

P.E.R.C. NO. 2021-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Petitioner,

-and-

Docket No. SN-2020-014

PBA LOCAL 76A (SUPERIORS),

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Township of Springfield for a restraint of binding arbitration of a grievance filed by the Springfield Superior Officers Association, PBA Local 76A, alleging that the Township violated the parties' collective negotiations agreement (CNA), past practice and applicable law by requiring two officers to contribute towards health insurance premiums after retirement. The Commission finds the officers were not exempt from the contribution requirements of P.L. 2011, c. 78 (Chapter 78) because neither had 20 or more years of creditable service as of the effective date of Chapter 78, and both retired while the CNA in which the parties reached full implementation of Chapter 78's contribution requirements was still in effect. The subject of retiree health benefit premium contributions was not mandatorily negotiable until the next collective negotiation agreement to be executed after full implementation.

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, Inglesino Webster Wyciskala Taylor, LLC, attorneys (R. Scott Eveland, of counsel; Joao F. Magalhaes, on the brief)

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

DECISION

On September 25, 2019, the Township of Springfield (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Springfield Superior Officers Association, PBA Local 76A (PBA). The grievance alleges that the Township violated Article VI, Article XI, of the parties' collective negotiations agreement (CNA), past practice and applicable law by requiring certain retired or retiring Officers, including J.M. and M.L., to contribute towards health insurance premiums after retirement.

The Township filed briefs, exhibits and the certification of its Chief Financial Officer, Diane Sherry. The PBA filed a

brief, exhibits, and the certifications of J.M. and M.L. These facts appear.

The PBA represents all Sergeants and Lieutenants employed by the Township's police department. The Township and PBA are parties to a CNA in effect from January 1, 2015 through December 31, 2019. The grievance procedure ends in binding arbitration.

Article XI of the parties CNA, entitled "Insurance," provides, "All members shall contribute towards health benefits pursuant to State Law." The same article states that "[t]he current carriers for major medical insurance can be located in the State Health Benefits Program [(SHBP)]." Article XI further provides, in relevant part:

Upon retirement of a member hired before 01/01/2015 in good standing and who has successfully completed eighteen (18) years of continuous service with the Township of Springfield and has twenty-five (25) years of credits in a local or state pension system in New Jersey, or upon retirement on a disability, then the member shall be afforded medical coverage for his and/or her life by the Township paying the cost of the premiums for medical coverage limited to: major medical (including prescription), vision care and dental coverage. The medical coverage shall consist of: vision care, dental care and major medical care (including prescription). Any and all plans are subject to limitations such as deductibles, co-pays, reasonable & customary charges for a specific region. The Township of Springfield's liability to any retiree shall never exceed the premium paid to the carrier for providing the coverage. The Township reserves the right to change insurance carriers and types of insurance coverage at any time for the

retirees, so long as the benefits are equal to or better.

J.M. certifies that he was hired as a Police Officer by the Township on January 11, 2000. On March 14, 2012, he was promoted to the rank of Sergeant. J.M. retired from the Township effective September 1, 2019 with twenty-five (25) years of service credit in the Police and Fire Retirement System (PFRS), and more than eighteen (18) years with the Township. Prior to his retirement, he was advised that he, as well as all other similarly situated SOA members, would have to contribute towards the cost of his health benefits in retirement, pursuant to P.L. 2011, c. 78 (Chapter 78). He was informed that the reason he would have to contribute was because he did not have twenty (20) years of service as of June 28, 2011. He has been contributing towards the cost of his retirement health benefits since September 1, 2019.

M.L. certifies that he was hired as a Police Officer by the Township on October 1, 1996. In May of 2012, he was promoted to the rank of Sergeant. He retired from the Township effective October 1, 2019 with twenty-five (25) years of service credit in the PFRS, and more than eighteen (18) years with the Township. He was informed that he would be required to contribute towards the cost of his retirement health benefits since he retired on October 1, 2019.

J.M. and M.L. both certify that they, as well all other PBA members, began contributing towards the cost of health benefits pursuant to Chapter 78 in 2011 or 2012, and that they reached the maximum contribution level of Chapter 78 (Tier 4) in 2015 or 2016. If so, the parties reached full implementation of Chapter 78 in year one or year two of their four-year CNA in effect from January 1, 2015 through December 31, 2019. The Township provided no certified facts or other evidence to the contrary, nor did it address in its brief the subject of when the parties reached full implementation.

The PBA filed a grievance contending the Township violated Article XI, Section 1 of the CNA by requiring any officer hired prior to January 1, 2015 who had either (1) completed 25 years of PFRS pension service credit and 18 years of actual service; or (2) who retires on a PFRS disability, to contribute towards their insurance premiums in retirement. The Township denied the grievance. On January 25, 2020, the PBA filed a request for submission of a panel of arbitrators. 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 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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.

[Id. at 404-405.]

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. 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 argues that the PBA's grievance arbitration request implicates Chapter 78's requirement that all active public employees and certain public retirees must contribute toward the cost of health care benefit coverage based upon a percentage of the cost of that coverage, i.e., the premiums. The Township argues that the subject matter of the grievance is outside the scope of collective negotiations because, pursuant to Chapter 78 as codified in N.J.S.A. 52:14-17.28c to -17.28d and N.J.S.A. 40A:10-21.1, employees with fewer than 20 years of service as of the effective date (June 28, 2011) of Chapter 78, are not exempt from contributing towards retiree healthcare benefits. Paraphrasing the Township, the PBA may not seek to enforce through binding arbitration any provisions of Article XI which run counter to and are thereby preempted by N.J.S.A. 40A:10-21.1(b), regardless of whether the grievants otherwise possessed the requisite years of service under the terms of Article XI of the CNA<sup>1/</sup> to qualify for a contractual entitlement to "free retiree medical benefits" paid for by the Township.

The PBA argues that negotiations are not preempted because N.J.S.A. 40A:10-21.1 "is not applicable to this unit," in that the Township provides health benefits through the State Health

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<sup>1/</sup> That is, regardless of whether they "successfully completed eighteen (18) years of continuous service with the Township of Springfield and [have] twenty-five (25) years of credits in a local or state pension system in New Jersey." (CNA, Article XI.)



Benefits Program (SHBP), therefore Title 52 of the New Jersey Revised Statutes applies, not Title 40A. Regardless, the PBA argues, upon achieving full implementation as the parties did here, Chapter 78 expressly and unequivocally made health benefit contributions negotiable, pursuant to N.J.S.A. 52:14-17.28e and N.J.S.A. 40A:10-21. The PBA stresses that unit members reached full implementation in 2015 or 2016, prior to each grievant's retirement in 2019, which was at least three years after full implementation.

In light of the facts presented, we do not find the issue of the health care contribution levels of retirees, including J.M. and M.L., who did not have 20 or more years of service as of June 28, 2011 and who retired while the 2015-2019 CNA was still in effect, to be legally arbitrable.

Title 52 and Title 40A each contain identical provisions codifying Chapter 78 and mandating employee contributions toward the cost of healthcare, which state, in pertinent part:

Employees . . . who have 20 or more years of creditable service in one or more State or locally-administered retirement systems on the effective date of P.L.2011, c.78 shall not be subject to the provisions of this subsection.

[N.J.S.A. 52:14-17.28d(b) (3); N.J.S.A. 40A:10-21.1(b) (3).]

N.J.S.A. 40A:10-21.1 also directly incorporates Title 52's Chapter 78 provisions by reference when it states that both

employees and retirees must contribute "toward the cost of health care benefits coverage . . . in an amount that shall be determined in accordance with section 39 of P.L.2011, c.78 (C.52:14-17.28c)." N.J.S.A. 40A:10-21.1(a) and (b)(1).

Moreover, while N.J.S.A. 40A:10-23 authorizes the Township to agree, as it did through Article XI of the parties' CNA, to assume the costs of health coverage for certain retirees, "Chapter 78 limited the ability of local governments to assume as much of the cost of that coverage as before." Matter of New Brunswick Mun. Employees Association, 453 N.J. Super. 408, 418 (App. Div. 2018). As the court in New Brunswick put it:

Accordingly, but for those local government employees having twenty or more years of service on the effective date of Chapter 78 (who are exempted by subsection (b)(3)), subsection (b)(2)(a) [of N.J.S.A. 40A:10-21.1] requires all employees who accrue the necessary service credit and age required by [N.J.S.A. 40A:10-23], on or after the expiration of a CNA in force on the effective date of Chapter 78 . . . to contribute to those costs in accordance with subsection (b)(1) [of N.J.S.A. 40A:10-21.1] by the withholding from their monthly retirement allowance the amount specified by the schedule set forth in N.J.S.A. 52:14-17.28c.

[Id., 453 N.J. Super. at 418]

See also, Hamilton Twp. Superior Officers Ass'n v. Twp. of Hamilton, 2019 N.J. Super. Unpub. LEXIS 2282, at 9 (App. Div. 2019), certif. den. 241 N.J. 77 (2020) (although plaintiff police officer completed twenty years of service prior to expiration of

CNA on June 30, 2013, "N.J.S.A. 40A:10-21.1(b)(3) applies only to public employees who had twenty or more years of creditable service on June 28, 2011"), citing Brick Twp. PBA Local 230 v. Brick Twp., 446 N.J. Super. 61, 70 (App. Div. 2016). The PBA does not dispute that as of June 28, 2011, neither J.M. nor M.L. had 20 or more years of creditable service required to be exempt from Chapter 78's contribution requirements, a prerequisite that applies equally under both Title 40A and Title 52.

The PBA's post-full-implementation negotiability argument also fails because the parties, based upon the grievants' undisputed certifications, reached full implementation of Chapter 78 in year one or two of their four-year contract, which did not expire until December 31, 2019; and the grievants retired prior thereto, respectively on September 1 and October 1, 2019, while that agreement was still in effect. Accordingly, the subject of retiree health benefit premium contributions did not become mandatorily negotiable until the "next collective negotiation agreement to be executed after the employees in that unit have reached full implementation," pursuant to N.J.S.A. 40A:10-21.2 and N.J.S.A. 52:14-17.28e. See also, Ridgefield Park Bd. of Educ. and Ridgefield Park Educ. Association, 24 N.J. 1 (2020), ("when employees reach the Tier 4 contribution level in the first year of a CNA, they must continue to contribute at that level until they negotiate a successor CNA providing for a lower rate

of contribution, and that successor CNA goes into effect")<sup>2/</sup>; Hamilton Twp., supra, at 7 (although plaintiff police officer retired on same day Chapter 78's four-year phase-in period concluded, CNA in effect at that time governed, and required employees and retirees to make contributions mandated under Chapter 78); Gloucester Tp., P.E.R.C. No. 2019-4, 45 NJPER 82 (¶21 2018) (finding N.J.S.A. 40A:10-21.1 preempts negotiations over retiree health benefits contribution levels in the succeeding years of a multi-year CNA in which the parties reach the fourth tier level of contributions in the first year except for retirees who are exempt from Chapter 78 contributions under N.J.S.A. 40A:10-21.1b(3)); cf., City of Plainfield, P.E.R.C. No. 2020-57, 46 NJPER 593 (¶135 2020) (negotiation over retiree health benefit contributions in 2018-2021 CNA not preempted where full implementation of Chapter 78's statutorily mandated terms

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<sup>2/</sup> The PBA relies upon Ridgefield Park Bd. of Educ., 459 N.J. Super. 57 (App. Div. 2019), in which the Appellate Division, construing N.J.S.A. 18A:16-17.2 (which codifies for school employees Chapter 78's restriction on negotiations over contribution levels until the "next collective negotiation agreement" after full implementation) reversed the Commission's decision in P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017). The facts of Ridgefield Park are not only distinguishable from the present case (unlike in Ridgefield Park, here the parties did not negotiate, nor did the Township implement then retract, any reduction in contribution levels to take effect during the life of the same CNA in which they had reached full implementation), but the Appellate Division's legal conclusions were subsequently overturned by the New Jersey Supreme Court, albeit after the PBA submitted its brief in this matter.

occurred during the term of the 2014-2017 CNA, and 2018-2021 CNA was the 'next' agreement, meaning contributions were fully negotiable).

ORDER

The Township of Springfield's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: November 12, 2020

Trenton, New Jersey