not normally required to negotiate over which health insurance carrier it contracts with to provide those benefits.” Id. “[P]arties can agree to permit an employer to change carriers consistent with the collective negotiations agreement.” Id. (citing Camden Cty. College, P.E.R.C. No. 2008-67, 34 NJPER 254 (¶89 2008)). However, “[w]here changing the identity of the carrier changes terms and conditions of employment, i.e., the level of insurance benefits, and the administration of the plan, it becomes a mandatory subject for negotiations.” Id. (citing Metuchen Bor., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984)).

However, “an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation.” Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass’n, 91 N.J. 38, 44 (1982). “However, the mere existence of

legislation relating to a given term or condition of employment does not automatically preclude negotiations." County of Mercer, P.E.R.C. No. 2015-46, 41 NJPER 339 (¶107 2015). "Negotiation is preempted only if the [statute or] regulation fixes a term and condition of employment 'expressly, specifically and comprehensively.'" Bethlehem Tp. Bd. of Ed., 91 N.J. at 44 (citing Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982)). "The legislative provision must 'speak in the imperative and leave nothing to the discretion of the public employer.'" Id. (citing Local 195, 88 N.J. at 403-404); see also, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

In the instant dispute, the Board exercised its managerial prerogative to select a private health insurance carrier and stopped paying 100% of the premium cost of dental coverage for unit members because it terminated participation in the SEHBP. N.J.S.A. 52:14-17.28c expressly, specifically and comprehensively specifies that the "cost of coverage" subject to Chapter 78 employee contributions includes the premium for dental coverage provided by a local board of education "when the employer is not a participant in the . . . [SEHBP]." See Bethlehem Tp. Bd. of Ed., 91 N.J. at 44. Accordingly, negotiations regarding unit members' contribution levels for dental coverage are preempted consistent with N.J.S.A. 18A:16-17.2. See Clementon Bd. of Ed.

ORDER

The request of the Readington Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: September 22, 2016

Trenton, New Jersey