

P.E.R.C. NO. 2020-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LACEY,

Petitioner,

-and-

Docket No. SN-2020-020

TEAMSTERS LOCAL 97,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township's request for a restraint of binding arbitration of the Local 97's grievance alleging violation of the parties' CNA when it continued to assess health care contributions pursuant to Tier Four of Chapter 78 following the expiration of the parties' 2016-2018 CNA and during negotiations for the successor CNA. The Commission finds that N.J.S.A. 40A:10-21.2 statutorily preempts arbitration as its plain, unambiguous language sets Tier Four health care contribution levels, following full implementation of Chapter 78 in the parties' expired CNA, as the status quo during pending negotiations for the parties' successor agreement.

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, Armando Riccio, LLC, attorneys
(Armando V. Riccio, of counsel and on the brief)
For the Respondent, Mets Schiro McGovern, LLP,
attorneys (Kevin P. McGovern, of counsel and on the
brief)

DECISION

On November 6, 2019, the Township of Lacey (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Teamsters Local 97 (Local 97). The grievance alleges that the Township violated the parties' collective negotiations agreement (CNA) when it continued to assess health care contributions pursuant to Tier Four of P.L. 2011, c. 78 (Chapter 78) following the expiration of the parties' 2016-2018 CNA and during negotiations for the successor CNA. The grievance seeks retroactive reimbursement for the difference between the Tier Four contributions and the 1.5% of salary rate set forth in the parties' 2016-2018 CNA.

The Township filed briefs, exhibits and the certification of its Township Administrator, Veronica Laureigh. Local 97 filed a brief and the certification of its Business Agent and Vice President, Patrick Guaschino. These facts appear.

Local 97 represents all blue collar employees, but excluding all police, managerial executives, professional and craft employees and supervisors. The Township and Local 97 were parties to a CNA in effect from January 1, 2016 through December 31, 2018. The parties are currently mediating the successor CNA after Local 97 filed a Notice of Impasse on March 6, 2019. The grievance procedure ends in binding arbitration.

Article XV(J) of the CNA, entitled "Medical Benefits, Prescription and Dental Plan and State Disability Insurance," provides, in pertinent part:

When applicable, the employees will be required to contribute one and a half percent (1.5%) of their salary toward health coverage. All future employees will be required to contribute at a rate of one and a half percent (1.5%) of their salaries toward health care coverage.

Laureigh certifies that during the 2016-2018 CNA, health care coverage contributions at Tier Four of Chapter 78, as codified in N.J.S.A. 40A:10-21.1, commenced in July 2017 and were fully implemented by the expiration of the 2016-2018 CNA. N.J.S.A. 40A:10-21.1 requires municipal employees to contribute a percentage of the cost of health benefits premiums at levels to

be phased in over four years (commonly referred to as the four Chapter 78 "tiers"), with full implementation reached in the fourth year.^{1/} Local 97 members continue to make health care coverage contributions at Tier Four during negotiations for a successor CNA.

Laureigh certifies that at no time during the 2016-2018 CNA did Local 97 claim that it was not required to contribute toward health care benefit premiums at Tier Four until a successor agreement changed that contribution rate. Laureigh certifies that on October 10, 2018, during the initial negotiation sessions for the successor contract to the 2016-2018 CNA, Local 97 first made its proposal to change the level of employee contributions from Tier Four to Tier Two of Chapter 78. Laureigh further certifies that Local 97 pursued its proposed reduction in contributions throughout negotiations. Laureigh certifies that on October 4, 2019, Local 97 first raised the claim that employee health care coverage contributions should be reduced to 1.5% of salary pursuant to the parties' previous CNA.

Guaschino certifies that the Township began deducting health care coverage contributions in accordance with Chapter 78, following its enactment in 2011, rather than the 1.5% contribution rate established in Article XV(J) of the CNA. Tier

^{1/} N.J.S.A. 40A:10-21.1a provides that 25% of the contribution be made in year one, 50% in year two, 75% in year three, and the full contribution in year four.

One contributions commenced in July 2014, increased sequentially to Tier Four in July 2017, and the parties reached full implementation of Chapter 78 by July 2018, prior to the expiration of the 2016-2018 CNA. Guaschino further certifies that following the expiration of the 2016-2018 CNA, Local 97 did not seek enforcement of Article XV(J) since it was Guaschino's understanding that the Township would continue Tier Four contributions during negotiations for a successor CNA.

Guaschino certifies that, following the decision in Ridgefield Park Bd. of Educ. & Ridgefield Park Educ. Ass'n, 459 N.J. Super. 57 (App. Div. 2019), he informed the Township that health care coverage contributions should be reduced from Tier Four to the 1.5% of salary provided by Article XV(J) of the 2016-2018 CNA. On October 9, 2019, Local 97 filed its grievance seeking enforcement of Article XV(J). Laureigh certifies that on October 28, the Township denied Local 97's grievance. By letter dated October 31, Local 97 filed for arbitration with the New Jersey State Board of Mediation. This petition ensued.

In a scope of negotiations determination, the Commission's 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, the Commission does not consider the contractual merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982)

states:

[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.

Negotiations are preempted only when a statute or regulation fixes a term and condition of employment expressly, specifically and comprehensively. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982).

N.J.S.A. 40A:10-21.2 provides that during negotiations for the next CNA to be executed after employees in a unit have

reached the full Chapter 78 fourth tier contribution levels, the parties “shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract.” N.J.S.A. 40A:10-21.2 also provides that: “After full implementation [of Chapter 78 contribution levels], 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.” See Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), dism’d as moot, 43 NJPER 125 (¶38 2016) (Chapter 78 mandates that the Tier Four contribution levels become the status quo for negotiations for the successor CNA); City of Hoboken, P.E.R.C. No. 2019-22, 45 NJPER 213 (¶56 2018) (during negotiations for the successor CNA after full Chapter 78 implementation, the employer complied with N.J.S.A. 40A:10-21.2 by maintaining the percentage of premium contribution levels set by Chapter 78, Tier Four, as the status quo pending completion of negotiations).

The Township argues that, pursuant to N.J.S.A. 40A:10-21.2, after the parties reached full implementation of Chapter 78, the Tier Four contributions became a part of the parties’ 2016-2018 CNA and that term continues until a successor agreement is reached, which is still pending.

Local 97 argues citing Ridgefield Park, 459 N.J. Super. 57, among other authority, that following full implementation of Chapter 78 and the expiration of the 2016-2018 CNA, the health care contribution rate became fully negotiable and should have reverted to the 1.5% of salary provided by Article XV(J). Local 97 asserts that Ridgefield Park allowed a union to enforce through binding arbitration similar contract language setting a 1.5% health care coverage contribution rate, which was carried over from the parties' 2011-2014 CNA to their 2014-2018 CNA. Local 97 emphasizes that the Court enforced the 1.5% term despite the parties in that case having not yet reached full Chapter 78 implementation prior to execution of their 2014-2018 CNA. Local 97 asserts that in the instant matter the parties did reach full implementation, and thus, the parties' previous 1.5% term should be enforceable through binding arbitration.

The dispositive question before us is whether N.J.S.A. 40A:10-21.2 sets the full Chapter 78 contribution level (i.e. Tier Four) as the status quo during negotiations for the parties' successor agreement, therefore statutorily preempting arbitration over the instant grievance. We find that it does, and restrain arbitration accordingly. Hoboken, supra, 45 NJPER at 216 ("We find that the City maintained, and did not increase, Chapter 78 fourth tier employee contribution levels. Those levels became

the status quo following full implementation of Chapter 78 in 2017, the last year of the prior CNA.”)

Local 97's reliance on its cited authority is distinguishable from the instant matter. In Ridgefield Park, the parties had entered into the 2014-2018 CNA, where year one of that CNA completed full implementation of Chapter 78 at Tier Four contribution levels. The 2014-2018 CNA carried over the health care contribution rates of 1.5% of salary from the parties' previous CNA. The employer in that case had indeed reduced the deductions following the one year at Tier Four, and subsequently raised the contribution rate back to Tier Four due to its new understanding of the law following the decision in Clementon Bd. of Ed. and Clementon Ed. Ass'n, 42 NJPER 117 (¶34 2015), dism'd as moot, 43 NJPER 125 (¶38 2016). For equitable reasons, the Appellate Division gave effect to the bargain that was reached by the parties in that case, as evidenced through the plain language of their agreement and their actions in performance of that agreement, i.e. the parties intended to pay Tier Four levels in year one and 1.5% of salary for the remaining term. The Court noted the employer's unilateral efforts to revert to Tier Four and recoup claimed overpayment of health care coverage contributions.

Here, unlike Ridgefield Park, the employer has not implemented a reduction in the contribution rate in accordance

with a new CNA and then raised it again to Tier Four. Here, the parties have not yet reached any agreement on the contribution rate. Local 97 claims that the Township agreed to charge employees 1.5% of salary for health care coverage contributions, rather than Tier Four contributions, because the last agreed upon health care coverage contribution rate was 1.5% of salary under the 2016-2018 CNA. Local 97 suggests that since the Township did not change that term when health care coverage contributions became fully negotiable, then the 1.5% rate was the current term for pending negotiations. We find no support in the record for this claim. In fact, the record supports that the Township intended to deduct Tier Four contributions following the expiration of the 2016-2018 CNA through the pendency of negotiations and Local 97 responded to that proposal accordingly. Moreover, the plain language of N.J.S.A. 40A:10-21.2 sets Tier Four as the current health care coverage contribution rate pending negotiations; in essence, the status quo ante.

Similarly, Fairfield Tp., I.R. No. 2019-13, 45 NJPER 252 (¶68 2019) (accord Fairfield Tp., P.E.R.C. No. 2019-31, 45 NJPER 309 (¶80 2019)) is readily distinguishable. In Fairfield Tp., the parties reached agreement on a 2018-2020 CNA, the successor agreement to the CNA in which Tier Four was fully implemented. That CNA included the following language, which was carried over from the parties' previous CNAs: "Additionally, all members shall

contribute to health benefits pursuant to State law.” The Commission did not restrain arbitration, concluding that the above provision, whether or not the parties intended “pursuant to State law” to continue Chapter 78 Tier Four levels or to apply only the 1.5% floor or utilize some other contribution amount, was a matter of contractual interpretation for an arbitrator to decide.

Here, unlike Fairfield, the parties have not reached a successor CNA following full implementation of Chapter 78 in their previous CNA. As the Commission Designee stated in Fairfield, I.R. No. 2019-13, aptly interpreting N.J.S.A. 40A:10-21.2, “if the parties had not agreed to a successor CNA, then Chapter 78 would have required that the tier four contribution levels continue and arbitration over contribution levels would be preempted.” Such is exactly the case presented in the instant matter. The parties have not agreed to a successor CNA, and thus, arbitration over contribution levels is preempted.

The plain, unambiguous language of N.J.S.A. 40A:10-21.2 made the Tier Four contribution levels following full implementation of Chapter 78 the starting point for the pending negotiations absent any agreement to the contrary. Health care coverage contributions are negotiable in the successor CNA, but until that contract is reached, arbitration over the status quo ante is preempted. Accordingly, we restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: March 26, 2020

Trenton, New Jersey