

P.E.R.C. NO. 2008-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ROCKAWAY,

Petitioner,

-and-

Docket No. SN-2007-054

FRATERNAL ORDER OF POLICE,
LODGE NO. 31,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Rockaway for a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Lodge No. 31. The grievance alleges that the Township violated the parties' collective negotiations agreement when it implemented co-pay increases established by the State Health Benefits Commission for NJPLUS and HMO office visits and therefore allegedly violated a contractual obligation to provide medical benefits equal to or better than the existing plan. The Commission declines to restrain arbitration on whether there is a change in the negotiated level of benefits. The Commission holds that an arbitrator may determine whether the parties made such an agreement and whether the employer violated the agreement, but an arbitrator cannot order the employer to continue the previous co-pay levels since the SHBC has exercised its authority to set higher levels. The Commission does not decide whether an arbitrator can issue a remedial order requiring the employer to reimburse employees for the higher co-pay expenses since that question is pending in an appeal before the SHBC. The Commission concludes that should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued, the Township may re-file its scope petition.

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, Laufer, Knapp, Torzewski, Dalena & Sposaro, attorneys (Fredric M. Knapp, on the brief)

For the Respondent, Loccke Correia Schlager Limsky & Bukosky, attorneys (Marcia J. Tapia, on the brief)

DECISION

On March 5, 2007, the Township of Rockaway petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Lodge No. 31. The grievance alleges that the Township violated the parties' collective negotiations agreement when it implemented co-pay increases established by the State Health Benefits Commission ("SHBC") for NJPLUS and HMO office visits and therefore allegedly violated a contractual obligation to provide medical benefits equal to or better than the existing plan. We decline to restrain arbitration at this juncture, but will permit the Township to refile its petition

should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued.

The parties have filed briefs and exhibits. The Township has submitted its business administrator's certification. These facts appear.

The FOP represents all police personnel below the rank of lieutenant. The parties' contract is effective from January 1, 2005 through December 31, 2009. The grievance procedure ends in binding arbitration.

Article XVIII of the parties' contract is entitled Hospitalization and Medical Benefits. Sections A and B provide:

- A. The Township shall continue to provide enrollment in the hospital and medical benefits program, the dental expense insurance and the prescription insurance presently in existence; as well as Major Medical and Rider J coverage and enrollment in a prescription eye glass plan and a disability plan.

Prior to entering the Joint Insurance Program, the Township will insure that equivalent or better coverage is available. If such a plan is not available, the Township must negotiate with the FOP the benefits plan to be entered.

Until such time that the coverage described in paragraph A above is available through the Joint Insurance Fund, the Township agrees to continue to provide current coverage.

- B. Union agrees to self-insurance hospitalization, medical benefits and

dental insurance plan supplied through the Morris County Joint Insurance Program when available provided that coverage under the Joint Insurance Program will be equal to or better than coverage currently in existence.

The Township participates in the State Health Benefits Program, N.J.S.A. 52:14-17.25 et seq. ("SHBP"). The Township apparently has not yet entered into the joint insurance program referred to in Article XVIII.

On September 20, 2006, the Township received a letter from an Account Manager, SHBP Division of Horizon Blue Cross Blue Shield of New Jersey. The letter announced an increase in the co-pay for NJPLUS and HMO office visits from \$5 to \$10 effective January 1, 2007; this increase was based on the SHBC's adoption of rate actions and a plan design recommended by an actuarial consultant. The business administrator forwarded the SHBP letter to the FOP's president and other union representatives.

On October 17, 2006, the FOP filed a grievance. The grievance stated:

Upon recent notification from the Township Business Administrator regarding an increase in co-pays for doctor visits from \$5.00 to \$10.00, a review of Article XVII [XVIII], HOSPITALIZATION AND MEDICAL BENEFITS, requires the Township to provide medical benefits equal to or better than the existing plan. In light of this increase in co-pay, the FOP is formally grieving the proposed medical coverage changes and fully expects the Township to abide by the current contract. The requested remedy is

contractual compliance for all affected members as a whole.

The FOP demanded arbitration and this petition ensued.

On July 6, 2007, the Township wrote to the SHBC asking whether any SHBP rules or regulations prohibit the Township from reimbursing employees for all or any portion of the employee co-pay. The Township also asked whether such reimbursement would jeopardize the Township's participation in the SHBP.

On July 19, 2007, the Director of Division of Pensions and Benefits responded. He stated that the Township has no legal authority to reimburse any of an employee's out-of-pocket costs and that termination of an employer's participation is the most powerful tool the SHBC has to ensure compliance with the rules and regulations governing the program. Finally, he stated that the SHBC is the controlling authority for the SHBP and that the matter could be referred to the SHBC's Appeal Coordinator.

On August 23, 2007, the FOP requested that the Director rescind his determination or treat its letter as a formal appeal to the SHBC.

The Township contends that N.J.S.A. 34:13A-18 bars an arbitrator from considering this grievance. We reject that argument. That statute prohibits an interest arbitrator from issuing, with respect to any participating public employer, "any finding, opinion or order regarding any aspects of the rights, duties, obligations in, or associated with the State Health

Benefits Program. . . ." By its terms, the statute applies only to interest arbitration. Borough of Bradley Beach, P.E.R.C. No. 2000-17, 25 NJPER 412 (¶30179 1999).

The level of health benefits is generally negotiable absent a preemptive statute or regulation and a grievance contesting a change in a negotiated level of benefits is generally arbitrable. In re Council of New Jersey State College Locals, 336 N.J. Super. 167 (App. Div. 2001). An arbitrator may determine whether the parties made such an agreement and whether the employer violated such an agreement. We decline to restrain arbitration over these contractual issues and we express no opinion on the answer to them since they are outside our jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

We add that an arbitrator cannot order the employer to continue the previous co-pay levels for NJ PLUS and HMO office visits since the SHBC has exercised its authority to set higher levels. State of New Jersey, P.E.R.C. No. 99-40, 24 NJPER 522 (¶29243 1998). However, we need not decide at this juncture whether, as the FOP argues citing Hudson Cty., P.E.R.C. No. 2000-53, 26 NJPER 71 (¶31026 1999), aff'd 27 NJPER 212 (¶32073 App. Div. 2001), an arbitrator can issue a remedial order requiring the employer to reimburse employees for their expenses in meeting the higher co-pays. The precise question of whether an SHBP participant can reimburse employees for higher co-pays is

presented in an appeal now pending before the SHBC, the agency charged with administering the program and issuing a definitive determination on that question. Should the arbitrator find a contractual violation and a dispute arise over the negotiability of any remedy issued, the Township may re-file its scope petition.

ORDER

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

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: October 25, 2007

Trenton, New Jersey