

P.E.R.C. NO. 2020-53

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PISCATAWAY,

Petitioner,

-and-

Docket No. SN-2020-032

PBA LOCAL 93,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Piscataway for a restraint of binding arbitration of a grievance filed by PBA Local 93 asserting that the Township violated the parties' CNA when it refused to provide retiree health benefits to a retired patrolman and his family. The Commission finds the grievant did not have the requisite years of service, age, or combination thereof to qualify for employer-paid retiree health benefits under N.J.S.A. 40A:10-23. Thus, the Commission holds that arbitration challenging the Township's denial of the grievant's retiree health benefits is statutorily preempted.

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, Rainone Coughlin Minchello, LLC,  
attorneys (Louis N. Rainone, of counsel; Ruben D.  
Perez, on the brief)

For the Respondent, Mets Schiro & McGovern, LLP,  
attorneys (Leonard C. Schiro, of counsel and on the  
brief)

DECISION

On December 19, 2019, the Township of Piscataway (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Piscataway PBA Local No. 93 (PBA). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) when it refused to provide retiree health benefits to a retired patrolman and his family.

The Township filed briefs, exhibits, and the certification of its Business Administrator, Timothy Dacey. The PBA filed a brief, exhibits, and the certification of the grievant. These facts appear.

The PBA represents all police officers below the rank of sergeant employed by the Township. The Township and the PBA are parties to a CNA in effect from January 1, 2011 through December 31, 2016. The grievance procedure ends in binding arbitration.

Article XIX, Section 4, of the CNA provides that: "All health and dental benefits shall be continued in full force and effect for retired employees and their families and Employer agrees to pay for same until the death of the Employee retiree."

The Township's Ordinance No. 96-37 provides in Section 12 that:

The Township shall, pursuant to the provisions of N.J.S.A. 40A:10-23, pay the premiums for health, prescription, and dental insurance for retired Township employees: (a) who have retired after 25 years of service with the Township or (b) who have retired after 25 years of service credited in a State retirement system and who last five years of employment immediately preceding their retirement were with the Township of Piscataway or (c) employees who have retired and reached the age of 62 years or older and have been in the employment of the Township of Piscataway for fifteen years.

The grievant served as a police officer for the Township from January 9, 1996 until his service retirement on April 1, 2018. On February 21, 2018, prior to his service retirement, the grievant was charged with records tampering and a disorderly persons offense and suspended without pay. Based on the grievant's guilty plea to those charges, on May 14, 2019 the Board of Trustees of the Police and Firemen's Retirement System

of New Jersey (PFRSNJ Board) imposed a partial forfeiture of the grievant's service and salary, reducing it from 22 years, two months, to 20 years. When the grievant retired, he did not have 25 years of service, had not reached 62 years of age, and did not retire on a disability pension.

By letter dated June 4, 2019, the grievant informed the Township that he had begun to receive his pension and sought commencement of his retiree health benefits pursuant to the CNA. On June 6, 2019, the Township informed the grievant that because he did not retire with 25 years of service, he was not entitled to retiree health benefits. On July 31, 2019, the PBA filed a request for binding grievance arbitration challenging the denial of retiree health benefits. 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 merits of the grievance or any contractual defenses the employer may have.

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.

The Township asserts that arbitration of the grievance is preempted by N.J.S.A. 40A:10-23. Specifically, it argues that while the statute allows for employer discretion as to whether to provide retiree health benefits, the statute expressly sets minimum qualifications for retiree health benefits and that such qualifications are not negotiable.

The PBA responds that the grievant is entitled to retiree health insurance pursuant to Article XIX, Section 4 of the parties' CNA and that the language of N.J.S.A. 40A:10-23 is permissive because it allows the Township discretion in assuming retiree health insurance coverage.

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 legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

Health benefits for future retirees are mandatorily negotiable so long as the particular benefit at issue is not preempted by statute or regulation. Essex Cty. Sheriff, P.E.R.C. No. 2006-86, 32 NJPER 164 (¶73 2006); Watchung Bor., P.E.R.C. No. 2000-93, 26 NJPER 276 (¶31109 2000); Atlantic Cty., P.E.R.C. No. 95-66, 21 NJPER 127 (¶26079 1995). As for employees who have

already retired, although an employer is not obligated to negotiate over benefits for them, a majority representative may seek to enforce alleged contractual obligations on behalf of retired employees via binding arbitration. Voorhees Tp. and Voorhees Police Officers Ass'n, P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd, 39 NJPER 69 (¶27 2012) (elimination of retiree prescription co-pay benefit was arbitrable); City of Jersey City and Jersey City City PSOA, P.E.R.C. No. 2013-38, 39 NJPER 223 (¶75 2012), aff'd, 41 NJPER 31 (¶7 2014) (changes to retiree health benefit costs were arbitrable); Union City, P.E.R.C. No. 2011-73, 37 NJPER 165 (¶52 2011) (increase in retiree prescription co-pays); and Middletown Tp., P.E.R.C. No. 2006-102, 32 NJPER 244 (¶101 2006) (increase in retiree Medicare costs).

N.J.S.A. 40A:10-23(a) provides, in pertinent part:

The employer may, in its discretion, assume the entire cost or a portion of the cost of such coverage and pay all or a portion of the premiums for employees a. who have retired on a disability pension, or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or c. who have retired and reached age 65 years or older with 25 years or more of service credit in a State of locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be

determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe.

A public employer's discretion per N.J.S.A. 40A:10-23 to pay all, part, or none of retirees' health premiums must be exercised through the negotiations process, but N.J.S.A. 40A:10-23 specifies the minimum conditions under which retirees may be eligible for employer paid health benefits. Essex Cty. Sheriff, P.E.R.C. No. 2006-86, supra; Watchung Bor., P.E.R.C. No. 2000-93, supra; Atlantic Cty., P.E.R.C. No. 95-66, supra. For an employee to qualify for retiree health benefits under N.J.S.A. 40A:10-23, they must have either: retired on a disability pension; reached 25 years of service credit in a State or local retirement system and up to 25 years of service with the employer at the time of retirement; reached 65 years of age and have 25 years of service credit in a State or local retirement system and up to 25 years with the employer at the time of retirement; or reached 62 years of age with at least 15 years of service with the employer. Some of the criteria set forth in N.J.S.A. 40A:10-23(a), like the minimum of 25 years of service credit in a State or locally administered retirement system, are non-negotiable, while the requirement of service of up to 25 years with the employer is mandatorily negotiable.



Middletown Tp. PBA Local 124 v. Township of Middletown, 193 N.J.  
1 (2007); Pemberton Tp., P.E.R.C. No. 2000-5, 25 NJPER 369  
(¶30159 1999).

Applying the preemption test set forth above, the Commission has held that N.J.S.A. 40A:10-23 precludes payment of health insurance premiums for any retiree who does not meet its conditions. Belleville Tp., P.E.R.C. No. 92-74, 18 NJPER 68 (¶23030 1991) (contract clause providing for payment of health benefit premiums for all retirees may not be retained in successor agreement unless modified to meet the requirements of N.J.S.A. 40A:10-23); Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990).

Here, it is undisputed that the grievant did not retire on a disability pension, reach 25 years of employment with the State or a local system upon retirement, or reach the age of 62 (to combine with his more than 15 years of service with the Township) upon retirement. He therefore did not have the requisite years of service, age, or combination thereof to qualify for employer-paid retiree health benefits under N.J.S.A. 40A:10-23.<sup>1/</sup>

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<sup>1/</sup> The grievant's certification stated that he received health insurance through the State Health Benefits Program (SHBP) while employed with the Township. We note that N.J.S.A. 52:14-17.38 is the applicable statute for employers enrolled in the SHBP, but that the relevant provisions concerning eligibility for employer-paid retiree health benefits are analogous to the requirements set forth in N.J.S.A. 40A:10-23. Thus, regardless of whether the Township is  
(continued...)

Accordingly, we find that arbitration of the Township's denial of retiree health benefits for the grievant is specifically preempted by N.J.S.A. 40A:10-23(a).

ORDER

The request of the Township of Piscataway for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Voos voted in favor of this decision. Commissioner Jones opposed. Commissioner Papero recused himself.

ISSUED: April 30, 2020

Trenton, New Jersey

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1/ (...continued)  
enrolled in a private health insurance plan or the SHBP, it was preempted by either N.J.S.A. 40A:10-23 or N.J.S.A. 52:14-17.38 from providing the grievant retiree health benefits based on his age and years of service.