

P.E.R.C. NO. 2019-31

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF FAIRFIELD,

Petitioner,

-and-

Docket No. SN-2019-011

WEST ESSEX PBA LOCAL 81,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Fairfield for a restraint of binding arbitration of a grievance filed by the West Essex PBA Local 81. The grievance alleged that the Township violated the parties' CNA by making excessive deductions for health benefits contributions. The Commission holds that having reached full implementation of the fourth tier premium share pursuant to P.L. 2011, ch. 78. in the parties' 2015-2017 CNA, the amount of employee health benefit premium contributions for the parties' 2018-2020 CNA was fully negotiable and not preempted, provided that the minimum share was at least 1.5% in accordance with N.J.S.A. 40A:10-21(b).

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, Cleary, Giacobbe, Alfieri &  
Jacobs LLC, attorneys (Adam S. Abramson-Schneider,  
of counsel)

For the Respondent, Loccke, Correia & Bukosky,  
attorneys (Corey M. Sargeant, of counsel)

DECISION

On August 8, 2018, the Township of Fairfield (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the West Essex PBA Local 81 (PBA). The grievance alleges that the Township violated the parties' collective negotiations agreement (CNA) by making excessive deductions for health benefits contributions. The petition was accompanied by an application for interim relief seeking a temporary restraint of binding grievance arbitration.

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 the Township's application, I.R. No. 2019-13, 45 NJPER \_\_\_\_ (¶ \_\_\_\_ 2019).

The parties' dispute involves the amount of health benefit premium contributions payable by employees pursuant to a CNA between the Township and the PBA covering calendar years 2018, 2019, and 2020, a period of time occurring after premium contributions had been made at the top level mandated by P.L. 2011, c. 78. Article 7 of the CNA provides, in pertinent part:

Section A. The Employer shall provide to members and their families the following insurance protection to the members: Additionally, all members shall contribute to health benefits pursuant to State law.

1. The Horizon Blue Cross/Blue Shield Direct Access 8, or equivalent, at no cost to the members of the PBA Local #81.<sup>1/</sup>

As explained in I.R. No. 2019-013 at 3, the parties agree that, as required by P.L. 2011, c. 78, officers represented by the PBA contributed towards health benefits at tier one levels in 2012, tier two in 2013, tier three in 2014, and tier four in 2015.<sup>2/</sup> As the fourth tier contribution level was reached in the

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1/ This language differs from the analogous portions of CNAs between the Township and the representatives of two other units of Township employees, which read:

"Employee contributions towards health care, at Tier 4 Chapter 78, shall be continued during the term of this contract."

2/ N.J.S.A. 52:14-17.28c sets forth the full contribution amounts based on salary range and coverage selected, and N.J.S.A. 40A:10-21.1a provides that 25% of the contribution (continued...)

first year of the parties' 2015-2017 CNA, the PBA continued contributing at the fully implemented fourth tier level through all three years of that CNA. See N.J.S.A. 40A:10-21.2; Ridgefield Park Bd. of Ed., P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017), appeal pending.

The parties also agree that having reached full implementation of the four tier premium share, the amount of the premium share payable by employees for the 2018 - 2020 CNA was subject to collective negotiations provided that the minimum would be 1.5% of base salary as per N.J.S.A. 40A:10-21(b).

At the beginning of the 2018 - 2020 CNA, the Township continued to assess employees in the PBA unit for their share of health insurance premiums at the tier four level. The PBA grieved that action and demanded arbitration after the Township denied the grievance. Paraphrasing the issue as set forth in I.R. No. 2019-13, at 12, the parties' dispute is:

[W]hether in their new (2018 to 2020) CNA, that includes a provision on health benefits contributions, the parties intended that language [as it applies to employee premium contributions] to continue Chapter 78 tier four levels, apply only the 1.5% floor, or utilize some other contribution amount.

The interim relief decision reflects the positions of the parties on issues pertaining to the negotiation of the 2018 -

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2/ (...continued)  
be made in year one, 50% in year two, 75% in year three, and the full contribution in year four.

2020 CNA and the significance of the agreement reached.<sup>3/</sup> I.R. No. 2019-13 at 5-7. The Designee reviewed and applied all the pertinent statutes, administrative and judicial decisions and we concur with his analysis. I.R. No. 2019-13 at 10-12.

After reviewing the record, including the parties' certifications, we agree with the Designee's conclusions that:

1. The amount of employee health benefit premium contributions for the 2018 - 2020 CNA was fully negotiable and not preempted provided the share [as required by N.J.S.A. 40A:10-21(b)] was at least 1.5%.
2. That, as this issue has arisen in a scope of negotiations proceeding, it is the function of an arbitrator, not the Commission, to interpret Article 7, Section A of the 2018 - 2020 CNA to determine the agreed-upon premium share, and to issue an appropriate remedy, if any.<sup>4/5/</sup>

Accordingly, we decline to restrain arbitration.

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3/ The parties did not make any further submissions after I.R. No. 2019-13 was issued.

4/ We deny the PBA's request for an evidentiary hearing as the issues it raises bear on the merits of the grievance and may be presented to and decided by the arbitrator.

5/ We do not consider the contractual merits of the grievance or any contractual defenses the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

ORDER

The request of the Township of Fairfield for a permanent restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: February 28, 2019

Trenton, New Jersey