P.E.R.C. NO. 2017-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW BRUNSWICK MUNICIPAL
EMPLOYEES ASSOCIATION,

Petitioner,

-and- Docket No. SN-2016-080

CITY OF NEW BRUNSWICK,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract provision that the New Brunswick Municipal Employees Association seeks to remove from its collective negotiations agreement (CNA) with the City of New Brunswick. The Association asserts that the CNA provision providing for a 50% contribution by eligible retirees to the cost of health benefits is preempted by the lower maximum health benefits contribution required by Chapter 78 as set forth in N.J.S.A. 40A:10-21.1 and N.J.S.A. 52:14-17.28(c). Noting that N.J.S.A. 40A:10-21.1(d) provides that negotiated contributions in addition to those required by Chapter 78 "shall remain in effect," the Commission holds that the statutes cited by the Association set a contribution floor and do not preempt negotiated contribution levels in excess of the Chapter 78 levels.

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, Oxfeld Cohen, P.C., attorneys (Samuel B. Wenocur, of counsel and on the brief)

For the Respondent, Bauch Zucker Hatfield, LLC, attorneys (Kathryn V. Hatfield, of counsel and on the brief)

DECISION

On June 20, 2016, the New Brunswick Municipal Employees Association (MEA) petitioned for a scope of negotiations determination. The Association asserts that Article XXI, Coordination of Benefits, Section C. of its collective negotiations agreement (CNA) with the City of New Brunswick (City) is preempted by P.L. 2011, c. 78 (Chapter 78).

The MEA filed a brief, exhibits, and the certification of its Business Representative (Representative). The City filed a brief. The MEA also filed a reply brief. These facts appear.

The MEA represents all City employees excluding: professional employees; police officers; crossing guards; fire fighters; elected officials; heads and deputy heads of departments, divisions and agencies; members of boards and commissions; managerial executives; and all supervisors and foremen having power to hire, discharge, discipline, or evaluate employees, promote or effectively recommend same, and confidential employees. The City and the MEA were parties to a CNA in effect from January 1, 2011 through December 31, 2014; they are currently parties to a CNA in effect from January 1, 2015 through December 31, 2018.

Article XXI of the parties' CNA, entitled "Health and Welfare," provides in pertinent part:

> Coordination of Benefits
>
> * * *
>
> C. For those employees hired prior to December 31, 1998 the City will assume fifty (50%) percent of health and welfare benefits for those employees who have twenty-five (25) years or more of service with the City or are sixty-two (62) years of age and fifteen (15) years of service.
>
> For those employees hired after January 1, 1999 the City will assume fifty (50%) percent of health and welfare benefits for those employees who have twenty-five (25) years of service or more service with the City or are sixty-two (62) years of age and twenty (20) years of service.
>
> The level of coverage will be equivalent to coverage provided to active employees.

> Co-pays, deductibles and/or eligible benefits are subject to collective bargaining and are therefore subject to change. Medicare will be primary health coverage when retiree turns sixty-five (65).

The MEA Representative certifies that Article XXI of the parties' prior CNA set the health benefits contribution for eligible retirees at 50% of the cost of coverage. However, during negotiations for the current CNA, the MEA Representative argued that Chapter 78 preempted Article XXI and requested that the City remove and replace this contract provision. The MEA Representative certifies that even the highest Chapter 78 contribution level is significantly less than the existing 50% contractual level. In order to finalize the current CNA, the parties agreed that Article XXI would remain in the agreement but would be subject to the instant scope petition. The MEA Representative certifies that the City never indicated or provided documentation to the MEA or the State that Article XXI would result in greater annual savings than Chapter 78.

The MEA argues that N.J.S.A. 40A:10-21.1 establishes the ceiling for a retiree's health benefits contribution based upon the sliding scale set forth under N.J.S.A. 52:14-17.28c. The MEA maintains that Article XXI is preempted by Chapter 78 given that the contribution amounts under N.J.S.A. 52:14-17.28c are significantly less than the 50% contribution level set by the parties' CNA.

The City argues that the MEA does not have standing to initiate this scope petition on behalf of retirees. The City also maintains that relevant New Jersey statutes set a floor, not a ceiling, on what employers can charge retirees for health benefits. In particular, the City contends that the Legislature has acknowledged that negotiated premium contributions exceeding the mandatory Chapter 78 levels are permitted.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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 a threshold issue, we find that the MEA had standing to file this scope petition given that it seeks to enforce the parties' CNA which incorporates applicable statutes pertaining to health benefits contributions on behalf of current and future retirees. The Commission has consistently "permitted a majority representative to seek arbitration to enforce a contract on behalf of retired employees because it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored." Voorhees Tp. and Voorhees Police Officers Ass'n, P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd 39 NJPER 69 (¶27 2012); see also, City of Jersey City and Jersey City City PSOA, P.E.R.C. No. 2013-38, 39 NJPER 223 (¶75 2012), aff'd 41 NJPER 31 (¶7 2014). "That principle is different from the proposition . . . that an employer is not under an obligation to negotiate over benefits of already retired employees." Id.; see also, Ocean Tp., P.E.R.C. No. 81-136, 7 NJPER 338 (¶12152 1981) (holding that public employers must negotiate with majority representatives over what health benefits its currently active employees will receive at the time of their retirement but not with respect to prior employees who are already retired). However, "collective negotiations agreements incorporate controlling statutes and regulations . . . and . . .

grievances involving the application of such statutes or regulations generally may be submitted to binding arbitration." Bradley Beach Bor., P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999) (citing State v. State Supervisory Employees, 78 N.J. 54, 80 (1978); Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 15 (1983)).

Turning to the negotiability of health benefits contributions, "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." Mercer Cty., 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); Teamsters Local 97 v. State of New Jersey, 434 N.J. Super. 393, 418 (App. Div. 2014) (finding

that although health care benefits are a negotiable term or condition of employment, CNAs must be consistent with laws addressing contribution amounts).

In 2010, negotiations over the level of health benefits contributions were first preempted by the enactment of P.L. 2010, c. 2 (Chapter 2). Notwithstanding any other amount that may be required additionally by the employer or through a collective negotiations agreement, Chapter 2 required all public employees to contribute 1.5% of base salary toward health benefits and those employees who became members of a public retirement system on or after Chapter 2's effective date to pay 1.5% of their monthly retirement allowance for health benefits in retirement. See N.J.S.A. 18A:16-17; N.J.S.A. 40A:10-21; N.J.S.A. 40A:10-23(b); N.J.S.A. 52:14-17.28b(c)(2).

In 2011, negotiations over the level of health benefits contributions were further preempted by the enactment of Chapter 78. Chapter 78 required all public employees to contribute a percentage of the cost of coverage for health benefits based upon employees' earning levels and specified the health benefits contribution required for public employees in retirement. See N.J.S.A. 18A:16-17.1; N.J.S.A. 40A:10-21.1; N.J.S.A. 52:14-17.28c; N.J.S.A. 52:14-17.28d. However, negotiated health benefits contribution levels in excess of Chapter 78 levels remain in effect despite the enactment of Chapter 78:

> . . . the authority to determine an amount of contribution at the discretion of the employer or by means of a collective negotiations agreement . . . shall remain in effect with regard to contributions, whether as a share of the cost, or percentage of the premium or periodic charge, or otherwise, in addition to the contributions required under subsections a. and b. of this section.
>
> [N.J.S.A. 40A:10-21.1(d) (emphasis added); accord N.J.S.A. 18A:16-17.1; N.J.S.A. 52:14-17.28d(c)]

Here, the parties' CNA requires employees to contribute "fifty (50%) percent of health and welfare benefits." See CNA Art. XXI, Coordination of Benefits, Section C. Under Chapter 78, the maximum health benefits contribution level is 35% of the cost of coverage. See N.J.S.A. 52:14-17.28c. Given that the contract provision at issue includes a health benefits contribution level in excess of Chapter 78 levels, Chapter 78 is not preemptive.[1/] See N.J.S.A. 40A:10-21.1(d).

1/ Based upon the issue presented by the parties (i.e., whether Article XXI, Coordination of Benefits, Section C. of the CNA is preempted by Chapter 78), the Commission need not determine the health benefits contribution level required for any particular employee or retiree.

ORDER

Chapter 78 does not preempt Article XXI, Coordination of Benefits, Section C. of the parties' CNA.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Voos voted in favor of this decision. Commissioners Jones and Wall voted against this decision. Commissioners Boudreau and Eskilson were not present.

ISSUED: October 20, 2016

Trenton, New Jersey