

P.E.R.C. NO. 2000-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BRADLEY BEACH,

Petitioner,

-and-

Docket No. SN-99-55

BRADLEY BEACH PBA LOCAL NO. 50,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Bradley Beach for a restraint of binding arbitration of a grievance filed by Bradley Beach PBA Local No. 50. The grievance contests the Borough's denial of health benefits coverage to the widow of a retired police officer. The Commission finds that the grievance is legally arbitrable. The Commission concludes that the PBA has a cognizable interest in seeking enforcement of the Borough's alleged contractual agreement to adhere to governing regulations in providing health benefits to eligible retirees and their surviving spouses. The Commission also concludes that the arbitrator is being asked to apply a regulation that, through a Township resolution, is incorporated in the parties' agreement, and would not be required to interpret contract language that itself extended additional benefits to current retirees or their surviving spouses. Finally, the Commission concludes that neither N.J.S.A. 34:13A-18 nor its case law precludes an arbitrator from determining whether a grievant comes within the terms of the 1993 resolution, simply because the construction of that resolution may also require an interpretation of SHBP regulations.

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, Ruderman & Glickman, P.C., attorneys  
(Joel G. Scharff, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys  
(Charles E. Schlager, Jr., on the brief)

DECISION

On February 1, 1999, the Borough of Bradley Beach petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Bradley Beach PBA Local No. 50. The grievance contests the Borough's denial of health benefits coverage to the widow of a retired police officer.

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

The PBA represents all probationary and regular full-time police officers of the Borough. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1997 through December 31, 2000. The grievance procedure ends in binding arbitration.

Since at least 1980, the Borough has been a participant in the State Health Benefits Program (SHBP), N.J.S.A. 52:14-17.25 et seq. In 1980, the Borough passed a resolution adopting the provisions of Chapter 88, Public Laws of 1974, N.J.S.A. 52:14-17.38, which permits local public employers to pay the health benefits premium charges for certain eligible pensioners and their dependents. Section 3 of the Resolution states, in part:

We hereby agree to pay the premium or periodic charges for the benefits provided to all eligible retired employees and their dependents covered under the program, but not including survivors, if such employees retired from a State or locally-administered retirement system effective after the date the employer adopted the State Health Benefits Program on a benefit based on 25 years or more of service credited in such retirement system, excepting the employees who elected deferred retirement, but including the employees who retired on disability pensions based on fewer years of service credited in such retirement system also to reimburse such retired employees for their premium charges under part B of the Federal Program covering the retired employees and their spouses in accordance with the regulations of the State Health Benefits Commission. [Emphasis added]

At the time the resolution was passed, local employers participating in the SHBP were not authorized to pay for health benefits for the surviving spouse of a retired employee: that authority was granted in 1982. See Historical Note following N.J.S.A. 52:14-17.38. On January 12, 1993, the Borough passed a resolution stating that it would pay the premium or periodic charges for surviving spouses of retired employees who had been

eligible for employer-paid health care premiums. That resolution stated, in part:

2. We hereby acknowledge that the rules and regulations of the State Health Benefits Commission established that Chapter 88, P.L. 1974 as amended by Chapter 436, P.L. 1981 does:

- a. Apply to all eligible current and future pensioners of the employer and their dependents.
- b. Extend to surviving spouses.

Article 14, section C of the parties' 1997 through 2000 agreement provides:

The Borough shall provide health benefits to all eligible retirees of the Police Department in accordance with the provisions of Ch. 88, P.L. 1974, by appropriate ordinance and/or resolution. The definition of retired police officer shall be pursuant to the New Jersey Police and Fire Retirement System Law definitions, for employees on staff as of January 1, 1998 and thereafter.

On July 2, 1998, the PBA wrote to the Borough Administrator requesting information concerning health benefits for widows of retired employees. The letter stated:

I am writing this letter on behalf of a family member of one of our deceased Police Officers who retired in good standing with both the Borough and the P.B.A. There is currently a question as to whether or not Mrs. Gigi Strate is entitled to receive Health Benefits from the Borough, at her cost, as a spouse of a retired employee who is deceased.

First, I would like to know if the Borough holds any documentations with respect to Mrs. Strate and the status of her Health benefit coverage upon the death of her husband Gerhard Strate. It is our contention that she should have been given the opportunity to continue her

health benefit coverage at her cost. If she was not, I would like to know why, and if she was, what the response was at that time. I would appreciate copies of any documentation you may have.

Second, I would like to know if the Borough has any plan or policy in effect to advise families of deceased members that they have the right to continue coverage upon the death of their spouse.

Finally, I would like to know if the Borough is currently offering any Health Benefit to spouses and/or family members of retired employees who are deceased, and if so, who they are and what benefits do they receive.

Gerhard Strate died in 1991. The record does not indicate when he retired.

The record does not include the Borough's response, if any, to the PBA's July 2, 1998 letter, but there is no dispute that the Borough denied health benefits to Strate's widow. The PBA filed a grievance and, on September 11, 1998, the PBA demanded arbitration over "health care coverage." This petition ensued. While the PBA's initial letter asked that Strate be given the opportunity to continue health coverage at her own cost, it appears that the PBA now seeks employer-paid benefits since it asserts that the 1993 resolution concerning surviving spouse benefits applies to Strate.

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.

Under Local 195, IFPTE v. State, 88 N.J. 393, 404 (1982), a subject is mandatorily negotiable when:

[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 Borough asserts that the limited issue before us is whether a contractual mechanism is available to the PBA to pursue a surviving spouse's claim to health benefits coverage. The Borough maintains that, under longstanding case law, majority

representatives are prohibited from negotiating benefits for retirees, but can only negotiate future retirement benefits for current employees. It cites Allied Chemical & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157, 78 LRRM 2974 (1971); Middlesex Cty., P.E.R.C. NO. 79-80, 5 NJPER 194 (¶10111 1979), aff'd 6 NJPER 338 (¶11169 1980); Borough of Bradley Beach, P.E.R.C. No. 81-21, 6 NJPER 429 (¶11216 1980); Ocean Tp., P.E.R.C. No. 81-136, 7 NJPER 338 (¶12152 1981) and Borough of Keansburg, D.U.P. No. 86-12, 12 NJPER 278 (¶17114 1986). It reasons that because Strate retired before the 1993 resolution, subsequent negotiations may not extend additional benefits to him or his spouse. The Borough also asserts that questions concerning SHBP coverage may not be submitted to either grievance or interest arbitration under N.J.S.A. 34:13A-18 and that a grievance arbitrator's ruling that Strate is entitled to health benefits would require the Borough to extend the same benefits to all other surviving spouses. Finally, it questions the PBA's standing to invoke arbitration on behalf of a third-party beneficiary of a collective negotiations agreement.

The PBA counters that it is not seeking to negotiate new benefits for retirees but to enforce a contract provision that is supported by statute. It contends that once the Borough decided to pay for health benefits for the surviving spouses of some retired employees, SHBP regulations required it to provide the

same benefits to "all eligible present and future pensioners of the employer and their dependents." See N.J.A.C. 17:9-5.5; New Jersey State PBA v. N.J. State Health Benefits Comm'n, 153 N.J. Super. 152 (App. Div. 1977). It contends that the only retirees who may be excluded from employer-paid coverage are those who retired before the employer became a SHBP participant. N.J.S.A. 52:14-17.38. Relying on State of New Jersey (Dept. of Higher Education), P.E.R.C. No. 96-47, 22 NJPER 37 (¶27018 1995), it also asserts that a majority representative has an interest in enforcing a contract on behalf of a former employee who seeks accumulated or deferred compensation based on his or her service as an employee.

This unusual case implicates several principals and lines of case law. The first principle, articulated in Middlesex, is that benefits for former employees who have already retired are not mandatorily negotiable. Relying on Middlesex, we have held that such proposals may not be pressed to the point of impasse. See Ocean Tp.; N.J.A.C. 19:16-5.7(g). But Middlesex itself relied on private-sector case law, which in turn deemed proposals concerning benefits for current retirees to be permissively negotiable. See Middlesex, 5 NJPER at 197, n. 11; Pittsburgh Plate Glass, 78 LRRM at 2984-2986.

The second and third principles pertinent to this dispute are that collective negotiations agreements incorporate



controlling statutes and regulations, State v. State Supervisory Employees, 78 N.J. 54, 80 (1978), and that grievances involving the application of such statutes or regulations generally may be submitted to binding arbitration. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 15 (1983).

Also relevant is our ruling that, while a public employer and a majority representative may agree to exclude grievances involving retired employees from an arbitration clause, there is no statutory bar against a majority representative seeking to enforce a contract on behalf of a former employee since it has a cognizable interest in ensuring that the terms of its collective negotiations agreements are honored. State of New Jersey; compare City of Newark, P.E.R.C. No. 94-7, 19 NJPER 417 (¶24186 1993) (whether retiree had standing to file grievance was a procedural issue for the arbitrator); Ray J. Schoonhoven, Fairweather's Practice and Procedure in Labor Arbitration, p. 59-60 (3rd ed. 1991) (as a rule, persons who are not parties to a collective bargaining agreement have no standing to compel arbitration under it, but retirees have standing to enforce their contract rights to, e.g., retiree medical benefits).

Finally, we note that we have restrained arbitration over grievances that sought a result inconsistent with SHBP statutes or regulations, finding that the relevant contract clauses were preempted. See, e.g., Stratford Bd. of Ed., P.E.R.C. No. 94-65,

20 NJPER 55 (¶25019 1993); City of Passaic, P.E.R.C. No. 92-23, 17 NJPER 422 (¶22203 1991); Borough of Belmar, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988). On the other hand, we have held that a grievance arbitrator may determine whether an employee falls within the ambit of a SHBP regulation. See Tenafly Bd. of Ed., P.E.R.C. No. 93-83, 19 NJPER 210 (¶24100 1993) (arbitrator could determine whether employee worked the 20 hours per week that, at that time, entitled an employee to SHBP coverage).

Within this framework, we conclude that this grievance is legally arbitrable. Preliminarily, we need not address whether a contract clause increasing benefits for former employees who have already retired is enforceable through grievance arbitration. This is not a situation where a union seeks to enforce such an agreement. Instead, the PBA argues that the parties' contract includes a clause stating that retiree health benefits are to be provided in accordance with a Borough resolution that is intended to comply with SHBP statutes and regulations. The PBA argues that those SHBP provisions in turn require that the 1993 resolution be extended to the surviving spouses of all eligible retirees, including those who retired before 1993.<sup>1/</sup> Thus, consistent with Teaneck, the arbitrator is being asked to apply a regulation that, through the Township resolution, is incorporated in the

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<sup>1/</sup> The resolution itself appears to reflect that understanding of N.J.A.C. 19:16-5.5.

parties' agreement. The arbitrator would not be required to interpret contract language that itself extended additional benefits to current retirees or their surviving spouses.

Moreover, as in State of New Jersey, we find the PBA has a cognizable interest in ensuring that the Borough honors its alleged contractual agreement to adhere to governing regulations in providing health benefits to eligible retirees and their surviving spouses. The PBA therefore, is not legally barred from pursuing this grievance.

Finally, neither N.J.S.A. 34:13A-18 nor our case law precludes an arbitrator from determining whether a grievant comes within the terms of the 1993 resolution, simply because the construction of that resolution may also require an interpretation of SHBP regulations. The Borough does not contend that the relief sought is inconsistent with SHBP regulations and, as noted, we have held that an arbitrator may determine whether a grievant is entitled to coverage under pertinent SHBP rules. Tenafly.

We also reject the Borough's contention that N.J.S.A. 34:13A-18 bars an arbitrator from considering this grievance. 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. Moreover, contrary to the Borough's suggestion, the rationale of our cases applying N.J.S.A. 34:13A-18 to certain SHBP interest arbitration proposals does not pertain here.

Both we and the Appellate Division have held that one rationale for N.J.S.A. 34:13A-18 is to prevent an interest arbitrator from awarding a proposal that, by virtue of SHBP uniformity requirements, would affect employees over whom the arbitrator had no jurisdiction. See Middlesex, 6 NJPER at 339; Borough of Oradell, P.E.R.C. No. 91-85, 17 NJPER 222 (¶22095 1991). The theory of those cases was that an interest arbitrator's award of a proposal to pay retiree or dependent health care premiums for one group of employees would, by operation of law, require the employer to pay those premiums for other employee groups. But see Borough of Matawan, P.E.R.C. No. 99-107, 25 NJPER 324 (¶30140 1999) (where same concern arose under N.J.S.A. 40A:10-23, requiring that non-SHBP employers pay for retiree health premiums under uniform conditions, it could be addressed by interest arbitrator ordering that any change in employer payments take effect only after uniformity requirements are met).<sup>2/</sup> That analysis does not pertain here, where any

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<sup>2/</sup> Matawan suggested that L. 1999, c. 48 may have, for some SHBP employers, eliminated the requirement that payment of retiree health benefits be uniform for all retirees. It is not clear how L. 1999, c. 48 meshes with N.J.A.C. 17:9-5.5: the statute appears to allow an employer to negotiate different payment levels for future retiree health benefits for different groups of current employees, while the preexisting regulation requires uniformity among all present and future eligible pensioners.

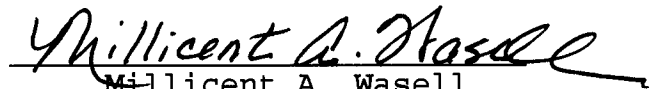
obligation to pay for surviving spouse health care premiums under uniform conditions would stem not from the exercise of the arbitrator's authority to award a proposal but from an employer's resolution that, either by its terms or by incorporating an SHBP regulation, requires that result.

For the foregoing reasons, we deny the Borough's request for a restraint of binding arbitration.

ORDER

The request of the Borough of Bradley Beach for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration under protest.

DATED: August 26, 1999  
Trenton, New Jersey  
ISSUED: August 27, 1999