P.E.R.C. NO. 2020-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Petitioner,

-and- Docket No. SN-2017-033

ESSEX COUNTY PBA LOCAL 382,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part, and denies in part, the County's request for a restraint of binding arbitration of the PBA's grievance challenging the County's unilateral change of medical insurance carriers that allegedly reduced the level of health benefits. The Commission holds that the County had discretion to change health insurance carriers from a private plan to the State Health Benefits Plan (SHBP), but that the PBA may arbitrate whether the change in carriers resulted in changes to the level of health benefits. It finds that while an arbitrator cannot order the SHBP to change its coverage, the County has not demonstrated that SHBP laws or regulations preempt other arbitral remedies. The Commission also holds that any changes to the County's health insurance waiver opt-out payment program caused by its change to the SHBP are preempted by N.J.S.A. 52:14-17.31a, so it restrains arbitration of the PBA's challenge of changes to the opt-out payments.

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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COUNTY OF ESSEX,

Petitioner,

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ESSEX COUNTY PBA LOCAL 382,

Respondent.

Appearances:

For the Petitioner, Genova Burns, LLC, attorneys (Angelo J. Genova, of counsel and on the brief; Joseph M. Hannon, on the brief; Anthony M. Anastasio, on the brief)

For the Respondent, Trimboli & Prusinowski, LLC, attorneys (James T. Prusinowski, of counsel and on the brief; John P. Harrington, on the brief)

DECISION

On March 10, 2017, the County of Essex (County) filed a scope of negotiations petition seeking to restrain arbitration of a grievance filed by Essex County PBA Local 382 (PBA). The grievance claims that the County violated the parties' collective negotiations agreement (CNA) when it unilaterally changed medical insurance carriers resulting in a reduction in the level of health benefits.[1/] The parties have filed briefs, exhibits, and certifications. These facts appear.

1/ The allegations underlying the grievance are also the subject of a pending unfair practice charge filed by the PBA against the County (Docket No. CO-2017-105).

The PBA represents the County's correction officers under the rank of sergeant. The County and PBA are parties to a CNA effective from January 1, 2014 through December 31, 2017. The grievance procedure ends in binding arbitration.

Article 21 of the CNA is entitled "Health Insurance and Section 125 Cafeteria Plan." Article 21, Sections 1 and 5 provide, in pertinent part:

> 1. The existing Hospitalization, Medical-Surgical and Major Medical Insurance benefits shall be paid for by the County except as set forth below. The County reserves the right to select the insurance carrier who shall provide such benefits, as long as the benefits are not less than those now provided by the County. The County shall maintain the following: . . .
>
> 5. The County may change insurance carriers or be self-insured, so long as it does not reduce existing benefits.

Article 21, Section 7 provides:

> 7. Waiver/Opt-Out - Effective January 1, 2012 the County will implement a waiver program for health benefits insurance costs for active Employees. The waiver program will consist of the following: . . .

Courtney Gaccione, County Counsel, certifies that for the year 2016 the County contracted with Aetna to provide health insurance to County employees including PBA members. By September 8, 2016, the County had obtained final renewal rates from Aetna, as well as the rates if the County changed health insurance providers to the State Health Benefits Plan (SHBP).

The County's consultant compared 2017 annual health insurance costs and found that a renewal with Aetna would increase the County's annual health insurance costs more than a transition to the SHBP. On September 13, 2016, the County held a Labor Roundtable, including representatives from the PBA, where it presented the unions with the cost comparisons between Aetna and the SHBP for 2017. Gaccione certifies that the County sought cooperation from all 26 of its negotiations units to switch health insurance to the SHBP because the SHBP requires that all active and retired employees of a public entity be enrolled in the SHBP, known as the SHBP's "uniformity" requirement. The County received approval to change to the SHBP from 24 of its 26 negotiations units, and the County's brief notes that two of those 24 units subsequently reneged. The PBA was one of the two units that had never approved of the change. Gaccione certifies that the County's agreements with negotiations units regarding the change to the SHBP for 2017 also included the County allowing each unit to extend its CNA by one, two, or three years with certain guaranteed wage increases for 2017, 2018, and 2019, as well as an agreement to negotiate over future changes in SHBP benefits for 2018 that the parties mutually agree are not equal to or better than those provided by the SHBP in 2017.

On September 28, 2016, the County's Board of Chosen Freeholders passed a resolution to enter into the SHBP on January

1, 2017. In October 2016, the PBA's attorney and Gaccione corresponded regarding the PBA's requests for plan descriptions and documents concerning the County's Aetna plans. On November 10, 2016, the PBA and County met to discuss the SHBP. That same day, the PBA filed its unfair practice charge, along with an application for interim relief, alleging that the County violated N.J.S.A. 34:13A-5.4(a)(5) of the Employer-Employee Relations Act by unilaterally implementing a reduction in health insurance coverage without negotiating in good faith and in the middle of an existing term of the CNA.[2/] On November 21, 2016, Gaccione received a November 17, 2016 correspondence from the PBA's counsel setting forth a list of proposed "contract modifications in exchange for transferring from the current health insurance plan to the State Health Benefits Plan." Gaccione certifies that the County has not responded to the PBA's November 17 proposal. Gaccione certifies that the County entered the SHBP on January 1, 2017, thereby discontinuing its prior health insurance coverage under Aetna, and that the County's employees, including PBA members, have been covered by the SHBP since then.

2/ The PBA's application for interim relief was denied by a Commission Designee on February 1, 2017. The charge remains pending in the Commission's Unfair Practice section after being held in abeyance pending an Appellate Division decision, recently issued on June 14, 2019, see FN5, infra, in related litigation concerning a State Health Benefits Commission declaratory ruling on a question presented by the PBA and other County units concerning the SHBP.

On January 13, 2017, the PBA filed a grievance alleging that the County's January 1, 2017 unilateral placement of PBA members into the SHBP violated Article 21 of the CNA by reducing the level of health benefits and denying waiver/opt-out payments to PBA members. The grievance also cited Article 4, "Retention of Existing Benefits," as being violated by the County's change to the SHBP. As a remedy, the PBA seeks that the County reinstate the level of health insurance benefits that were provided under the Aetna plans in place in 2016.

On January 31, 2017, the PBA filed a demand for binding arbitration of the grievance. 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 scope of negotiations for police officers and firefighters is broader than for other public employees because

N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

> First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978). If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

Arbitration is permitted if the subject of the grievance is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd, NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially

limit government's policy-making powers. Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982).

The County asserts that its switch to the SHBP was within its managerial prerogative because the health benefits provided under the SHBP are "not less than" the health benefits previously provided under Aetna. It argues that opt-out payments for waiving employer health coverage are preempted from negotiations by N.J.S.A. 40A:10-17.1, and that the SHBP only prohibits an opt-out arrangement with an employee whose spouse is also covered by the SHBP. The County contends that it acted in good faith by reaching agreements with most of its negotiations units over entry into the SHBP even though the SHBP does not reduce employee health benefits. It asserts that, due to the SHBP's uniformity requirements, if an arbitrator were to reinstate the PBA's Aetna coverage, then the County's continued participation in the SHBP for all of its other units would be compromised. The County argues that such a result would disrupt its agreements with the other units, increase costs, and be inconsistent with the public interest and State "Best Practices" guidelines that encourage limiting health care costs such as through the SHBP. It contends that it is not asking the Commission to interpret or reconsider

the legal underpinnings of the SHBP's uniformity requirement, but is highlighting it to show that the result of the PBA's arbitration could effect all other units' health benefit costs.

The PBA asserts that the issue of whether the County violated the CNA when it unilaterally reduced the level of health benefits of PBA members by switching them to the SHBP in 2017 is negotiable and legally arbitrable. It argues that the County's discussions, negotiations, and agreements with other negotiations units concerning the switch to the SHBP are not relevant to the issue in this case, and only tend to support the PBA's position that the County was obligated to negotiate and come to an agreement before changing the contractual level of benefits. The PBA contends that the County does not dispute that the Commission has held that when a change in health insurance carriers changes the level of health benefits, the change becomes mandatorily negotiable. The PBA asserts many alleged reductions in health benefits from the change to the SHBP, both qualitative and quantitative, and argues that the level of benefits and changes are disputed issues of fact for the arbitrator. It contends that the County's interpretation of the SHBP's uniformity requirement has no legal support, and that its meaning and applicability has no bearing on this scope of negotiations petition. The PBA argues that this petition should not be decided on the County's premature speculation about arbitral remedies and whether its

other units could remain in the SHBP, as such concerns are a creature of its own making because the County unilaterally moved the PBA to the SHBP without the PBA's consent.

We first address the County's assertion that any decision to provide PBA members with opt-out payments for waiving employer-provided health coverage is statutorily preempted and therefore not arbitrable. N.J.S.A. 40A:10-17.1 (applicable to employer-provided non-SHBP medical coverage) and N.J.S.A. 52:14-17.31a (applicable to employer-provided SHBP medical coverage) authorize local government employers to offer their employees health benefit waiver payments up to a certain amount, but specifically preempt negotiations over such opt-out payments because they provide that the employer's decision "to allow its employees to waive coverage and the amount of consideration to be paid therefor shall not be subject to the collective bargaining process." Town of Westfield, P.E.R.C. No. 2018-12, 44 NJPER 144 (¶42 2017); Township of Clinton, P.E.R.C. No. 2013-33, 39 NJPER 212 (¶70 2012). Here, the PBA alleges that the County's move to the SHBP reduced eligibility for the waiver opt-out payments provided in Article 21, Section 7 of the CNA because the SHBP prohibits opt-out payments for employees who continue to receive SHBP coverage through their spouse. Regardless of whether the PBA members are covered under a private plan or the SHBP, the issue of health care waiver opt-out payments is preempted from

negotiations by N.J.S.A. 40A:10-17.1 (non-SHBP) and N.J.S.A. 52:14-17.31a (SHBP). Therefore, absent any allegation that PBA members waived coverage but were neither permitted to enroll in the SHBP nor received opt-out payments,[3/] we restrain arbitration over this aspect of the grievance. Westfield; Clinton.

We next turn to the issue of whether the alleged decrease in the PBA's contractual level of health benefits caused by the County's change from private Aetna insurance carriers to the SHBP is legally arbitrable. The level of health benefits is generally negotiable absent a preemptive statute or regulation and a grievance contesting a change in a negotiated level of benefits is generally arbitrable. In re Council of New Jersey State College Locals, 336 N.J. Super. 167 (App. Div. 2001); Borough of East Rutherford and East Rutherford P.B.A. Local 275, P.E.R.C. No. 2009-15, 34 NJPER 289 (¶103 2008), aff'd, 36 NJPER 33 (¶15 App. Div. 2010). Therefore, an employer's selection or change of insurance carrier becomes mandatorily negotiable if the change would affect the level of benefits or administration of the plan. Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 97-104, 23 NJPER 178

3/ See City of Orange Tp., P.E.R.C. No. 2019-37, 45 NJPER 325 (¶86 2019) (once employer exercised discretion to accept employees' health care waivers for 2018 in exchange for an opt-out payment and employees waived coverage with no opportunity to re-enroll, the union was not preempted from seeking the agreed upon waiver payments for that year).

(¶28089 1997); Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984).

An arbitrator may determine whether the parties made an agreement over the level of health benefits and whether the employer violated that agreement, even if the changed benefits were a result of legislative or regulatory changes to the SHBP. East Rutherford, supra (SHBP co-pay increase); City of Elizabeth, P.E.R.C. No. 2010-66, 36 NJPER 65 (¶30 2010) (SHBP change from Traditional Plan to NJ Direct Plan); Rockaway Bd. of Ed., P.E.R.C. No. 2010-9, 35 NJPER 293 (¶102 2009) (change to SEHBP for school districts no longer eligible for SHBP); River Edge Bor., P.E.R.C. No. 2009-49, 35 NJPER 69 (¶27 2009) (SHBP change from Traditional Plan to NJ Direct Plan) City of Bayonne, P.E.R.C. No. 2009-40, 35 NJPER 12 (¶7 2009) (SHBP change from Traditional Plan to NJ Direct Plan); and Rockaway Tp., P.E.R.C. No. 2008-21, 33 NJPER 257 (¶96 2007), dism. as moot, 35 NJPER 183 (¶69 App. Div. 2009), on remand, P.E.R.C. No. 2009-19, 34 NJPER 300 (¶109 2008) (SHBP co-pay increase). An arbitrator cannot order the County to continue a level of benefits through the SHBP that the SHBC has not authorized. River Edge; Elizabeth; Bayonne; Rockaway Tp., P.E.R.C. No. 2008-21. However, no statute or regulation requires that a local employer participate in the SHBP. Local employers can withdraw from the SHBP at any time consistent with their obligations under existing collective

negotiations agreements. New Jersey School Bds. Ass'n v. State Health Benefits Comm'n, 183 N.J. Super. 215, 218, 224 (App. Div. 1981); River Edge; East Rutherford; Rockaway Bd. of Ed.; Bayonne; Rockaway Tp., P.E.R.C. No. 2009-19.

Here, once the County and PBA agreed on a level of health benefits, the County had discretion to choose which health insurance carrier (whether private or the SHBP) to contract with to provide those benefits, so long as the chosen provider offered plans consistent with the negotiated level of benefits. The County was not mandated to join the SHBP, but voluntarily chose to change health insurance carriers and consequently potentially violate the CNA's health benefits provisions. The County concedes that it unilaterally changed carriers for some negotiations units, such as the PBA, that did not consent to the change. Therefore, if the arbitrator determines that the transition to the SHBP also resulted in changes to the level of health benefits that the County agreed to in its CNA with the PBA, the County cannot use the SHBP's uniformity rules as a shield to claim immunity from an arbitrator's remedy. The Commission has consistently held that such remedial concerns about what becomes of the employees' SHBP eligibility, either for the unit or the employer's SHBP participation generally, as a consequence of a hypothetical arbitrator's remedy if it is found

that health benefits have been decreased, cannot preclude arbitration over a negotiable health benefits issue.

In Rockaway Tp., supra, P.E.R.C. No. 2008-21, the employer asserted that it did not have to arbitrate over the increased co-pay from $5 to $10 for office visits that was implemented by the SHBP. The employer also submitted a letter from the Director of the Division of Pensions and Benefits stating that the employer has no legal authority to reimburse any of an employee's out-of-pocket costs and that termination of an employer's participation is the most powerful tool the SHBC has to ensure compliance with the rules and regulations governing the program. 33 NJPER at 258. The Commission declined to decide if the arbitrator could reimburse employees for their expenses in meeting higher co-pays, and declined to restrain arbitration. Id. On remand from the Appellate Division, the Commission supplemented the record with the collective negotiations agreements of all the employer's other negotiations units showing that they were all enrolled in the SHBP, and considered the employer's arguments about the possible effects an arbitration award might have on the health benefits of those other units. Rockaway Tp., supra, P.E.R.C. No. 2009-19, 34 NJPER at 300. As in the present case, the employer asserted that should a grievance arbitrator render an award that requires the employer to select a private insurance carrier, the employer will also be required to withdraw membership from the

SHBP for all of its other negotiations units. Id. at 301. Acknowledging that the Township's other employees participate in the SHBP and that participation by all of a local employer's eligible employees is a prerequisite to enrolling in the SHBP, the Commission reaffirmed its initial decision declining to restrain binding arbitration, reasoning:

> If the arbitrator finds a contractual violation and orders the employer to make employees whole through reimbursement, that may be inconsistent with the employer's obligations as a participant in the SHBP. . . . Perhaps the SHBC will not permit the Township to remain a participant and reimburse employees for a difference in co-pays. Perhaps it will permit the Township to reimburse and remain a participant pending the next round of negotiations when the contract can be conformed to the higher co-pays. Perhaps the Township would rather change providers than incur a reimbursement obligation. Nothing obligates the Township to remain a participant in the SHBP. . . . The contracts of the other collective negotiations units that are now in the record may require the Township to maintain a certain level of benefits, but the other unions cannot require the Township to continue participation in the SHBP.
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> [34 NJPER at 301; emphasis added.]

See also Bayonne, supra, P.E.R.C. No. 2009-40, 35 NJPER at 14 (alleged change in contractual level of health benefits caused by SHBP change was arbitrable: "[I]f the arbitrator finds a contractual violation and orders the employer to make employees whole through reimbursement, that action may be inconsistent with the employer's obligations as a participant in the SHBP.")

In Rockaway Bd. of Ed., supra, P.E.R.C. No. 2010-9, the Commission declined to foreclose arbitrability of alleged health benefits changes just because a remedy might be incompatible with a particular plans's rules, noting that it does not make a difference whether the plan at issue is a private carrier or the SHBP/SEHBP. In that case, the Commission, by order of the Superior Court following arbitration, determined the arbitrability of the remedy of reimbursement for increased medical expenses caused by the employer's enrollment in the new School Employees Health Benefits Program (SEHBP) when the SHBP plan was eliminated for school districts. 35 NJPER at 293-294. The employer argued that the arbitrator did not have the legal authority to order reimbursement for any differences between the SEHBP and their old SHBP plan, submitting a letter from the Chief of the Bureau of Health Benefits stating that the employer cannot remain in the SEHBP and somehow supplement the benefits. Id. at 294-295. The Commission found the grievance legally arbitrable, addressing the employer's remedial arguments as follows:

> We know of no statute or regulation that prohibits an arbitral award directing reimbursement, nor has the Board cited to any. Thus, the award is not unlawful or preempted. Nevertheless, the question of whether the Borough can reimburse employees and remain a participant in the SEHBP is a question for the School Employees Health Benefits Commission ("SEHBC"), whose members are appointed by the Governor pursuant to N.J.S.A. 52:14-17.46.3. Like a private insurance carrier, but subject to any

> statutory restrictions, the SEHBC has the authority to determine the conditions for participation in its plan. . . . The right of the insurance carrier to set the terms for participation in its plan would be no different if the Borough had chosen to purchase its insurance from a private insurance plan rather than the SEHBC. Whether the Borough could reimburse employees for any difference between a contractual level of benefits and the level of benefits under a private plan would be a question for the private plan to answer.
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> [Rockaway Bd. of Ed., 35 NJPER at 294-295.]

In Maplewood Tp., P.E.R.C. No. 2010-88, 36 NJPER 227 (¶80 2010), the Commission denied the employer's motion for summary judgment to dismiss the union's unfair practice charge alleging changes to contractual health benefits caused by the SHBC's revisions to the SHBP. Similar to the County's public policy arguments in the instant case, the employer asserted that a result that would cause it to cease participation in the SHBP would be against public policy because public employers leaving the SHBP would reduce its membership and dilute its bargaining power, leading to higher costs and reduced benefits. 36 NJPER at 228. The Commission held that, while the employer cannot be ordered to continue the SHBP plan that no longer exists, the employer is not statutorily obligated to remain in the SHBP and thus cannot by virtue of its participation in the SHBP "insulate itself from a determination as to whether it breached its alleged

contractual obligation to maintain a certain level of health benefits." Id. at 228-229.[4/]

In East Rutherford, P.E.R.C. No. 2009-15, the Commission held, consistent with Rockaway Tp., P.E.R.C. No. 2009-19, that the union could arbitrate whether the SHBP's increased co-pay levels violated an alleged contractual agreement to maintain a certain level of health benefits. The employer submitted a copy of the same Director of the Division of Pensions and Benefits letter submitted in Rockaway Tp. that stated the employer has no legal authority to reimburse employees for increased out-of-pocket costs from changes in the SHBP. 34 NJPER at 289. The employer argued that arbitration should be restrained until it receives a ruling from the SHBC on whether such reimbursement is authorized or permitted under the SHBP. Id. at 290. In rejecting the employer's arguments, the Commission found that "the question that will be presented to the arbitrator does not interfere with the SHBC's authority" and held:

> To restrain arbitration, we would have to first conclude that the PBA is not entitled to pursue its claim that the Borough was obligated to maintain a contractual level of

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4/ The Commission deferred the charge to arbitration, noting: "Whether the Township was contractually obligated to maintain a level of health benefits other than the level of benefits currently offered by the SHBP is a question of contract interpretation that should most appropriately be placed before a grievance arbitrator. That is why we routinely defer these kinds of questions to binding arbitration and will do so here as well." Id. at 229.

> benefits. Such a holding would be a departure from well-established case law. Purchasing insurance from the SHBP does not insulate an employer from enforcement of an agreement over a level of health benefits. Absent a preemptive statute or regulation not present here, an employer must reconcile its contractual obligations with its choice of health insurance providers.
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> [East Rutherford, 34 NJPER at 290; emphasis added.]

The Appellate Division affirmed the Commission. East Rutherford, 36 NJPER 33 (¶15 App. Div. 2010). The court noted that during the pendency of the appeal, the arbitrator issued an award concluding that the employer violated the CNA's contractual health benefits provisions when it increased employee co-pays from $5 to $10 per visit through its SHBP participation. 36 NJPER at 34. The court found that the employer's argument that the arbitration remedy of reimbursement frustrates the purposes of the State Health Benefits Act could be pursued by refiling its scope petition with the Commission. Ibid. Instead, the employer sought to vacate the arbitrator's award in court. A Law Division judge vacated the award, but the Appellate Division reversed and reinstated the arbitrator's award. Borough of E. Rutherford v. East Rutherford PBA Local 275, 2011 N.J. Super. Unpub. LEXIS 1921 (App. Div. 2011). The Appellate Division addressed various SHBP statutes and regulations concerning uniformity of benefits, but disagreed with the employer's arguments that the award was contrary to law and public policy for violating the uniformity

requirements of the SHBP. 2011 N.J. Super. Unpub. LEXIS 1921, at 13-14. It held:

> We have been offered no controlling statute or precedent that would establish the illegality of the remedy of reimbursement during the term of a CBA in effect at the time of the statutory change, so long as the full amount of the co-pay was remitted in the first instance by the employee enrolled in the SHBP. Therefore, we find no statutory violation or violation of the policy of uniformity in connection with the implementation of N.J.S.A. 52:14-17.29(C).
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> [East Rutherford, 2011 N.J. Super. Unpub. LEXIS 1921, at 15-16.]

The Supreme Court of New Jersey affirmed. Borough of East Rutherford v. East Rutherford PBA Local 275, 213 N.J. 190 (2013). After upholding the arbitrator's award on the merits, the Court addressed the employer's arguments that the arbitration award violated law and public policy, stating:

> These arguments also fail to withstand scrutiny because it cannot be said that the arbitration award clearly violates or undermines implementation of the SHBP. . . . The framework for reviewing a public-sector arbitration award accounts for the interplay between the SHBP and the CBA by requiring a reviewing court to determine whether the arbitration award actually causes direct contradiction with law or public policy. We fail to see that this arbitration award met the demanding standard of a direct conflict between the law and public policy on the one hand and the award's make-whole remedy on the other.
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> [East Rutherford, 213 N.J. at 206-207; internal citations omitted.]

Accordingly, given the Appellate Division's affirmance of the Commission's East Rutherford decision finding the SHBP health benefits changes grievance arbitrable, as well as the Appellate Division's and Supreme Court's decisions finding that the arbitration award that reimbursed unit members for increased costs did not violate SHBP laws or public policies concerning uniformity, we find no basis for restraining arbitration based on hypothetical arbitral remedies.[5/] Furthermore, as in the analogous cases of Rockaway Tp., Bayonne, Rockaway Bd. of Ed., and Maplewood discussed above, the County's assertion that the PBA cannot arbitrate over contractual health benefits levels for

5/ We are aware of a recent unpublished Appellate Division decision involving the County, PBA, and other negotiations units upholding the SHBC's authority to issue a declaratory ruling on a question posed to it by the PBA. Essex Cty. Sheriff's Officers PBA Local 183 v. Dep't of the Treasury, 2019 N.J. Super. Unpub. LEXIS 1368 (App. Div. 2019). The PBA challenged a SHBC ruling that found in unfair practice cases before this Commission, reimbursement funds are impermissible remedies for changes to the level of health benefits by SHBP-participating employers. The Appellate Division noted, "The SHB Commission did not rule that PERC cannot issue an appropriate remedy if an unfair labor practice is found by PERC," and "[t]he questions of remedy must be decided in the first instance by PERC." Id. at 25-26. As that case concerns an SHBC opinion on a potential unfair practice remedy, it is not germane to the present issue regarding arbitrability of alleged contractual health benefits changes in light of SHBP uniformity and public policy concerns, which the Supreme Court addressed in East Rutherford, 213 N.J. 190. Therefore, we need not and decline to opine as to what impact, if any, the Essex Cty. decision concerning the SHBC's ruling would have on any pending or future unfair practice case between the parties.

public policy reasons due to the potential impact on the County's participation in the SHBP and its other units is not persuasive because the County is not legally mandated to choose the SHBP as its health insurance provider, but is legally required to negotiate over the level of health benefits.

We also have a policy of declining to consider before arbitration what remedies may be appropriate or enforceable if an arbitrator were to find a contractual violation. Lodi Bd. of Ed., P.E.R.C. No. 2014-83, 40 NJPER 567 (¶183 2014); Mercer Cty., P.E.R.C. No. 2009-11, 34 NJPER 248 (¶86 2008); Washington Tp. Bd. of Ed., P.E.R.C. No. 2007-14, 32 NJPER 315 (¶131 2006); Atlantic Cty. Sheriff, P.E.R.C. No. 93-68, 19 NJPER 148 (¶24073 1993); State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985); Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981). The County may challenge the legality of a particular remedy through a proceeding to vacate an arbitration award. N.J.S.A. 2A:24-7 and 8. There the County may assert that a particular award is not contractually authorized or that it does not accord with the public interest, welfare, and other pertinent statutory criteria. See Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208 (1979); Burlington Cty. Bd. of Chosen Freeholders and CWA Local 1044, P.E.R.C. No. 97-84, 23 NJPER 122 (¶28058 1997), aff'd, 24 NJPER 200 (¶29092 App. Div. 1998); State of New Jersey, P.E.R.C. No. 91-107, 17 NJPER 310 (¶22137 1991).

ORDER

The request of the County of Essex for a restraint of binding arbitration is granted to the extent that the grievance challenges the County's elimination of opt-out stipends for waiving employer-provided health care coverage, but is denied to the extent the grievance challenges any other alleged reductions in the level of the PBA's health benefits caused by the County's unilateral change to the SHBP.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Jones and Voos voted in favor of this decision. None opposed. Commissioners Bonanni and Papero recused themselves.

ISSUED: February 20, 2020

Trenton, New Jersey