

P.E.R.C. NO. 2019-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF GLOUCESTER,

Petitioner,

-and-

Docket No. SN-2018-039

FOP LODGE 206 (PATROL UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contractual provision in an expired collective negotiations agreement between the Township of Gloucester and the FOP Lodge 206 (Patrol Unit). The Commission finds that N.J.S.A. 40A:10-21.1 preempts negotiations over retiree health benefits contribution levels in the succeeding years of a multi-year CNA in which the parties reach the fourth tier level of contributions in the first year except for retirees who are exempt from Chapter 78 contributions under N.J.S.A. 40A:10-21.1b(3).

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, Archer & Greiner, P.C., attorneys
(David A. Rapuano, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel and on the brief; Hop T.
Wechsler, on the brief)

DECISION

On March 27, 2018, the Township of Gloucester (Township) petitioned for a scope of negotiations determination. The Township seeks a determination that a retiree health benefits provision in the most recent collective negotiations agreement between it and the FOP Lodge 206 (FOP) cannot be maintained in the parties' successor collective negotiations agreement (CNA) because it is preempted by statute. Specifically, the Township asserts that negotiations over retiree health benefits contribution levels are preempted by P.L. 2011, c. 78 (Chapter 78) in a multi-year collective negotiations agreement (CNA) which

includes the fourth tier level of Chapter 78 contributions in the CNA's first year.

The Township submitted briefs, exhibits, and the certification of Carla Geppi, the Township's Human Resources Manager. The FOP submitted a brief, exhibits, and the certification of Scott Obermeier, FOP Vice President.

The FOP represents rank-and-file patrol officers employed by the Township. The Township and FOP are parties to a CNA effective January 1, 2014 through December 31, 2016. The 2014-2016 CNA contained the following language in Appendix A:

Active bargaining unit members shall contribute towards health insurance premium share pursuant to Chapter 78, P.L. 2011 regulations.

Retired officers shall contribute 1.5% of pension, meaning that their contribution shall be based on 1.5% of the monthly retirement allowance (exclusive of COLAs).

The above health care contributions shall not apply to those employees who have 25 years of service and retire before January 1, 2011. The above health care contributions shall apply to all active employees and to employees who have 25 years of service who retire on or after January 1, 2011.

The retiree contribution levels set forth in the 2014-2016 CNA were superseded, where applicable, by Chapter 78 requirements. The first three out of four years of the Chapter 78 contribution levels were phased in during the 2014-2016 CNA. This left the

fourth tier level of contributions to be implemented in 2017, the first year of the successor CNA.

The parties began negotiating for a successor CNA on October 17, 2016. The parties exchanged various written proposals during contract negotiations. Geppi certifies that the Township would not agree to a contract reducing Chapter 78 obligations after the first year, the year in which the fourth tier level of contributions were made, of a three-year CNA. The FOP's attorney objected to draft language that would continue retiree Chapter 78 contributions after the first year of the successor CNA. The affected retirees subject to Chapter 78 contributions made the fourth tier level of contributions in 2017.^{1/}

The Township asserts that Chapter 78 and N.J.S.A. 40A:10-21.2 require that after the fourth tier level of contributions are reached in the first year of the successor CNA, those levels must be maintained for the remainder of the CNA and may not be re-negotiated until negotiations for the following contract after the one in which full Chapter 78 implementation has been reached. The Township argues that the Commission has already decided this issue in Ridgefield Park Bd. of Ed., P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017), app. pending, and Clementon Bd. of Ed.,

^{1/} N.J.S.A. 40A:10-21.1b(3) exempts certain retirees based on years of creditable service on the effective date of Chapter 78.

P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016). The FOP responds that the 1.5% retiree health contributions are not preempted by Chapter 78 and N.J.S.A. 40A:10-21.2 after the first year of a multi-year CNA. The FOP suggests that the Ridgefield Park and Clementon decisions were incorrect, arguing that after the full tier four Chapter 78 contribution level is met, the parties may negotiate for lower contribution levels for the remaining years of the CNA.^{2/}

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:

^{2/} The FOP also asserts that on June 22, 2017, the parties agreed to a draft MOA, ratified by the FOP, for 2017-2019 that included the 1.5% retiree health contribution provision from the 2014-2016 CNA. It asserts that the Township later forwarded draft contracts that for the first time set retiree health contribution levels based on Chapter 78. The FOP's allegation that the parties agreed to a successor CNA that the Township refuses to honor is the subject of an unfair practice charge, Docket No. CO-2018-243. The instant matter addresses the negotiability of retiree health care contribution levels in the successor CNA, and it may proceed independent of the unfair practice proceeding.

[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.

Here, the Township asserts that the disputed contract language is not negotiable under the second prong of the Local 195 test based on statutory preemption. Parties may not agree to contravene specific statutes or regulations setting particular terms and conditions of public employment. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, negotiation is preempted only if the statute fixes the term "expressly, specifically, and comprehensively." Council of New Jersey State College Locals v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982).

N.J.S.A. 40A:10-21.2 provides:

A public employer and employees who are in negotiations for the next collective negotiation 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. The public employers and public employees shall remain bound by the provisions of sections 39, 42, and 44 of P.L.2011, c.78 (C.52:14-17.28c, C.40A:10-21.1, and C.40A:5A-11.1), notwithstanding the expiration of those sections, until the full amount of the contribution required by section 39 has been implemented in accordance with the schedule set forth in section 42.

Employees subject to any collective negotiations agreement in effect on the effective date of P.L.2011, c.78, that has an expiration date on or after the expiration of sections 39 through 44, inclusive, of P.L.2011, c.78, shall be subject, upon expiration of that collective negotiations agreement, to sections 39, 42, and 44 until the health care contribution schedule set forth in section 42 is fully implemented.

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.

A public employee whose amount of contribution in retirement was determined in accordance with section 42 or 44 shall be required to contribute in retirement the amount so determined pursuant to section 42 or 44 notwithstanding that section 42 or 44 has expired, with the retirement allowance, and any future cost of living adjustment thereto, used to identify the percentage of the cost of coverage.

[N.J.S.A. 40A:10-21.2; emphasis added.]

In Clementon, P.E.R.C. No. 2016-10, supra, and Ridgefield Park, P.E.R.C. No. 2018-14, supra, the Commission considered the preemptive effect of the analogous Chapter 78 statute, N.J.S.A. 18A:16-17.2, that is applicable to school employees. Just like the instant case, Clementon and Ridgefield Park involved disputes over whether parties could negotiate to reduce health care contributions in the succeeding years of a CNA in which the fourth tier level of contributions were met in the first year of a multi-year CNA. The Clementon decision relied on the following statutory language to find that a reduction from tier four levels within the same CNA was preempted:

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]

Applying that language to the disputed health contributions language, the Commission held:

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.

[*Clementon*, 42 NJPER at 118-119; emphasis added.]

In Ridgefield Park, the Commission applied Clementon to again hold that Chapter 78 preempts negotiations over contribution levels:

After considering the arguments of the parties and the provisions of Chapter 78 pertaining to employee health care contributions, we conclude that our analysis as set forth in Clementon is correct and applies to this dispute. The parties' 2014-2018 CNA is not the "next collective negotiations agreement after . . . full

implementation of the contribution levels" within the meaning of N.J.S.A. 18A:16-17.2. As the tier four contribution level was reached in the first year of the parties' 2014-2018 CNA, the "next collective negotiations" agreement within the meaning of that statute will be the agreement that succeeds the 2014-2018 CNA. Nothing in Chapter 78 pertaining to employee health care contributions suggests an alternative construction, and any other interpretation fails to give meaning to the specific terms set forth in N.J.S.A. 18A:16-17.2.

[Ridgefield Park, 44 NJPER at 169.]

The statutory language from N.J.S.A. 18A:16-17.2 relied upon by the Commission in Clementon and Ridgefield Park to find that negotiations over contribution levels were preempted by Chapter 78 is identical to the pertinent language of N.J.S.A. 40A:10-21.2, applicable to county and municipal employees, that we underscored above. The first and final paragraphs of N.J.S.A. 40A:10-21.2 mandate municipal retiree health care contributions by reference to the applicable statutory provisions of Chapter 78. We therefore apply the reasoning of Clementon and Ridgefield Park to find that for those retirees to whom the Chapter 78 contributions apply, N.J.S.A. 40A:10-21.2 preempts negotiations in the succeeding years of a multi-year CNA in which the parties reach the fourth tier level of contributions in the first year.

ORDER

Except for retirees who are exempt from the Chapter 78 contributions per N.J.S.A. 40A:10-21.1b(3), negotiations over retiree health contribution levels in a multi-year collective negotiations agreement in which the Chapter 78 fourth tier level of contributions were met in the first year are preempted by N.J.S.A. 40A:10-21.2.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Boudreau and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: August 16, 2018

Trenton, New Jersey