

P.E.R.C. NO. 99-40

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(OFFICE OF EMPLOYEE RELATIONS),

Petitioner,

-and-

Docket No. SN-98-84

COUNCIL OF NEW JERSEY STATE  
COLLEGE LOCALS, NJSFT, AFT, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the State of New Jersey (Office of Employee Relations) for a restraint of binding arbitration of grievances filed by the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO. The grievances concern alleged reductions in health benefits and refusals to provide information. The Commission restrains arbitration over the decisions of the State Health Benefits Commission to equalize co-pays and delete the \$50 vision hardware benefit. The Commission also restrains arbitration over any challenge to the SHBC's contracts with Blue Cross/Blue Shield. Any appeal from an action of the SHBC must be made to the SHBC or in court.

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, Peter Verniero, Attorney General  
(Mary L. Cupo-Cruz, Senior Deputy Attorney General, on  
the brief)

For the Respondent, Dwyer & Canellis, P.A., attorneys  
(Brian Miller Adams, on the brief)

DECISION

On May 4, 1998, the State of New Jersey (Office of Employee Relations) petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of grievances filed by the Council of New Jersey State College Locals, NJSFT, AFT, AFL-CIO. The grievances concern alleged reductions in health benefits and refusals to provide information.

The parties have filed briefs and exhibits. The State has filed a certification. These facts appear.

The Council represents faculty, librarians and other professional staff at the State colleges. The State and the Council are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 1999. The grievance procedure ends in binding arbitration. Article VII, Section A provides, in part:

The parties agree that it is in the best interests of the academic community that all grievances should be resolved promptly, fairly and equitably. To this end relevant and necessary information, material and documents concerning any grievance shall be provided by the UNION and the STATE upon written request to the other within a reasonable time....

Article XIX, Section E, provides:

The fringe benefits heretofore provided to full-time employees in this negotiating unit, such as the Health Benefits Program, Life Insurance, and the like, shall remain in effect without diminution during the term of this Agreement unless otherwise modified herein.

On April 16, 1996, the Council filed a group grievance alleging a reduction in levels of payment for medical expenses in violation of Article XIX, Section E. The Council also requested that the employer provide documentation the Council deemed necessary to process the grievance.

On December 6, 1996, the Council amended its grievance to allege that the employer failed to implement Article XIX, Section E; failed to monitor payments by Blue Cross/Blue Shield to health care providers to ensure enforcement of Article XIX, Section E; failed to monitor provider and Blue Cross/Blue Shield practices to

ensure that medical coverage previously provided was not diminished or denied; failed to place appropriate and necessary provisions into its contracts with Blue Cross/Blue Shield and providers to ensure implementation of Article XIX, Section E; failed to remedy violations of Article XIX, Section E; and failed to provide information concerning the April 16 grievance in violation of Article VII, Section A.

On April 23, 1997, the Council filed a group grievance concerning health benefits provided by certain HMO plans. The grievance challenges increases in office visit co-pays to \$5 (HIP, PruCare, Amerihealth) and deletion of a \$50 vision hardware benefit (HIP, First Option, PruCare, Amerihealth). The April 16 and 23 grievances have been consolidated for arbitration proceedings.

The employer seeks a restraint of arbitration, asserting that the grievances are not legally arbitrable because the subject matter is preempted by State Health Benefits Program ("SHBP") statutes and regulations. N.J.S.A. 52:14-17.25 et seq. N.J.S.A. 52:14-27 establishes a State Health Benefits Commission ("SHBC") made up of the State Treasurer, the Commissioner of Insurance, and the Commissioner of Personnel. The SHBC is required to:

establish a health benefits program for the employees of the State.... The commission shall establish rules and regulations as may be deemed reasonable and necessary for the administration of this act. [N.J.S.A. 52:14-17.27]

The employer further asserts that the SHBC is authorized to adjust or modify the insurance plans made available to State employees.

It relies on N.J.S.A. 52:14-17.29(b), which provides:

Benefits under the contract or contracts purchased as authorized by this act may be subject to such limitations, exclusions, or waiting periods as the commission finds to be necessary or desirable to avoid inequity, unnecessary utilization, duplication of services or benefits otherwise available, including coverage afforded under the laws of the United States, such as the federal medicare program, or for other reasons.

The employer specifically asserts that the SHBC exercised its regulatory authority when it set uniform co-payment levels for HMOs and when it eliminated a duplicative benefit for vision hardware for certain HMOs and that an arbitrator cannot direct the SHBC to amend contracts with its insurance carriers. As for the demand for information, the employer asserts that the arbitrator directed the union to narrow its request and to file a motion before him if a dispute remained.

The Council asserts that other statutory provisions contemplate and authorize collective negotiations. It relies on N.J.S.A. 52:14-17.28a, which provides:

Notwithstanding the provisions of any other law to the contrary, the commission shall not enter into a contract under the "New Jersey State Health Benefits Program Act," P.L. 1961, c. 49 (C.52:14-17.25 et seq.) for the benefits provided pursuant to the contract in effect on October 1, 1988, including, but not limited to, basic benefits, extended basic benefits, and major medical benefits unless the level of benefits provided under the contract entered into is equal to or exceeds the level of

benefits provided for in the contract in effect on October 1, 1988, or unless the benefits in effect on October 1, 1988 are modified by an authorized collective bargaining agreement made on behalf of the State.

The Council also relies on N.J.S.A. 52:14-17.29(F) which authorizes the SHBC to purchase contracts for drug prescription and other health care benefits as may be required to implement a collective negotiations agreement.

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 grievances 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 level of health benefits is a mandatorily negotiable subject. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant pt. 6 NJPER 338 (¶11169 App. Div. 1980). However, all or part of a generally negotiable subject area may be set by statute or regulation and thereby removed from the scope of negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State Supervisory at 80-82. The existence of authority in an agency to regulate concerning a subject is not preemptive by itself; that authority must actually be exercised. State Supervisory at 80-81.

No statute or regulation specifically sets HMO co-pays or HMO reimbursement for eyeglasses. There are, however, several statutes that authorize the SHBC to enter into contracts with insurance companies to provide health benefits, subject to statutory minimums, and to establish limitations to avoid inequity, unnecessary utilization, duplication of services, or for

other reasons. Those statutes vest authority in the SHBC to equalize co-pays and eliminate the duplicate vision benefit. Thus, these specific actions of the SHBC cannot be challenged through binding arbitration with the employer. Accordingly, we restrain arbitration over the decisions of the SHBC to equalize co-pays and delete the \$50 vision hardware benefit. We also restrain arbitration over any challenge to the SHBC's contracts with Blue Cross/Blue Shield. Any appeal from an action of the SHBC must be made to the SHBC or in court.

ORDER

The request of the State of New Jersey (Office of Employee Relations) for a restraint of binding arbitration over the challenge to the State Health Benefits Commission's contracts with Blue Cross/Blue Shield and the decisions of the State Health Benefits Commission to equalize co-pays and eliminate a duplicate vision benefit is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Ricci and Finn voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioners Klagholz and Wenzler were not present.

DATED: October 26, 1998  
Trenton, New Jersey  
ISSUED: October 27, 1998