

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MANALAPAN,

Petitioner,

-and-

Docket No. SN-98-53

MANALAPAN TOWNSHIP POLICE  
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract provision concerning dental benefits for retirees in an expired agreement between the Township of Manalapan and the Manalapan Township Police Superior Officers Association. The Commission finds that the proposal is not mandatorily negotiable to the extent it requires payment of retiree dental premiums to retirees who do not meet the age and service requires of N.J.S.A. 40A:10-23. However, the Commission finds the SOA's proposal to modify the provision to conform to these requirements to be mandatorily negotiable. The Commission does not have jurisdiction to determine the validity of the Township's overall health benefits system or decide whether the SOA may be treated differently from other employee groups.

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. 98-136

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Appearances:

For the Petitioner, LoMurro, Davison, Eastman & Munoz,  
P.A., attorneys (Robert F. Munoz, on the brief)

For the Respondent, Klausner & Hunter, attorneys  
(Stephen B. Hunter, on the brief)

DECISION

On December 22, 1997, the Township of Manalapan petitioned for a scope of negotiations determination. The Township seeks a determination that a provision of an expired collective negotiations agreement with the Manalapan Township Police Superior Officers Association is preempted by a statute and may not be included in a successor agreement.

The parties have filed briefs, certifications and exhibits. These facts appear.

The Association represents police sergeants, lieutenants and captains. The parties' most recent contract expired on December 31, 1996. The parties have engaged in successor contract negotiations and are now in interest arbitration.

Article XVII of the parties' collective negotiations agreement provides:

Group dental plan presently being provided, or its equivalent, shall remain in effect throughout the duration in terms of this Agreement. Any improvement in the dental plan provided the P.B.A. shall automatically be provided the Superior Officers Association.

The Township agrees that members of the Superior Officers Association, and their families, upon retirement, can continue in the employee's dental plan being granted by the Township at the time of their retirement. All costs for dental benefits at the time of retirement shall be borne by the employer and shall continue thereafter until such time as the employee wishes to withdraw.

The Township does not pay dental premiums for any other group of retirees. While it appears that rank-and-file police officers also have dental coverage, the record does not indicate whether a single group contract covers employees represented by both the SOA and PBA. Nor does it show whether non-police employees receive dental coverage and, if so, whether coverage is provided under the same contract that pertains to the SOA.

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. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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. [87 N.J. at 92-93; citations omitted]

This case involves only the first aspect of the Paterson test: do specific statutes preempt inclusion of the challenged provision in a successor agreement? To preempt negotiations over a mandatorily negotiable subject, a statute must expressly, specifically and comprehensively regulate that term and condition of employment, leaving no discretion for the parties to vary that condition through negotiations. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982); see also Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982).

N.J.S.A. 40A:10-17 authorizes a local employer to enter into insurance contracts to provide medical, dental and other health coverage for its employees. N.J.S.A. 40A:10-22 and

40A:10-23 authorize an employer to continue that coverage after retirement. These laws provide:

N.J.S.A. 40A:10-22

The continuance of coverage after retirement of any employee may be at rates and under the conditions as shall be prescribed in the contract, subject, however, to the conditions set forth in N.J.S.A. 40A:10-23. The contribution required of any employee toward the cost of coverage may be paid by him to his former employer or in such manner as the employer shall direct.

N.J.S.A. 40A:10-23

Retired employees shall be required to pay for the entire cost of coverage for themselves and their dependents at rates which are deemed to be adequate to cover the benefits, as affected by Medicare, of the retired employees and their dependents on the basis of the utilization of services which may be reasonably expected of the older age classification....

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees a. who have retired on a disability pension or b. who have retired after 25 years or more of service credit in a State or locally administered retirement system and a period of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate or c. who have retired and reached the age of 65 years or older with 25 years or more of service credit in a State or locally administered retirement system and a period of service of up to 25 years with the employer at the time of retirement, such period of service to be determined by the employer and set forth in an ordinance or resolution as appropriate, or d. who have retired and reached the age of 62 years or older with at least 15 years of service with the employer, including the premiums on their dependents, if any, under uniform conditions as the governing body of the local unit shall prescribe....

The Township contends that N.J.S.A. 40A:10-23 preempts Article XVII because that article requires the Township to pay the cost of dental coverage for retirees who do not meet the statute's age and service requirements. It also asserts that because the Township does not pay for dental coverage for retirees in other units, Article XVII violates a statutory requirement that an employer who agrees to pay premiums for some retirees must also pay premiums for all other eligible retirees.

The Association counters that Article XVII must be read in pari materia with N.J.S.A. 40A:10-23. It states that it seeks dental benefits only for those SOA retirees who meet the requirements of the statute. In its brief, it proposes to modify the second paragraph of Article XVII to state that members are eligible for the benefits upon retirement "as defined in N.J.S.A. 40A:10-23." With respect to the Township's argument that the provision is not mandatorily negotiable because it violates the uniformity requirement of N.J.S.A. 40A:10-23, the Association asserts that, unlike such cases as Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988), it is not seeking a change in benefits that, pursuant to N.J.S.A. 40A:10-23, would then have to be awarded to other Township employees. Instead, it seeks only to retain an existing benefit.

Applying the preemption test set forth above, we have held that N.J.S.A. 40A:10-23 precludes payment of health insurance premiums for any retiree who does not meet its conditions.

Belleville Tp., P.E.R.C. No. 92-74, 18 NJPER 68 (¶23030 1991); Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990). Therefore, Article XVII is not mandatorily negotiable as written, because it requires the Township to pay the cost of dental coverage for all retirees. However, we find to be mandatorily negotiable the SOA's proposal to modify the article to state that the Township will pay for dental benefits for officers "upon retirement as defined in N.J.S.A. 40A:10-23." See Belleville Tp. (existing contract clause providing payment of health benefit premiums for all retirees may not be retained in successor agreement unless modified to meet the requirements of N.J.S.A. 40A:10-23).

We disagree with the Township that the SOA proposal is not mandatorily negotiable because it seeks a change in benefits which would not apply uniformly to all qualified retirees under N.J.S.A. 40A:10-23. We have considered the uniformity requirement in N.J.S.A. 40A:10-23 in two types of cases.

In the first type of case, represented by Essex Cty. Sheriff, P.E.R.C. No. 97-26, 22 NJPER 362 (¶27190 1996), the employer argued that existing contract provisions requiring payment of retiree health premiums to several groups of employees were not mandatorily negotiable because those benefits were not provided to all negotiations units or to non-unionized employees. We rejected this claim, reasoning that the clauses did not

facially violate the uniformity requirement in N.J.S.A. 40A:10-23. Rather, the employer's concerns turned on the application of the contract provisions and their relationship to other parts of the employer's health benefits system which were not before us and over which we had no jurisdiction. Essex Cty. We observed that an employer seeking a determination as to whether its overall health benefit system met the uniformity requirements of N.J.S.A. 40A:10-23 could seek further relief in Superior Court. See also City of Newark, P.E.R.C. No. 93-57, 19 NJPER 65 (¶24030 1992) (N.J.S.A. 40A:10-23 did not preclude retention of contract clauses providing different medical coverage for different categories of retirees; Newark also held that the Commission lacked jurisdiction to determine the validity of the city's overall health benefits system)<sup>1/</sup>

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<sup>1/</sup> The courts have held that not all distinctions between employee groups violate the uniformity requirement of N.J.S.A. 40A:10-23. See Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140, 148, 151 (1987) (N.J.S.A. 40A:10-23 neither required nor justified terminating benefits to County employees who had been hired by a predecessor autonomous agency which had agreed to pay their retiree health benefits; these employees stood on a different footing than other County employees, for whom the County had not agreed to pay retiree health benefits); Fair Lawn Ret. Police v. Fair Lawn, 299 N.J. Super. 600, 605-606 (App. Div. 1997) (N.J.S.A. 40A:10-23 did not preclude adoption of ordinance which provided for continued payment of 50% of health premiums for retired employees but, in accordance with negotiated agreement, provided that Borough would pay 100% of premiums for current employees when they retired).



In the second type of case discussing the uniformity requirement in N.J.S.A. 40A:10-23, we considered whether proposals to change retiree health benefits could be submitted to interest arbitration. We held that an interest arbitrator may not rule on a proposal that, by virtue of N.J.S.A. 40A:10-23 and the employer's method of providing health insurance, would affect employees over whom the arbitrator had no jurisdiction. For example, in Bernards Tp., we held that an interest arbitrator could not rule on a proposal that the Township pay health care premiums for current employees upon their retirement. We reasoned that the Township provided coverage for all of its employees under a single group contract and that an arbitrator having jurisdiction over only a portion of that group could not award any change in premium payments that, by operation of law, would apply to all employees in the insurance group. See also Verona Tp., P.E.R.C. No. 97-71, 23 NJPER 48 (¶28032 1996) (Township could not submit to interest arbitration proposal to eliminate payment of retiree premiums for unit employees hired after a certain date; since all Township's employees were included in a single insurance group, arbitrator could not rule on proposal that, if awarded, would affect employees over whom he had no jurisdiction); cf. Ocean Tp., P.E.R.C. No. 95-12, 20 NJPER 331 (¶25172 1994), aff'd 21 NJPER 324 (¶26208 App. Div. 1995) (contract provision requiring increased employee contribution toward dependent coverage is mandatorily

negotiable because it expressly did not take effect until employer met uniformity requirements of State Health Benefits Plan).


The circumstances in this case fall within the ambit of Essex Cty. Sheriff and Newark rather than Verona Tp. and Bernards Tp. The SOA proposal, on its face, does not violate the uniformity requirement of N.J.S.A. 40A:10-23. As in Essex Cty. Sheriff and Newark, a determination as to whether the Township's overall health benefits system violates that requirement requires an evaluation of parts of that system over which we have no jurisdiction. In contrast to Verona Tp. and Bernards Tp., an arbitrator is not being asked to award a change in retiree health benefits which would create non-uniformity or affect employees not involved in the interest arbitration. The fact that Article XVII grants benefits to all retirees, not just those who meet the requirements in N.J.S.A. 40A:10-23, does not confer jurisdiction on us to determine the validity of the Township's overall health benefits system or decide whether the SOA may be treated differently from other employee groups. Gauer; Fair Lawn. In this posture, the SOA may propose that Article XVII be modified to conform to the age and service requirements of N.J.S.A. 40A:10-23, thereby reducing the number of employees entitled to the benefit, as it could if there were no uniformity objection to the article. See Belleville Tp.

For these reasons, we find to be mandatorily negotiable the proposal to modify Article XVII to conform to the age and service requirements of N.J.S.A. 40A:10-23.

ORDER

Article XVII is not mandatorily negotiable to the extent it requires payment of retiree dental premiums to retirees who do not meet the age and service requirements of N.J.S.A. 40A:10-23. The SOA proposal to modify Article XVII to conform to these requirements is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Finn and Klagholz were not present.

DATED: April 30, 1998  
Trenton, New Jersey  
ISSUED: April 30, 1998