P.E.R.C. NO. 2019-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2018-048

MATAWAN-ABERDEEN REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Matawan-Aberdeen Regional Board of Education's request for a restraint of binding arbitration of a grievance filed by the Matawan-Aberdeen Regional Education Association which alleged the Board violated the parties' CNA when it stopped paying the full premium cost of dental coverage after the Board terminated its participation in the School Employees Health Benefits Plan (SEHBP) and contracted with a private health insurance carrier to provide medical benefits to its employees. An employer's choice of health insurance carriers is mandatorily negotiable when changing the identity of the carrier changes the level of benefits or the administration of the plan. The Commission finds that allocating dental premiums to employees when the employer has previously paid the full cost affects both the level of insurance benefits and the administration of the plan. Fundamental to the Commission's holding is that the Board's decision to move to a private plan was voluntary, and was not mandated by Chapter 78 or any other law. In choosing to move to a private plan, the Board then failed to fulfill a contractual commitment under the CNA to cover the full cost of dental coverage.

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, Weiner Law Group, LLP, attorneys (Joshua I. Savitz, of counsel and on the brief; John A. Boppert, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys (Richard A. Friedman, on the brief)

DECISION

On May 18, 2018, the Matawan-Aberdeen Regional Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Matawan-Aberdeen Regional Education Association (Association). The grievance alleges that the Board violated the parties' collective negotiations agreement (CNA) when it stopped paying the full premium cost of dental coverage for unit members after changing to a private health insurance carrier.

The Board filed briefs, exhibits, and the certification of its Superintendent of Schools, Joseph G. Majka (Majka).[1/] The Association filed a brief and certification of a New Jersey Education Association Field Representative, Region 9, Thomas Predale.[2/] These facts appear.

The Association represents four separate bargaining units. The units are separated among certified personnel, bus drivers, custodial and maintenance employees, and clerical employees and assistants. The terms of all four CNAs are July 1, 2014 through June 30, 2017. All four CNAs contain the following language:

> The Board will continue to pay all premiums to provide to each employee for the duration of this Agreement the New Jersey Dental Service Plan (known as the Delta Incentive Plan) family coverage, including domestic partner.[3/]

The grievance procedure ends in binding arbitration.

1/ On June 4, 2018, the Board filed its brief in support of its petition for scope of negotiations determination and request for interim relief with temporary restraints. On June 5, the Commission Case Administrator informed the Board that absent an arbitrator being assigned or an arbitration date being scheduled, the request for interim relief would be held in abeyance. To date, the Board has not sought to have the Commission process the request.

2/ In its brief, the Association also relies on an Unfair Practice Charge and accompanying Statement of Charge with exhibits docketed as CO-2018-062 on August 22, 2017.

3/ This language can be found in the CNAs as follows: certified personnel (Article XVIIB), bus drivers (Article XIII(B)), custodial and maintenance employees (Article XVI(C)), and clerical employees and assistants (Article VIII(B)).

According to Majka, at its meeting of February 27, 2017, the Board adopted a resolution stating that it would terminate its participation in the School Employees Health Benefits Plan (SEHBP) effective May 1. On March 2, the School Business Administrator (B.A.) notified all staff that they would be leaving the SEHBP, and that the Board had contracted with Horizon Blue Cross Blue Shield of New Jersey (Horizon BCBS) to provide medical benefits under a private plan commencing May 1.

The B.A. also distributed a document entitled "FAQ Medical benefits transition" which provided in relevant part:

> "Will my payroll contributions" towards health premiums change?
>
> Yes. The new calculation will take into consideration the new premium amount, and will include the premium cost of dental benefits as required by law."

Majka certifies that on or about March 16, 2017, the Association filed a grievance seeking to have the Board continue to pay the full cost of dental premiums. The district denied the grievance, however, the parties agreed to hold the matter in abeyance while they sought to resolve the dispute. On February 21, 2018, the Association reinstated the grievance.[4/]

4/ On August 22, 2017, the Association filed a related unfair practice charge, alleging that the Board violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:34-13A-5.4(a)(1), (3), and (5), by requiring its members to contribute towards dental coverage premiums. On February 16, 2018, the former Director of Unfair Practices deferred the matter to the parties' grievance arbitration

(continued...)

Predale certifies that pursuant to Chapter 78[5/], the Association contributed to healthcare premiums at the Tier 4 level during the 2014-2015 school year - the first year of the parties' 2014-2017 CNA.

On February 26, 2018, the Association filed a Request for Submission of a Panel of Arbitrators. 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 the grievance or any contractual defenses the employer may have.

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

4/ (...continued)
process, which required the Board's agreement. We note that the Board's filing of this scope petition is somewhat incompatible with its agreement to have the unfair practice charge deferred to arbitration.

5/ P.L. 2011, c. 78.

> [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.

Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Ed. of Higher Ed., 91 N.J. 18, 30 (1982); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). If a particular item in dispute is controlled by a specific statute or regulation, the parties may not include any inconsistent term in their agreement. Id.

The Board argues that it has a managerial prerogative to unilaterally select an insurance carrier. It also argues that there has been no change in the level of coverage and that it

only began requiring unit members to contribute towards dental coverage premiums because it was required by Chapter 78. The Board also argues that, although Tier 4 was reached, the parties have never negotiated alternative terms to the Chapter 78 mandates, and that it was therefore bound to begin requiring members to contribute towards dental premiums once a private plan was in place.

The Association argues that the Board's unilateral right to change carriers exists only when it maintains the level of benefits. It further argues that since the switch resulted in a reduction in the level of benefits, an arbitrator should determine whether the Board breached its contractual obligation to maintain benefits. The Association further argues that once full implementation of Tier 4 occurred, the contribution structure was negotiable starting from the point of full implementation, and that the Board therefore could not take subsequent unilateral action in switching carriers and changing the contribution structure even though the contract had not yet expired.

The Board counters that there was no change to the level of benefits, co-pays, deductibles, and co-insurance, and that therefore there was no obligation to negotiate over the switch in carriers. The Board argues that it is irrelevant whether the Board was required to change carriers. The Board also argues

that, even when Tier 4 is reached, contributions levels only become negotiable in the next collective negotiations agreement and cannot be negotiated mid-contract. Therefore, the Board argues, the mandates of Chapter 78 still applied and required the Board to begin collecting employee contributions for dental premiums after it switched to a private carrier.

Applying the Local 195 balancing test to the unique facts of this case, as we are required to do by City of Jersey City v. Jersey City Police Officers Benevolent Ass'n, 154 N.J. 555, 575-75 1998), we find that this dispute is mandatorily negotiable and legally arbitrable.

Regarding the first prong of the Local 195 test, the allocation of dental premiums intimately and directly affects the work and welfare of employees. Applying the second prong of the Local 195 test, the Board argues that this matter is preempted by Chapter 78. As discussed at length in our previous decisions, Chapter 78 instituted a four-year tiered system of health insurance premium contributions for public employees, that increased according to employees' salaries.[6/] Predale certifies that the unit members herein completed the fourth tier levels of contributions (i.e. full implementation) in the 2014-2015 school

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6/ See, e.g. Hoboken, P.E.R.C. No. 2019-22, 45 NJPER 213 (¶56 2018); Gloucester Tp., P.E.R.C. No. 2019-4, 45 NJPER 82 (¶21 2018).

year, the first year of the current contract. We have interpreted Chapter 78[7/] as requiring that contributions continue at the fourth tier level until the next successor agreement after full implementation, when any negotiated changes could be implemented. Clementon Bd. of Ed., P.E.R.C. No 2016-10, 42 NJPER 117 (¶34 2015).

N.J.S.A. 52:14-17.28c, the Chapter 78 statute that the Board asserts preempts this matter, defines "cost of coverage" as:

> As used in this section, "cost of coverage" means the premium or periodic charges for medical and prescription drug plan coverage, but not for dental, vision, or other health care, provided under the State Health Benefits Program or the School Employees' Health Benefits Program; or the premium or periodic charges for health care, prescription drug, dental, and vision benefits, and for any other health care benefit, provided pursuant to P.L.1979, c.391 (C.18A:16-12 et seq.), N.J.S.40A:10-16 et seq., or any other law by a local board of education, local unit or agency thereof, and including a county college, an independent State authority as defined in section 43 of P.L.2011, c.78 (C.52:14-17.34a), and a local authority as defined in section 44 of P.L.2011, c.78 (C.40A:5A-11.1), when the employer is not a participant in the State Health Benefits Program or the School Employees' Health Benefits Program.
>
> [N.J.S.A. 52:14-17.28c (emphasis supplied).]

Thus, the statute sets out that when an employer participates in the SEHBP, the cost of coverage excludes charges for dental

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7/ N.J.S.A. 18A:16-17.2.

coverage, but when an employer utilizes a private plan, the cost of coverage includes charges for dental coverage. The Board relies on this language in support of its position that once it moved to a private plan on May 1, 2017, it was statutorily required to include dental insurance premiums in the cost of coverage. The Board's interpretation of the statute is consistent with its plain language. However, we find that preemption analysis of N.J.S.A. 52:14-17.28c does not control this dispute. The preemption analysis only became dispositive once the Board chose to move to a private plan. A fundamental fact is that the Board's decision to move to a private plan was voluntary/discretionary. The Board was not mandated to move to a private plan by Chapter 78 or any other law. In choosing to move to a private plan, the Board then failed to fulfill a contractual commitment under the CNA to cover the full cost of dental coverage. Thus, we do not view the central issue in this case to be whether N.J.S.A. 52:14-17.28c preempts the issue of whether dental coverage should be included in the "cost of coverage" once the Board moved to a private plan. Rather, we find this grievance to center upon whether an employer's choice to change carriers is mandatorily negotiable and legally arbitrable when it impacts the allocation of dental insurance premiums. In accord with well-settled law, as more fully explained below, we find the answer to that question is affirmative. Metuchen Bor.

P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); see also Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002).

With regard to the third prong of the Local 195 test, we find that negotiations or arbitration over this dispute, as we have defined it above, would not significantly interfere with governmental policy. An employer's choice of health insurance carriers is mandatorily negotiable when changing the identity of the carrier changes terms and conditions of employment, "i.e., the level of insurance benefits, or the administration of the plan." Metuchen Bor. supra; see also Union Tp., supra. Allocating dental premiums to employees when the employer has previously paid the full cost affects both the level of insurance benefits and the administration of the plan. Moreover, the allocation of health insurance premiums is a negotiable term and condition of employment. Bridgewater Tp., P.E.R.C. No 95-28, 20 NJPER 399, 401 (¶25202 1994), aff'd 21 NJPER 401 (¶26245 App. Div. 1995)(finding that the Township failed to negotiate over a negotiable term and condition of employment when it unilaterally deducted HMO premium payments from employees despite language in CNAs clearly providing for HMO coverage at no charge to employees). While the Board has an interest in the choice of its health insurance carriers, in this case, that interest is outweighed by the employees' interests in the Board's fulfillment of its contractual commitments under the CNA.

The Board relies on Readington Tp. Bd. of Ed., P.E.R.C. No. 2017-018, 43 NJPER 128 (¶40 2016), a case with substantially similar facts in which an employer began to charge employees for the cost of dental coverage once it moved from the SHBP to a private carrier, despite language in the CNA stating that the Board shall pay the full cost of dental coverage. We held that N.J.S.A. 52:14-17.28c preempted the dispute. However, we depart from Readington defining that issue as the focus of this dispute. As set forth above, we find this dispute centers upon whether an employer's voluntary choice to change carriers is mandatorily negotiable and legally arbitrable when it impacts the allocation of dental insurance premiums. Readington did not focus on or address that aspect of the dispute.

Given our holding herein, we need not address the parties' arguments with regard to the applicability of Clementon Bd. of Ed. to this matter. Accordingly, we find that this dispute, as defined herein, is mandatorily negotiable and legally arbitrable.

ORDER

The Matawan-Aberdeen Board of Education's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Boudreau, Jones, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: April 25, 2019

Trenton, New Jersey