

P.E.R.C. NO. 2023-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket Nos. SN-2022-018
SN-2022-019
(Consolidated)

PBA LOCAL 307;
PBA LOCAL 177A,

Respondents.

SYNOPSIS

The Public Employment Relations Commission denies the consolidated requests of the Somerset County Prosecutor's Office for restraints of binding arbitration of grievances respectively filed by PBA Locals 307 and 177A (PBA or Locals), which assert that the County violated its collective negotiations agreements (CNAs) with the Locals by requiring certain retired unit members to contribute toward the cost of their health insurance premiums in retirement, pursuant to P.L. 2011, c.78 (Chapter 78). The Commission finds that the level of retiree health benefits coverage is a mandatorily negotiable subject following expiration of the contract in which a unit reaches full Chapter 78 implementation, as both Locals have done here. For Local 307, the Commission finds that the question of whether the parties intended, following full implementation, to "reintegrate" into their CNA a County Freeholder Resolution granting lifetime health benefits to certain eligible retirees is a question for an arbitrator, not the Commission, to decide. For Local 177A, the Commission finds that the County's assertions that the parties never negotiated lower rates than the full Chapter 78 rates concern the merits of the grievance and are appropriate for the arbitrator. The Commission further finds that an arbitrator is empowered to consider and apply the 1.5% minimum contribution requirement set forth in P.L. 2010, c.2 in resolving this dispute.

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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Respondents.

Appearances:

For the Petitioner, Cleary Giacobbe Alfieri Jacobs, LLC, attorneys (Matthew J. Giacobbe, of counsel; Gregory J. Franklin, on the brief)

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

DECISION

On December 20, 2021, the Somerset County Prosecutor's Office (County) filed scope of negotiations petitions, SN-2022-018 and SN-2022-019, seeking a restraint of binding arbitration of grievances respectively filed by PBA Locals 307 and 177A (PBA or Locals). We consolidate the matters, as both grievances assert that the County violated its collective negotiations agreements (CNAs) with the Locals by requiring certain retired unit members to contribute toward the cost of their health insurance premiums in retirement, pursuant to P.L. 2011, c.78 (Chapter 78).

The County filed briefs, exhibits and the certifications of its counsel, Gregory J. Franklin, and its former Labor Relations and Compensation Manager, Jon Cochran. The PBA filed briefs, exhibits and the certifications of Local 307's president, Detective Michael Grosso, and Local 177A's former president, Sergeant Ruben Crespo. These facts appear.

Facts specific to the Local 307 grievance (SN-2022-018)

Local 307 represents all sworn law enforcement employees employed by the County Prosecutor's Office from the ranks of Detective and Sergeant. Local 307 and the County are parties to a CNA in effect from January 1 through December 31, 2019 (the 2019 CNA). Its terms, including a grievance procedure that culminates in binding arbitration, remain in effect until a successor agreement is executed.

Article 14 of the 2019 CNA, entitled "Health/Dental/Retirement/Life Benefits," provides in pertinent part as follows:

- 14.1. The health benefits program made available shall be the same health benefits program made available to all employees of Somerset County. The level of employee contributions shall be as per P.L. 2010, C.2, P.L. 2011, C.78 and the Somerset County Health Benefits Policy, attached as Appendix C. The level of benefits provided shall not be changed during the term of this contract.
- 12.2. All employees hired on or before December 31, 2015 will be eligible for benefits under Freeholder

Resolution R98-741, attached as
Appendix E.

Appendix C, referenced in the above-quoted Article 14.1 of the 2019 CNA, is entitled "2015 Health Policy" and states, in pertinent part:

Employees receiving medical and/or dental benefits shall continue to contribute to health insurance benefits in accordance with P.L. 2010 c.2 and P.L. 2011 c.78. Employees must pay the greater of either one and a half percent (1.5%) of base salary, the formula cited under Chapter 78 or the employee's rate of contribution under the applicable formula sited [sic] below [formula omitted].

Appendix E, referenced in Article 14.2 of the 2019 CNA, quoted supra, is Resolution R98-741, adopted by the County Board of Chosen Freeholders on December 15, 1998. R98-741 amended the County's policy concerning its assumption of the cost of health benefits coverage to provide, in pertinent part, that the County:

will assume the entire cost of health benefits coverage and to pay the premium for such coverage for employees who have retired after 25 years or more of service with the County of Somerset, State of New Jersey and/or a New Jersey municipality, including coverage for their eligible dependents, if any, under uniform conditions established by the Board . . . and to extend those benefits to the surviving spouses of employees who are eligible for coverage, provided the employee has been continuously employed with the County of Somerset for a minimum period of 15 years immediately preceding the employee's retirement.

Local 307 signed the 2019 CNA on August 12, 2019. The County Prosecutor and the Board of Chosen Freeholders signed it on August 20 and 30, 2019, respectively.

In his certification, submitted with the County's reply brief, Cochran states that while employed by the County from July 31, 2009 through April 12, 2019, he was a member of the County's negotiations committee, and he negotiated CNAs on behalf of the County.^{1/} Cochran further certifies that until his departure, he was responsible for negotiating the 2019 CNA covering Local 307, and that prior to his departure, the parties negotiated and ratified a memorandum of agreement (MOA) "setting forth all the proposed changes" to the 2013-2015 CNA that would be incorporated into the 2019 CNA. Fully executed as of February 12, 2019, the MOA states, in pertinent part:

1. Article 14, Paragraph 14.1 will be replaced with the following: The health benefits program made available shall be the same health benefits program made available to all employees of Somerset County. The level of employee contributions shall be as per P.L. 2010, C.2, P.L. 2011, C.78 and the Somerset County Health Benefits Policy, attached as Appendix C. The level of benefits provided shall not be changed during the term of this contract.

All employees hired on or before December 31, 2015 will be eligible for benefits under

^{1/} Cochran, in his certification, does not state the title he held while in the County's employ. However, a Board resolution in the record (R19010) identifies him as the County's Labor Relations and Compensation Manager.

Freeholder Resolution R98-741, attached as Appendix E.

The MOA also references an "Agreement expiring on December 31, 2018," specifying that its "terms and conditions . . . shall remain unchanged except as modified" by the MOA. However, the record does not contain a copy of that agreement, nor do the parties otherwise discuss or mention it in their briefs and certifications.

Cochran certifies that, pursuant to the MOA, the level of employee health benefit contributions remains unchanged from the 2013-2015 CNA to the 2019 CNA, including the provision that the level of employee contributions shall be as per Chapter 78 and the 2015 Somerset County Health Benefits Policy. Cochran further certifies that, during negotiations, retiree benefits were never discussed; instead, the parties only negotiated extending death and disability benefits and salary increases for another year.^{2/}

Grosso certifies that as president of Local 307, he served on its negotiations committee and was personally involved in all negotiations for the 2019 CNA between Local 307 and the County. Grosso certifies that during negotiations for health benefits, the parties agreed that those employees hired on or before December 31, 2015 would receive health benefits in retirement with no contributions pursuant to Chapter 78, and that those

^{2/} The MOA specifies a 2% salary increase for 2019, but is silent on the issue of death and disability benefits.

hired after December 31, 2015 would not receive health benefits. To that end, Grosso certifies, the parties incorporated R98-741 into the CNA, and included it as Appendix E. Grosso further certifies that following negotiations, it was his understanding that employees would not be subject to Chapter 78 contributions if they were eligible to receive retiree health benefits.

Grosso certifies that Local 307 members' Chapter 78 Tier I contributions commenced in June of 2011, and that their Tier IV contributions were completed as of 2015, during the term of a prior CNA in effect from January 1, 2013 through December 31, 2015 (the 2013-2015 CNA).

The 2013-2015 CNA covering Local 307 contained health benefit language (also at Article 14) identical to that quoted above from Article 14 of the 2019 CNA, including the specification that "All employees hired on or before December 31, 2015 will be eligible for benefits under Freeholder Resolution R98-741."

On August 9, 2019, Local 307 filed a grievance seeking a make-whole remedy on behalf a retired unit member, alleging the County violated the CNA as follows:

Specifically, [R.C.] was denied medical benefits under Article 14.2 and Appendix E of the CBA, which clearly states (including but not limited to):

Article 14.2. "Any employees hired before December 31, 2015 will be eligible for

benefits under Freeholder Resolution R98-741, attached as Appendix E.”

Appendix E: “WHEREAS N.J.S.A. 40A:10-23 permits the County to assume the cost of health benefits coverage and pay premiums for employees who have retired under certain circumstances as permitted under that section, including coverage and premiums for eligible dependents, if any; and . . .”

“WHEREAS, the Somerset County Board of Chosen freeholders [sic] is desirous of amending it’s [sic] policy with regards to the assumption of the cost of health benefits coverage and to pay premiums for certain County employees who have retired after 25 years or more of service with the county, State of New Jersey, and/or municipal service, provided the employee has been employed continuously for a minimum of 15 years of [sic] more with the County of Somerset immediately preceding the employee’s retirement.”

This petition (SN-2022-018) ensued.

Facts specific to the Local 177A grievance (SN-2022-019)

Local 177A, a relatively recently-formed collective negotiations unit, represents County correctional police officers in the ranks of Sergeants, Lieutenants, Captains and the Correctional Police Chief.

The members of Local 177A previously belonged to a “wall-to-wall” unit of rank-and-file and superior officers represented by PBA Local 177. In June and July of 2014, Local 177 and the County executed a CNA with a term from January 1, 2010 through December 31, 2014 (the 2010-2014 CNA). This agreement specified that health benefits coverage would be provided to employees with

the requisite number of years of service and their surviving spouses "in accordance with County Resolution R98-741, . . . attached as Appendix A-4."^{3/} The 2010-2014 CNA further specified that "employees hired on or after January 1, 2014 shall not be eligible for retirement health benefits."

Chapter 78 contributions for Local 177 members commenced during the term of their 2010-2014 CNA, and concluded during the year after it expired, 2015. Specifically, Crespo certifies: Local 177 unit members' Tier I Chapter 78 health benefit contributions were implemented commencing October 1, 2011; Tier II contributions began July 1, 2012; Tier III contributions began July 1, 2013; Tier IV contributions began July 1, 2014; and that Chapter 78 was fully implemented as of July 1, 2015 for Local 77 members.

In a clarification of unit proceeding initiated by the County on April 24, 2015, Local 177 and the County voluntarily agreed to exclude the Chief, Captains and Lieutenants from the unit. Sergeants were removed on September 14, 2017, pursuant to a ruling of the Commission's Acting Director of Representation. D.R. No. 2018-10, 44 NJPER 155 (¶45 2017). Thereafter, the corrections superior officers became members of PBA Local 177A.

^{3/} The pertinent language of R98-741 is quoted supra in the facts specific to the Local 307 grievance.

Local 177A and the County are parties to a CNA in effect from January 1, 2019 through December 31, 2021 (the 2019-2021 CNA). The 2019-2021 CNA, signed by Local 177A on July 14, 2020, by the Somerset County Sheriff on August 7, 2020, and by the Board of Chosen Freeholders on August 31, 2020, is the first CNA covering Local 177A. Its terms, including a grievance procedure that culminates in binding arbitration, remain in effect until a successor agreement is executed.

Article XVII of the 2019-2021 CNA, entitled "Health and Dental Benefits Program," provides in pertinent part:

F. Cost of Health Benefits Plan

The level of Correctional Police Superior Officer contributions required shall be as per the 2019 County Health Benefits Policy, attached as Appendix A-2.

* * *

M. Retirement

. . . If the employee has twenty-five (25) years or more of service with the County, State of New Jersey, and/or local municipal Government Service in New Jersey, the last fifteen (15) of which were with the County, coverage for the employee and his/her surviving spouse shall be in accordance with County Resolution R09-600, which is attached as Appendix A-3. All employees hired on or after January 1, 2014 shall not be eligible for retirement health benefits.

Appendix A-2, referenced in the above-quoted Article XVII(F) of the 2019-2021 CNA covering Local 177A, is entitled "2019 Health Benefits Policy" and states, in pertinent part:

Correctional Police Superior Officers receiving medical and/or dental benefits shall continue to contribute to health insurance benefits in accordance with P.L. 2010 c.2 and P.L. 2011 c.78.

Appendix A-3, referenced in the above-quoted Article XVII(M) of the 2019-2021 CNA, quoted supra, is Resolution R09-600, adopted by the County Board of Chosen Freeholders on July 21, 2009. R09-600 eliminated lifetime health benefits (previously authorized by other County Resolutions) for employees hired on or after August 1, 2009. R09-600 provided, in pertinent part:

[T]he County of Somerset hereby amends all previous resolutions [R83-080, R83-295, R98-741, and R06-196] to provide that the County will not pay, or otherwise be responsible for, nor assume any portion of the cost of health benefits coverage for retirees nor for their dependents nor their surviving spouses, nor their domestic partners for employees hired on or after the effective date of this resolution or August 1, 2009, except that any retiree otherwise eligible for retirement shall have the ability to obtain benefits at their sole cost by paying for the full cost of health benefit cost [sic] otherwise available to the County employees at that time.

Cochran, the County's former negotiator for the Local 307 agreement, certifies that the County and Local 177A began negotiations for a CNA prior to Cochran's April 12, 2019 departure from County employment. In his certification Cochran

does not state that he was directly involved with the Local 177A negotiations. He certifies (without further detail) that at the time of his departure, his understanding was that those negotiations would consist of modifications to the previously-negotiated contract covering PBA Local 177. The County did not otherwise provide a certification based on personal knowledge regarding its negotiations with Local 177A.^{4/} The record also includes an unsigned document entitled "Settlement Summary, PBA 177A - Superior Correctional Police Officers, August 6, 2020." Submitted by the County with its reply brief, the Settlement Summary details, among other things for members of Local 177A who "were previously covered under PBA 177": a salary range, salary increases and an annual stipend; a job-title change to include Correctional Police Officer; and the fact that "[t]his is a three year contract, covering 2019-2021." The Settlement Summary does not address the subject of retiree health benefits.

Crespo certifies that he served as president of PBA 177 from 2008 through 2011, and was a member of that wall-to-wall unit's negotiations committee. Crespo further certifies that he has served as president of Local 177A since its inception, was on its negotiations committee, and was personally involved in all negotiations for the 2019-2021 CNA covering Local 177A. Crespo

^{4/} The only certification submitted with the County's initial brief, that of its counsel, identified attached exhibits.

certifies that because Local 177A did not have a prior contract with the County, all the terms of the 2019-2021 CNA were newly negotiated. Crespo certifies that during negotiations for health benefits, the parties agreed that those employees hired prior to January 1, 2014 would receive health benefits in retirement with no contributions pursuant to Chapter 78; and that those hired after January 1, 2014 would not receive health benefits. To that end, Crespo certifies, the parties incorporated R069-600 into the CNA, and added it as an Appendix. Crespo further certifies that following negotiations it was his understanding that employees would not be subject to Chapter 78 contributions if they were eligible to receive retiree health benefits.

On March 8, 2021, Local 177A filed a grievance seeking a make-whole remedy on behalf of A.D., a retired unit member, alleging the County violated the 2019-2021 CNA as follows:

SUMMARY OF FACTS:

The grievance is in regards to having to pay for health and retirement benefits in violation of the agreement.

CONTRACTUAL VIOLATIONS:

The County has violated, including but not limited to, Article XVII, Health and Dental Benefits Program, as well as any and all other applicable articles and past practice.

This petition (SN-2022-019) ensued.

The County argues that Resolutions R98-741 (incorporated in Local 307's 2019 CNA) and R09-600 (incorporated in Local 177A's 2019-2021 CNA) are preempted because Chapter 78 controls allowable employee contribution levels until full implementation of the law's health benefits contribution scheme; and although those levels became renegotiable after full implementation, they remain in effect until the parties negotiate lower health insurance contribution rates in the next CNA. The County contends that here, the fully implemented Chapter 78 contribution rates were incorporated in subsequent negotiations and remained the status quo; and that neither union renegotiated premium rates following full implementation.

The Locals counter that the County's argument fails because the Locals specifically negotiated retiree health benefits in their current CNAs, and the relevant resolutions were specifically made part of them to ensure that certain eligible retirees received health benefits in retirement at no cost.^{5/} The Locals argue that the County does not explain why the

^{5/} We note that Local 177A's CNA provides that health benefits for eligible retirees "shall be in accordance with County Resolution R09-600, . . . [and that] employees hired on or after January 1, 2014 shall not be eligible for retirement health benefits"; while R09-600 states, "the County will not pay . . . the cost of health benefits coverage for retirees . . . for employees hired on or after . . . August 1, 2009, except that any retiree otherwise eligible for retirement shall have the ability to obtain benefits at their sole cost".

resolutions were included in the CNAs if they had no meaning as a result of Chapter 78's purportedly preemptive effect, and it fails to prove the parties did not negotiate for lower rates.

The Locals argue that the County raises issues of contract interpretation which should properly be decided by an arbitrator.

In reply, the County argues that the Locals claims about renegotiating Chapter 78 rates are unsupported by documentation. The County further argues (for the first time) that Local 307 and the County "could not have intended to reintegrate R98-741 into their new contract," because it is preempted by P.L. 2010, c.2 as codified in N.J.S.A. 52:114-17.28b(d), which requires retirees to contribute a minimum 1.5 percent of their monthly retirement allowance towards health benefits costs.

ANALYSIS

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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). Thus, if we conclude that the grievances are either mandatorily or permissively negotiable, then an arbitrator can determine whether the grievance should be sustained or dismissed. Paterson bars arbitration only if the

agreement alleged is preempted or would substantially limit government's policy-making powers.

"[A]n otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by legislation."

Bethlehem Tp. Bd. of Educ. v. Bethlehem Tp. Educ. Ass'n, 91 N.J.

38, 44 (1982). "However, the mere existence of legislation relating to a given term or condition of employment does not

automatically preclude negotiations." County of Mercer, P.E.R.C.

No. 2015-46, 41 NJPER 339 (¶107 2015). "Negotiation is preempted only if the [statute or] regulation fixes a term and condition of employment 'expressly, specifically and comprehensively.'"

Bethlehem Tp. Bd. of Educ., 91 N.J. at 44 (citing Council of New Jersey State College Locals v. State Board of Higher Ed., 91 N.J.

18, 30 (1982)). "The legislative provision must 'speak in the imperative and leave nothing to the discretion of the public employer.'" Id. (citing Local 195, 88 N.J. at 403-404); see also,

State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978)

(holding that the "adoption of a statute or regulation setting or controlling a particular term or condition of employment will preempt any inconsistent provision of a negotiated agreement governing" the matter).

Health benefits are mandatorily negotiable unless preempted by statute or regulation. State of New Jersey, P.E.R.C. No.

2000-12, 25 NJPER 402, 403 (¶30174 1999); Bor. of Woodcliff Lake,

P.E.R.C. No. 2004-24, 29 NJPER 489 (¶153 2003); West Orange Bd. of Ed. and West Orange Ed. Ass'n, P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd, NJPER Supp.2d 291 (¶232 App. Div. 1993). Chapter 78 required affected public employees and retirees to contribute toward the cost of their health care benefits coverage, paying an increasing share of the premium over a four-year period (Tiers I through IV). N.J.S.A. 40A:10-21.1(a). See also, Rockaway Tp., P.E.R.C. No. 2022-3, 48 NJPER 103 (¶25 2021).

N.J.S.A. 40A:10-21.2 addresses health care contributions after full implementation of Tier IV contribution rates. The statute provides:

A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract.

After full implementation, 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.

[N.J.S.A. 40A:10-21.2.]

The Supreme Court of New Jersey, in Matter of Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020), adopted and affirmed the

Commission's construction, in Ridgefield Park Bd. of Ed., P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017), of Chapter 78 provisions in N.J.S.A. 18A:16-17.2 that are identical to the above-quoted language from N.J.S.A. 40A:10-21.2. Rockaway Tp., supra. The Court in Ridgefield Park held, "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." 244 N.J. at 6. See also, W. Essex PBA Local 81 v. Fairfield Twp., 2021 N.J. Super. Unpub. LEXIS 1209 (App. Div. June 22, 2021) (affirming grievance arbitrator's award finding c.78 Tier IV rates remained in effect where Tier IV was reached in expired CNA, and parties neither agreed to nor implemented modifications to those rates in successor CNA).

In these consolidated matters, the County does not dispute that Chapter 78 rates become negotiable in the next agreement following full implementation. Nor does the County dispute that both PBA Locals reached full Chapter 78 implementation in 2015.

We deny the County's requests for a restraint of binding arbitration of both grievances. We find that both grievances present a contractual dispute about the level of retiree health benefits coverage, a mandatorily negotiable subject following expiration of the contract in which a unit reaches full Chapter

78 implementation. See, e.g., City of Plainfield, P.E.R.C. No. 2020-57, 46 NJPER 593 (¶135 2020) (retiree contribution levels not set through preemption after full Chapter 78 implementation, and arbitrator could decide whether minimum 1.5% contribution applied); Gloucester Tp., P.E.R.C. No. 2019-4, 45 NJPER 82 (¶21 2018).

For Local 307, Chapter 78 was fully implemented in the last year of their 2013-2015 CNA. Local 307 now seeks to enforce through the parties' grievance procedure a disputed retiree health benefits provision from their 2019 CNA, which the parties executed some four years after the expiration of the 2013-2015 CNA in which full implementation occurred.^{6/} Although the retiree health benefits language in the 2019 CNA is virtually unchanged from the 2013-2015 CNA, the question of whether the parties intended to, as the County puts it, "reintegrate" into their 2019 CNA Freeholder Resolution R98-741 (which grants lifetime health benefits paid for by the County to certain eligible retirees) is a question for an arbitrator, not the Commission, to decide.

^{6/} It is unexplained why the record here does not contain intervening agreement(s) covering Local 307 in that four-year period between the expiration of the 2013-2015 CNA and the parties' adoption of their 2019 CNA. But the record does indicate that there was at least one. We do not know its duration or provisions, but it expired on December 31, 2018, according to the MOA that led to the 2019 CNA.

For Local 177A, the retiree benefits provision in the 2010-2014 CNA covering Local 177 is not identical to that in the 2019-2021 CNA covering Local 177A. Specifically, each agreement incorporates a different Freeholder Resolution addressing the subject. We do not, in a scope proceeding, decide the merits of the parties' conflicting claims regarding the meaning, intent or effect of these resolutions as incorporated by the CNAs.

Ridgefield Park, supra. The County's assertions that the parties never negotiated lower rates than the full Chapter 78 rates concern the merits of the grievance and are appropriate for the arbitrator.

As for the County's argument that arbitration of the Local 307 grievance is preempted by the 1.5% minimum contribution requirement set forth in P.L. 2010, c.2, N.J.S.A. 52:114-17.28b(d), we note that "grievances involving the application of controlling statutes or regulations . . . may be subjected to resolution by binding arbitration" as long as the award does not have the effect of establishing a provision of a negotiated agreement inconsistent with the law. Old Bridge Bd. of Education v. Old Bridge Education Assoc., 98 N.J. 523, 527-528 (1985). This is so because statutes setting terms and conditions of employment are generally incorporated into collective negotiations agreements. See, e.g., West Windsor Tp. v. PERC, 78 N.J. 98, 116 (1978) ("...statutes and regulations are effectively

incorporated by reference as terms of any collective agreement covering employees to which they apply"). Thus, an arbitrator is empowered to consider and apply P.L. 2010, c.2 in resolving this dispute. Pt. Pleasant Beach Bor., P.E.R.C. No. 2022-36, 48 NJPER 387 (¶88 2022). See also, City of Plainfield, supra.

Both the County and the Locals cite W. Essex PBA Local 81 v. Fairfield Twp., supra, wherein a court affirmed a grievance arbitrator's award finding Chapter 78 Tier IV rates remained in effect where Tier IV was reached in an expired CNA, and the arbitrator found no evidence that the parties negotiated modifications to those rates. As in W. Essex, here evidence as to what the parties agreed to regarding retiree health benefits in the 2019 CNA covering Local 307 and the 2019-2021 CNA covering Local 177A is appropriate for an arbitrator to consider and resolve.

ORDER

The requests of the Somerset County Prosecutor's Office for restraints of binding arbitration are denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Ford, Papero and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: August 18, 2022

Trenton, New Jersey