

P.E.R.C. NO. 2023-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BERKELEY,

Petitioner,

-and-

Docket No. SN-2022-030

PBA LOCAL 237,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Township's request for restraint of binding arbitration of the PBA's grievances contesting the Township's refusal to allow PBA members to pay for their own voluntary supplemental disability insurance coverage via payroll deduction. The Commission finds that disability insurance benefits and payroll deduction procedures for employee benefits are both mandatorily negotiable. Holding that the Township has not demonstrated how allowing PBA members to pay for their own disability insurance through payroll deduction, regardless of the carrier, would significantly interfere with its exercise of managerial prerogatives, the Commission declines to restrain arbitration.

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.

P.E.R.C. NO. 2023-007

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BERKELEY,

Petitioner,

-and-

Docket No. SN-2022-030

PBA LOCAL 237,

Respondent.

Appearances:

For the Petitioner, Dasti & Associates, P.C., attorneys  
(Christopher J. Dasti, of counsel and on the brief)

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

DECISION

On February 8, 2022, the Township of Berkeley (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the PBA Local 237 (PBA). The grievance asserts that the Township violated the parties' collective negotiations agreement (CNA) by refusing to allow payment via payroll deduction for voluntary supplemental disability insurance coverage from a vendor other than Aflac.

The Township filed briefs, exhibits, and the certification of its Township Administrator, John Camera. The PBA filed a brief, exhibits, and the certification of its President, Don Rowley. These facts appear.

The PBA represents all police officers employed by the Township below the rank of lieutenant. The Township and PBA are parties to a CNA in effect from January 1, 2018 through December 31, 2023. The grievance procedure ends in binding arbitration.

PBA members have access to supplemental disability insurance through Aflac. This supplemental disability insurance is offered as a voluntary benefit that is paid for by unit members. If PBA members choose to purchase Aflac supplementary disability insurance, the Township deducts the cost of the coverage through voluntary payroll deduction.

In 2021, Rowley received information regarding voluntary supplemental disability benefits offered through Washington National Insurance (Washington). On November 8, 2021, the PBA notified Chief of Police Kevin Santucci that it wanted Washington to address its membership regarding supplemental disability insurance. The PBA also asked Chief Santucci if the Township would agree to payment by payroll deduction for unit members who purchased supplemental disability insurance from Washington. Chief Santucci emailed the PBA's request to Administrator Camera. Camera responded, in pertinent part:

If the PBA is interested in a voluntary program which would provide free college and supplemental health coverage, they can certainly hear from a representative of the company. If they decide to move forward, and would like payments deducted from their pay checks, we could do to that as well.

PBA members began signing up for voluntary supplemental disability insurance coverage through Washington. On December 21, 2021, the Township advised Rowley that it would not allow payroll deduction for voluntary supplemental disability insurance provided by Washington. On December 29, 2021, Local 237 filed a grievance contesting the Township's decision. On January 10, 2022, Local 237 filed a request for submission of a panel of arbitrators. 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 contractual merits of the grievance or any contractual defenses the employer may have.

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 a grievance is 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.

The Township asserts that arbitration should be restrained because it has a non-negotiable managerial prerogative to decide the identity and the number of voluntary supplemental disability insurance carriers offered to the PBA for payroll deduction. It argues that because an employer's choice of health insurance carriers is not mandatorily negotiable if the negotiated level of benefits is not changed, the same managerial prerogative should be established for supplementary disability insurance. The Township notes that the level of benefits has not changed because it continues to offer voluntary supplemental disability insurance through Aflac. It asserts that the PBA's dissatisfaction with Aflac as the only supplementary disability insurance offered by the Township is outweighed by the organizational inefficiencies that would result from offering multiple supplementary disability insurance carriers available for payroll deduction. The Township contends that it has a managerial prerogative to only allow payroll deduction for Aflac supplementary disability insurance because of "the increased efficiency that derives from the Township working with its preferred insurance carrier and the relationships it has built as a result." Finally, the Township argues that Township e-mails cannot prove an agreement to allow

payroll deduction for Washington insurance because the CNA does not support such an agreement.

The PBA asserts that the grievance is arbitrable because the issues of voluntary payroll deductions and supplemental disability insurance are negotiable terms and conditions of employment. It argues that it is not asking the Township to change in any way the voluntary Aflac supplemental disability insurance it currently makes available to the PBA. The PBA contends that it is only seeking to allow its unit members to voluntarily sign up for and pay for a supplementary disability plan through Washington, not provided by the Township, and to have its members' payments for that voluntary plan be deducted directly from their paychecks. It asserts that because it is not seeking to change health insurance carriers, the Township's cases concerning a prerogative to change health insurance carriers when benefits are maintained are inapposite. Finally, the PBA argues that even if that case law were relevant, the Commission has held that the identify of an insurance carrier is a permissive subject of negotiations for police and firefighters.

The issue before us is whether the PBA may arbitrate over an alleged agreement to have the Township provide the option of payroll deduction to pay for some PBA members' chosen alternative for voluntary, employee-paid supplementary disability insurance. The Commission has held that procedural issues involving the use

of payroll deduction for employee benefits payments are mandatorily negotiable, unless preempted. See, e.g. Neptune Bd. of Ed., P.E.R.C. No. 90-55, 16 NJPER 30 (¶21015 1989), aff'd, NJPER Supp.2d 248 (¶201 App. Div. 1991), certif. den., 126 N.J. 333 (1991) (date of payroll deductions for voluntary credit union and annuity plan payments was mandatorily negotiable, so employer's unilateral change was an unfair practice); State of New Jersey (Dept. of Personnel), P.E.R.C. No. 92-65, 18 NJPER 50 (¶23021 1991) (in the event of non-negotiable departmental shutdown, the issue of dates and amounts of payroll deductions is a severable negotiable impact issue). The Commission has also held that a disability income insurance plan is mandatorily negotiable. See Watchung Borough Bd. Ed., P.E.R.C. No. 80-110, 6 NJPER 111 (¶11059 1980); Lacey Tp., P.E.R.C. No. 95-19, 20 NJPER 381 (¶25193 1994) ("Temporary disability insurance coverage is mandatorily negotiable."); and Old Bridge Tp., P.E.R.C. No. 98-53, 23 NJPER 622 (¶28301 1997).

Here, the record indicates that some PBA employees have signed up for supplementary disability insurance benefits with Washington. As with the Township-offered Aflac supplemental disability insurance, the Washington supplemental disability insurance is voluntary and is paid for completely by PBA members with no contribution from the Township. The PBA's grievance does not contest the Township's decision to offer Aflac supplementary



disability insurance. The Township can continue to offer and individual PBA members may continue to choose that additional insurance or not. The PBA's grievance seeks only for the option to pay for its chosen alternative for voluntary, employee-paid supplementary disability insurance through payroll deduction.

The Township seeks to analogize this dispute to the issue of whether a public employer has a managerial prerogative to choose health insurance carriers so long as the negotiated level of benefits is not changed. See Newton Bd. of Ed., P.E.R.C. No. 2021-47, 47 NJPER 522 (¶121 2021) and cases cited therein. However, the issue of the choice of health insurance carriers is distinguishable because it concerns the employer's ability to choose how to efficiently provide an agreed upon level of benefits in which it shares the costs. In contrast, the supplemental disability insurance at issue here is a voluntary employee-paid program. Unlike the selection of a health insurance carrier, there is no clear managerial interest implicated by the Township's offering of a particular employee-paid supplementary disability insurance plan (such as the Aflac plan) to PBA employees. We do not find that the Township's claim of "increased efficiency" from working with its "preferred insurance carrier and the relationships it has built as a result" articulates a dominant managerial concern sufficient to overcome

the PBA's ability to negotiate for payroll deduction for a different employee-paid supplementary disability insurance plan.

Accordingly, we find that the Township has not demonstrated how an alleged agreement to allow PBA members to pay for their supplementary disability insurance through payroll deduction, regardless of the carrier, would significantly interfere with the Township's exercise of managerial prerogatives. The issue is therefore mandatorily negotiable and legally arbitrable.

ORDER

The request of the Township of Berkeley for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford was not present.

ISSUED: September 29, 2022

Trenton, New Jersey