

P.E.R.C. NO. 94-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MOUNTAIN LAKES,

Petitioner,

-and-

Docket No. SN-94-54

MOUNTAIN LAKES POLICEMEN'S
BENEVOLENT ASSOCIATION LOCAL 310,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Borough of Mountain Lakes for a restraint of binding arbitration of Mountain Lakes Policemen's Benevolent Association Local 310's claim for less than 100% payment of premiums for retirees under the State Health Benefits Plan. Plan regulations require an employer affording such coverage to pay the full cost.

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Appearances:

For the Petitioner, Ruderman & Glickman, attorneys
(Mark S. Ruderman, of counsel; Ellen M. Horn, on the brief)

For the Respondent, Whipple, Ross & Hirsh, attorneys
(Donald B. Ross, of counsel; Susan K. Straub, on the brief)

DECISION AND ORDER

On December 6, 1993, the Borough of Mountain Lakes petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by a sergeant represented by the Mountain Lakes Policemen's Benevolent Association Local 310. The grievance asserts that the Borough violated the parties' collective negotiations agreement when it refused to pay 50% of the premiums for retirees' medical coverage.

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

Local 310 represents the Borough's regular police personnel, except the chief. The Borough participates in the State Health Benefits Plan ("SHBP").

The parties entered a collective negotiations agreement effective from January 1, 1992 through December 31, 1994. Section IX is entitled Health Benefits. It provides:

A. Except as provided in paragraph B below, Blue Cross hospitalization benefits and Blue Shield hospitalization benefits, excess medical benefits pursuant to the existing plan, and the existing dental insurance plan, provided by the Borough of Mountain Lakes at this time for all of its members, will be continued in effect for all members of the Mountain Lakes Police Department. Upon retirement with twenty-five (25) years of continuous service (or retirement at age fifty-five (55) or over with at least twenty (20) years of continuous service) the Borough will compensate each such retired member annually for fifty (50%) percent of his premiums for the above medical coverage, except dental insurance coverage, until such time as the member may become eligible for similar medical coverage from another source at less cost to him.

B. The Borough, through its participation in the Joint Insurance Fund, may substitute other insurance coverage to provide the same or better benefits than currently provided. The Borough must, however, notify the PBA and discuss such changes sufficiently in advance.

The grievance procedure ends in binding arbitration.

On July 21, 1993, Sergeant R.D. Regan filed a grievance. The grievance asserted that the Borough Manager had informed him that the Borough would not pay 50% of his health insurance premiums upon his planned retirement in 1994 because Regan did not have 25 years of continuous service with the Borough. Regan asserted that Section IX did not require 25 years of continuous service with the Borough and that three years of military service that he had bought

back should be included in calculating his continuous service.

The Borough Manager denied the grievance. He reiterated the Borough's position that the contract required 25 years continuous service with the Borough and that military service could not be counted in calculating that service.

Local 310 then demanded binding arbitration. It identified this grievance to be arbitrated: "The PBA submits to arbitration the refusal of the Borough to agree to pay 50% of retirement health insurance coverage to Sergeant Richard D. Regan." This petition ensued.

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 this grievance or any contractual defenses the Borough may have.

It is undisputed that payment of health insurance premiums is a negotiable subject absent a preemptive statute or regulation. The only issue is whether, as the Borough asserts, N.J.S.A. 52:14-17.38 preempts negotiations by eliminating the employer's

discretion to pay any amount other than either 0% or 100% of the premiums.^{1/} State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

N.J.S.A. 52:14-17.38 provides:

From funds allocated therefor, the employer other than the State may pay the premium or periodic charges for the benefits provided to a retired employee and his dependents covered under the program, if such employee retired from a State or locally-administered retirement system on a benefit based on 25 years or more of service credited in such retirement system, excepting the employee who elected deferred retirement, but including the employee who retired on a disability pension based on fewer years of service credited in such retirement system, and may also reimburse such retired employee for his premium charges under Part B of the federal Medicare Program covering the retired employee and the employee's spouse.

N.J.A.C. 17:9-5.5(a)4 requires a local employer affording coverage under N.J.S.A. 52:14-17.38 "to pay the full cost of such charges." The Borough has also submitted a letter from the Assistant Director of the State Health Benefits Bureau in response to an inquiry from its attorney concerning the legality of Article IX. The Assistant Director stated:

^{1/} In its original brief, the Borough asserted that N.J.S.A. 40A:10-23 preempted negotiations, but in its reply brief the Borough abandoned that contention and asserted instead that N.J.S.A. 52:14-17.38 preempted negotiations. We then gave Local 310 an opportunity to respond to that new contention. The Borough also appears to have abandoned its contention, raised in its responses to the grievance, that Regan did not have enough continuous service to qualify for benefits. We do not consider that question.

Under [N.J.S.A. 52:14-17.38], the employer must pay the full cost of coverage for all eligible retirees. No other arrangements would be acceptable under the laws governing the State Health Benefits Program.

According to the Association, N.J.S.A. 40A:10-23 permits the parties to share the premium costs however they see fit. ^{2/}
The Association relies on a 1983 opinion of Superior Court Judge Reginald Stanton confirming an arbitration award that ordered this employer to pay 50% of the annual premiums and rejecting a contention that Section IX, as embodied in an earlier collective negotiations agreement between these same parties, violated N.J.S.A. 40A:10-23, as interpreted by the Division of Pensions. Judge Stanton stated:

NJSA 40A:10-23 allows the employer to pay the entire cost of post-retirement health benefits coverage for employees who have served for more than 25 years before retirement. The authorization to pay the entire cost includes authority to pay part of the cost. Defendant's contention that NJSA 40A:10-23 gives the employer the choice of paying either all or nothing is an artificially restrictive reading of the statute. The statute is a liberalizing enactment designed to give public employers flexibility in providing benefits to deserving employees. It should be construed broadly in order to permit the accomplishment of its objectives.

This decision was rendered before the Borough began participating in the SHBP.

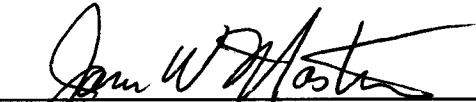
^{2/} N.J.S.A. 40A:10-23 was the statute originally relied upon by the Borough. It authorizes the employer, in its discretion, to assume the entire cost of coverage and to pay all the premiums of retirees with sufficient service.

While Judge Stanton's construction of N.J.S.A. 40A:10-23 may be appealing, his decision is limited to an interpretation of that statute. Under N.J.S.A. 52:14-17.38, a specific regulation requires an employer participating in the SHBP to pay the full cost of any retiree health benefits and an administrative interpretation confirms that requirement. We are compelled, therefore, to restrain binding arbitration of Local 310's claim for less than 100% payment of premiums for retirees under the SHBP.

ORDER

The request of the Borough of Mountain Lakes for a restraint of binding arbitration of Local 310's claim for less than 100% payment of premiums for retirees under the SHBP is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: April 28, 1994
Trenton, New Jersey
ISSUED: April 29, 1994