

P.E.R.C. NO. 97-71

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF VERONA,

Respondent,

-and-

Docket No. SN-97-2

VERONA TOWNSHIP PBA LOCAL NO. 72,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that successor contract proposals of the Township of Verona are controlled by statute and cannot be submitted to interest arbitration between the Township and PBA Local 172. The proposals relate to the elimination of HMO coverage for employees and retiree health benefits for employees hired after 12/31/95.

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, Abramson & Liebeskind Associates
(Arlene K. Liebeskind, consultant)

DECISION AND ORDER

On July 12, 1996, Verona PBA Local No. 72 petitioned for a scope of negotiations determination. The union seeks a determination that certain successor contract proposals of the Township of Verona are preempted by statute and cannot be submitted to interest arbitration.

The PBA filed exhibits and a brief. The Township did not file a response. These facts appear.

The PBA is the majority representative of the Township's police officers below the rank of chief. The parties entered into a collective negotiations agreement effective from January 1, 1994 through December 31, 1995. They are engaged in interest arbitration proceedings.

Article XXII, Medical and Dental Coverage, of the expired agreement provides, in part:

Section 1

Blue Cross/Blue Shield and Major Medical: The Township agrees to provide and pay the premium for Blue Cross/Blue Shield and Major Medical coverage, including Rider J. or their equivalent for all the employees and their eligible dependents.

The employee shall be permitted to enroll in the HMO plan offered by the Township if he so chooses. Said HMO coverage shall be inclusive of the employee and all of his eligible dependents.

Police unit employees currently enrolled in HMO's agree to switch to the Township's Municipal Employee HMO Plan with the express understanding that the Township shall reimburse each employee the co-pay differences from the previous "Premier" plan to the current "Patriot" plan within thirty (30) days from the presentation of receipts for same.

The Township has proposed these changes:

Paragraph 2 - Employee agrees to belong to the medical coverage that is offered to the Township employees which guidelines are listed in Paragraph #1.

Paragraph 3 - Remove

Article XXIII, Medical Coverage Upon Retirement, provides, in part:

Commencing January 1, 1989, the Township of Verona agrees to provide medical insurance coverage (Blue Cross/Blue Shield plus Major Medical or their equivalent or an HMO) for all police officers who retire from the Verona Police Department with twenty-five (25) or more years of credited police service or who are authorized a disability retirement. This coverage is subject to the provisions herein listed below.

A. The medical coverage benefit shall be administered by the Township at no cost to the retiree.

- B. Participation in the plan shall be mandatory for all police officers.

The Township has proposed these changes:

Remove (HMO)

Employees hired after 12/31/95 will not be eligible for paid medical coverage upon retirement

Remove (B)

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.^{1/} The Court stated:

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

^{1/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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 provisions 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. See Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State Supervisory.

N.J.S.A. 26:2J-29 provides:

Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organization; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer.

This statute expressly requires that employees shall be permitted to enroll in an HMO and that requirement may not be contravened by a negotiated agreement. State Supervisory. Accordingly, the Township may not submit to interest arbitration its proposal to eliminate HMO coverage for employees.

N.J.S.A. 40A:10-23 provides for payment of health benefit premiums after retirement. It states, in part:

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 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 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 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 period of time a county law enforcement officer has been employed by any county or municipal police department, sheriff's department or county prosecutor's office, may be counted cumulatively as "service with the employer" for the purpose of qualifying for payment of health insurance premiums by the county pursuant to this section.

This statute expressly requires that employer payment of retiree health benefits be under uniform conditions. In Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988), we held that where an employer which does not participate in the State Health Benefits Program provides health insurance coverage for all its employees under a single group contract, an interest arbitrator having jurisdiction over only a portion of that group may not


award any change in premium payments for employees on retirement. Cf. N.J.S.A. 34:13A-18. The change, by operation of this statute's uniformity requirement, would apply to all employees in the insurance group, including those in other units not involved in the interest arbitration proceeding or eligible for interest arbitration. The PBA asserts that the employees it represents are in an insurance group with non-unit employees and that Bernards controls. We have no factual or legal basis for distinguishing Bernards. Accordingly, the Township may not submit to interest arbitration its proposal to eliminate retiree health benefits for unit employees hired after 12/31/95. Contrast 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 negotiable because it expressly does not take effect until employer meets uniformity requirements).^{2/}

^{2/} The PBA has not addressed the proposed elimination of HMO coverage for retirees. Accordingly, we need not address that proposal.

ORDER

The negotiations proposals of the Township of Verona to eliminate HMO coverage for employees and retiree health benefits for employees hired after 12/31/95 may not be submitted to interest arbitration.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996