P.E.R.C. NO. 2018-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF MORRISTOWN,

Petitioner,

-and- Docket No. SN-2017-038

MORRISTOWN MUNICIPAL EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Town's request for a restraint of binding arbitration of an Association grievance alleging that the Town violated the collective negotiations agreement (CNA) when it denied a retired unit member's request that the Town pay 50% of the premium cost it saved due to the member's waiver of health insurance coverage. The Commission holds that N.J.S.A. 40A:10-17.1 preempts arbitration to the extent the CNA provides an opt-out payment in excess of the statutory maximum, 25% of the employer's savings, or $5,000, whichever is less.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Mark J. Blunda, of counsel; Timothy D. Cedrone, on the brief)

For the Respondent, Bell, Shivas & Fasolo, P.C., attorneys (Joseph J. Bell, on the brief; Brian C. Laskiewicz, on the brief; Michael K. Arroyo, on the brief)

DECISION

On March 29, 2017, the Town of Morristown (Town) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Morristown Municipal Employees Association (MEA). The grievance asserts that the Town violated Article Eight, Section B of the parties' collective negotiations agreement (CNA) when it denied a retired MEA member's request, who waived health insurance coverage, to pay the member 50% of the premium saved by the Town on account of the waiver.

The Town filed briefs, a certification of its Business Administrator and exhibits. The MEA filed a brief and certifications of its President and the retired employee/member. These facts appear.

The Town and MEA are parties to a CNA in effect from January 1, 2015 through December 31, 2017. The grievance procedure ends in binding arbitration. Article Eight, Section B of the CNA entitled "Employment Benefits," provides:

> In the event that any employee covered by this agreement is covered by a policy of health insurance purchased individually or offered to such employee through any other source whatsoever, including but not limited to being covered under the plan of a spouse, parent, or other, such employee may elect to forego coverage under the health plan provided above. In the event of such election by an employee, such an employee shall be entitled to receive a sum equivalent to 50% the amount of premium saved by the Town on account of such election. One half of such amount shall be paid to the employee on June 1, the balance on December 1 of each year for which such election is effective.

On March 8, 2016, the MEA filed the underlying request for grievance arbitration following the Town's denial of the member's request to pay the 50% of the premium saved by the Town based on the CNA language in Article Eight, Section B for 2014, 2015 and 2016. The Town had paid the member 25% of the premium saved for each of the three years.

The Town argues that this matter is preempted by statute because under N.J.S.A. 40A:10-17.1, payments for waivers of

health benefits are at the sole discretion of the Town (local unit) and, in any event, payments cannot exceed the lesser of twenty-five percent (25%) of the amount saved by the local unit as a result of the waiver, or $5,000.

N.J.S.A. 40A:10-17.1 provides in relevant part (emphasis supplied):

> Notwithstanding the provisions of any other law to the contrary, a county, municipality or any contracting unit ... which enters into a contract providing group health care benefits to its employees pursuant to N.J.S.40A:10-16 et seq., may allow any employee who is eligible for other health care coverage to waive coverage under the ... plan .... In consideration of filing such a waiver, a county, municipality or contracting unit may pay to the employee annually an amount, to be established in the sole discretion of the county, municipality or contracting unit, which shall not exceed 50% of the amount saved by the county, municipality or contracting unit because of the employee's waiver of coverage, and, for a waiver filed on or after [May 21, 2010], which shall not exceed 25%, or $ 5,000, whichever is less, of the amount saved by the county, municipality or contracting unit because of the employee's waiver of coverage.... The decision of a county, municipality or contracting unit 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.

The MEA argues in relevant part that the parties have a valid CNA that provides for the 50% payment and arbitration of the issue; that there was no negotiation or "collective bargaining process," as set forth in the statute, between the

parties regarding Article Eight, Section B as the Town unilaterally included the provision in the CNA to reflect its longstanding policy; and that to allow the Town "to dishonor the agreement will violate public policy and disregard the most basic tenants of fundamental fairness that collective bargaining in this is meant to protect and foster. The Town should not be allowed to avoid a valid contractual obligation under the guise of preemption."

The Town counters that the MEA members were given notice of the change that would be effective January 1, 2014, in a memo to all employees dated December 17, 2013, and that the Town attempted to revise the language of the provision in the latest negotiations for the current CNA, but the MEA rejected the proposal.

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. 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.

Negotiation is preempted "only if the [statute or] regulation fixes a term and condition of employment 'expressly, specifically and comprehensively.'" Bethlehem Twp. Bd. of Ed., 91 N.J. 38, 44 (1982)(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. 393, 403-404 (1982); see also, State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

In Hillsborough Bd. of Ed., P.E.R.C. No. 2005-54, 31 NJPER 99 (¶43 2005), we noted that under N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a[1/], decisions of municipalities and counties to permit waivers and the amount of consideration are not negotiable.

Accordingly, to the extent that the Town and the MEA's CNA provides an opt-out payment in excess of the statutory maximum (the lower of 25% of the employer's premium cost or $5,000), it is unenforceable and not arbitrable. See also Barnegat Tp., P.E.R.C. No. 2017-74, 44 NJPER 33 (¶10), 2017 NJ PERC LEXIS 46 and State of New Jersey, P.E.R.C. No. 2014-78, 40 NJPER 547 (¶177 2014).

ORDER

The request of the Town of Morristown for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Bonanni recused himself. Commissioner Eskilson was not present.

ISSUED: August 17, 2017

Trenton, New Jersey

1/ N.J.S.A. 52:14-17.31a contains the same restrictions as N.J.S.A. 40A:10-17.1 but applies to coverage provided through the New Jersey State Health Benefits Plan.