

P.E.R.C. NO. 2020-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LACEY,

Petitioner,

-and-

Docket No. SN-2020-043

CWA LOCAL 1088,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township's request for a restraint of binding arbitration of the CWA's grievance alleging 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 its full implementation, commencing on July 1, 2016 through the expiration of the parties' 2016-2018 CNA and during current negotiations for the successor CNA. The Commission found that N.J.S.A. 40A:10-21.2 established Tier Four, once implemented in July 2016, as the healthcare contribution rate for the remainder of the 2016-2018 CNA and the starting point for the pending negotiations for a successor CNA. The Commission concluded that health care coverage contributions did not become negotiable until negotiations for the next CNA, and thus, until a successor contract is reached, arbitration over the healthcare contribution rate 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, Armando Riccio, LLC, attorneys
(Armando V. Riccio, of counsel and on the brief)

For the Respondent, Weissman & Mintz, LLC, attorneys
(Ira W. Mintz, of counsel and on the brief)

DECISION

On February 21, 2020, the Township of Lacey (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by CWA Local 1088 (CWA). 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 its full implementation, commencing on July 1, 2016 through the expiration of the parties' 2016-2018 CNA (December 31, 2018) and during current negotiations for the successor CNA. The grievance seeks a reduction from Tier Four to 1.5% of members' salary as the health care benefit contribution rate and reimbursement retroactive to July 1, 2017.

The Township filed briefs, exhibits and the certification of its Township Administrator, Veronica Laureigh. The CWA filed briefs.^{1/} These facts appear.

The CWA represents all full-time and part-time "white collar employees" working twenty or more hours per week in the classifications set forth in the CNA. The Township and the CWA were parties to a CNA in effect from January 1, 2016 through December 31, 2018. The parties are currently in mediation for the successor CNA after the Township filed a Notice of Impasse on December 6, 2019. The grievance procedure ends in binding arbitration.

Article VII(H), entitled "Insurance", provides, "Employees covered under this agreement are required to pay 1.5% of their salary as their health benefits contribution pursuant to Chapter 2, of P.L. 2010 legislation." 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.^{2/}

^{1/} The CWA did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certification(s) based upon personal knowledge.

^{2/} 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.

Laureigh certifies that on or about April 14, 2016, the parties finalized the 2016-2018 CNA. At that time, CWA bargaining unit members were contributing toward healthcare premiums at Tier Three of Chapter 78. CWA bargaining unit members began paying Tier Four in July 2016 and continue paying to the present, including during the current negotiations for a successor CNA.

Laureigh also certifies that at no time during the administration of the 2016-2018 Agreement had the CWA claimed that bargaining unit members did not have to pay the Tier Four rate. Laureigh further certifies that the CWA acted consistent with the parties' understanding that the Tier Four rate applied from July 2016 until a negotiated change, if any, in a successor agreement.

On October 18, 2018, the CWA filed a grievance referencing CNA Article VII(H) and citing Ridgefield Park Bd. of Ed. v. Ridgefield Park Educ. Ass'n, 459 N.J. Super. 57 (App. Div. 2019)^{3/}, as the basis for lowering the healthcare benefit contribution rate from Tier Four to 1.5% of members' salary. A grievance hearing was held on October 22, 2019 where the grievance was denied. Laureigh memorialized the denial of the grievance via email dated October 28, 2019, stating, among other

^{3/} The New Jersey Supreme Court has granted certiorari of this appeal and a decision is currently pending.

things, that neither party has ever acted in any manner supporting the CWA's position that the health care benefit contribution rate would revert to 1.5% of members' salary after one year of Tier Four contributions. Laureigh further certifies that until the pending grievance, the CWA has never claimed, neither during contract negotiations for the 2016-2018 CNA nor during the current negotiations for the successor CNA, that 1.5% of members' salary was the appropriate health care benefit contribution rate. 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 Tier Four contributions levels, the parties "shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract." Thus, once Tier Four is reached in the CNA, Tier Four is the health care benefit contribution rate until negotiations for the next CNA, when that rate becomes negotiable. Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed 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).

N.J.S.A. 40A:10-21.2 also provides that: "After full implementation [of Chapter 78 contribution levels], those [Tier Four] 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 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).

This matter presents nearly indistinguishable facts, issues, and arguments as those the Commission addressed in Tr. of Lacey, P.E.R.C. NO. 2020-47, 46 NJPER 447 (¶101 2020) (Lacey I). In Lacey I, the Commission held that N.J.S.A. 40A:10-21.2 statutorily preempted arbitration of the grievance, and we hold likewise here. The Commission, in Lacey I, found that N.J.S.A. 40A:10-21.2 set 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.

A factual difference between Lacey I and this matter is that in Lacey I the statutorily required year at Tier Four (e.g. 2017-2018) coincided with the expiration of the 2016-2018 CNA, and thereafter, Tier Four continued to be paid during negotiations for the successor CNA. Here, the statutorily required year (e.g. 2016-2017) at Tier Four was reached in July 2017. Thereafter, Tier Four continued to be paid for the remainder of the 2016-2018 CNA (e.g. July 2017 to December 31, 2018) and to the present, including during the current negotiations for a successor agreement.

Nonetheless, here, based on the express language of N.J.S.A. 40A:10-21.2, Tier Four became the healthcare benefit contribution rate in July 2016, and it remains so until a change is negotiated in the successor CNA. The parties are currently negotiating that successor CNA, but no agreement on healthcare benefit contribution levels or on the CNA itself has yet been reached.

The CWA's relies on Ridgefield Park, supra, however the facts of that case are distinguishable from the facts here. As we discussed in Lacey I, Ridgefield Park was decided by the court on equitable grounds, giving effect to the bargain that was reached by the parties in that case. Here, unlike Ridgefield Park, the employer has not implemented a reduction in the healthcare benefit contribution rate in accordance with a new CNA and then raised it again to Tier Four. Here, the factual record

shows that the CWA paid the Tier Four rate beginning in July 2016 through the expiration of the 2016-2018 CNA and continued to do so without objection or demand for negotiations until the filing of the October 18, 2019 grievance.

The CWA argues that an arbitrator should determine whether the parties agreement in the 2016-2018 CNA was intended to revert back to 1.5% of members' salary as the contribution rate after full implementation of Tier Four for the statutorily required year (i.e. 2016-2017). However, unlike the facts present in Ridgefield Park, the CWA presents no evidence that the parties agreed to have the healthcare contribution rate revert back to 1.5% of members' salary. The sole certification in the record, filed by the Township, certifies that the parties' agreement was that Tier Four would apply during the 2016-2018 CNA and until a successor agreement was reached.

N.J.S.A. 40A:10-21.2 expressly established Tier Four, once implemented in July 2016, as the healthcare contribution rate for the remainder of the 2016-2018 CNA and the status quo for the pending negotiations for a successor CNA. Health care coverage contributions do not become negotiable until negotiations for the next CNA. Thus, until a successor contract is reached, arbitration over the healthcare contribution rate 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 opposed.

ISSUED: June 25, 2020

Trenton, New Jersey