

P.E.R.C. NO. 2019-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2019-019

PBA LOCAL 89,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the City's request for a restraint of binding arbitration of Local 89's grievance contesting the City's failure to make opt-out payments for unit members who had waived employer health care coverage. The Commission finds that once the City exercised its discretion under N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a to accept employees' health care waivers for 2018 in exchange for an annual opt-out payment, those statutes did not preempt arbitration to enforce the City's chosen waiver and payment system for that year.

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, Scarinci Holleneck, attorneys  
(Ramon E. Rivera, of counsel and on the brief)

For the Respondent, Detzky, Hunter & DeFillippo,  
attorneys (David J. DeFillippo, of counsel and on the  
brief)

DECISION

On September 11, 2018, the City of Orange Township (City) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 89 (Local 89). The grievance alleges that the City violated the parties' past practice when it failed to make 2018 "opt-out" payments for those Local 89 members who had waived the City's health care coverage for 2018. On October 5, 2018, the City filed an application for interim relief seeking a temporary restraint of binding grievance arbitration, premised upon the City's contention that N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a

preempt negotiations on the subject of providing opt-out payments for waivers of health care coverage.<sup>1/</sup>

A Commission Designee was appointed to hear the interim relief application. After the parties submitted briefs, exhibits and certifications and argued orally, the Commission Designee issued a decision denying interim relief, except to the extent that N.J.S.A. 40A:10-7.1 and N.J.S.A. 52:14-17.31a preempt an award in excess of the maximum opt-out payments allowed by those statutes. I.R. No. 2019-10, 45 NJPER 169 (¶43 2018).

As detailed in I.R. No. 2019-10, the parties' dispute centers on the City's past practice of providing opt-out payments to Local 89 officers who declined health care coverage under the City's health care plan. The practice was to distribute the opt-out payments in the fall of the year in which coverage was waived. At least six Local 89 members waived the City's health care coverage for calendar year 2018. On July 11, 2018, the City adopted a resolution cancelling the disbursement of the opt-out incentive payment to eligible City municipal employees and elected officials who had waived health care benefits for the 2018 budget year. The City advised Local 89 that employees

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1/ Both statutes authorize local government employers to offer their employees health benefit waiver payments. N.J.S.A. 52:14-17.31a applies to employers who participate in the State Health Benefits Plan (SHBP). N.J.S.A. 40A:10-17.1 governs non-SHBP employers. The record does not reflect whether the City is an SHBP or non-SHBP employer.

affected by the cancellation of payments for 2018 could not resume employer health coverage until January 1, 2019. Local 89 grieved that action and demanded arbitration after the City denied the grievance.

The parties' respective positions <sup>2/</sup> (drawn from the Designees's more detailed discussion in I.R. No. 2019-10, at 3-5), are summarized as follows: The City contends that its July 11, 2018 resolution cancelling opt-out payments "for the 2018 budget year . . . was the City's prerogative; and is expressly exempted [by N.J.S.A. 40A:10-7.1 and N.J.S.A. 52:14-17.31a] from bargaining." Local 89 acknowledges that those laws "preempt negotiations over the compensation payable to employees who waive coverage, but asserts that the City could only discontinue the past practice of opt-out payments on a prospective basis (for 2019 and beyond), and . . . should not be permitted to engage in an act of bad faith by reneging on its commitment to compensate officers who already waived coverage for 2018 and who are not allowed to re-enroll until 2019 while the City continues to enjoy the savings from the 2018 health coverage waivers."

The Designee thoroughly reviewed and applied all the pertinent statutes, administrative and judicial decisions, and we concur with his analysis. I.R. No. 2019-10, at 9-18.

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2/ The parties made no further submissions after the issuance of I.R. No. 2019-10.

Paraphrasing I.R. No. 2019-10, at 12-13, the question now before us is: After the employer exercised its discretion under N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a to accept employees' waivers of health care coverage in 2018 in exchange for an annual opt-out fee, do those statutes ban arbitration over the employer's subsequent refusal to pay the fee in that year?

After reviewing the record, we agree with the Designee's conclusions in I.R. No. 2019-10, at 13-14, that:

1. N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a do not "expressly, specifically, and comprehensively" preempt this issue.
2. N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a preempt negotiations over whether to offer waivers and how much of an opt-out payment to provide as an incentive to waive coverage. However, once an employer has exercised its discretion to institute a waiver and payment system, nothing in the statutes precludes arbitration to enforce the employer's chosen waiver and payment system for a year in which it was in effect, where the employer accepted the employees' waivers prior to any announced changes in the opt-out payment amount.

In short, we agree with the Designee that N.J.S.A. 40A:10-17.1 and N.J.S.A. 52:14-17.31a link the employer's decision to make an opt-out payment to its decision to allow the waiver. Therefore, an arbitrator may consider whether the City's irregular application of its waiver and opt-out system violated the statutes, which are effectively incorporated by reference as

terms of the CNA. I.R. No. 2019-10, at 8-9, West Windsor Twp. v. PERC, 78 N.J. 98, 116 (1978) (finding that disputes concerning the interpretation and application of statutes setting terms and conditions of employment may be subject to binding arbitration so long as the grievance resolution does not contravene statutory mandates).

ORDER

The request of the City of Orange Township for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Boudreau and Jones voted in favor of this decision. None opposed. Commissioner Papero recused himself. Commissioner Voos was not present.

ISSUED: March 20, 2019

Trenton, New Jersey