

P.E.R.C. NO. 2000-93

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WATCHUNG,

Petitioner,

-and-

Docket No. SN-2000-63

WATCHUNG P.B.A. LOCAL 193,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Borough of Watchung for a restraint of binding arbitration of a grievance filed by Watchung P.B.A. Local 193. The grievance contests the Borough's refusal to pay health insurance premiums for a police officer who retired on a disability pension. The Commission concludes that N.J.S.A. 40A:10-23 does not prohibit the payment of premiums for retirees on disability pensions unless the employer has first adopted an enabling ordinance or resolution. The Commission further concludes that the ordinance or resolution language is not preemptive since it assumes that the employer can exercise its discretion through a collective negotiations agreement, subject to later incorporation in an ordinance or resolution.

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  
(Steven S. Glickman, on the brief)

For the Respondent, Szaferman, Lakind, Blumstein, Watter  
& Blader, P.C., attorneys (David B. Beckett, on the brief)

DECISION

On December 15, 1999, the Borough of Watchung petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by Watchung P.B.A. Local 193. The grievance contests the Borough's refusal to pay health insurance premiums for a police officer who retired on a disability pension.

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

The PBA represents police officers, excluding the chief and other employees. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1999

through December 31, 2000. The grievance procedure ends in binding arbitration.

Article IV, C. 2. of the grievance procedure provides:

During the course of negotiations for the 1982-83 Agreement, the parties agreed to provide for binding as opposed to advisory arbitration of grievances and to delete a retention of benefits article. However, the deletion of the retention of benefits article is not intended to preclude either party from making conventional "past practices" arguments in those situations where such arguments are normally made.

Article XIV is entitled Hospitalization and Insurance.

Section A provides:

The Borough shall continue to provide enrollment in the New Jersey State Health Benefits Programs or an equivalent program providing the same benefits, for all employees and their families. Coverage shall consist of health, hospital, Rider J, major medical and any other benefits as provided by said plan. All costs and charges in connection with said program shall be borne by the Borough.

Before 1997, the Borough participated in the State Health Benefits Program. But on January 1, 1997, the Borough changed health insurance. On April 1, the Borough advised all PBA unit members who had retired on a disability pension with less than twenty-five years of pensionable service that it would no longer pay their health insurance premiums.

The PBA objected to the discontinuance of such payments, asserting that they were required by past practice and not violative of N.J.S.A. 40A:10-23. In May 1997, the Borough resumed payments although it noted that it was still researching the issue and was not waiving its right to raise it again.

In September 1999, the Borough terminated James Tinnes, a police officer who had been on a disability leave. Tinnes had been employed by the Borough since January 1991. Tinnes filed a lawsuit challenging his termination and the parties agreed that he would retire on a disability pension. On October 28, the Borough informed Tinnes that it would not pay his health insurance premiums.

On November 5, 1999, the PBA demanded arbitration over the refusal to pay the premiums. The demand asserts that the refusal violated the parties' past practice clause. 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 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]

When a negotiability dispute arises over a grievance, arbitration will be permitted if the subject of the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policymaking powers.

Health benefit premiums are mandatorily negotiable unless a statute or regulation preempts negotiations. See, e.g., Atlantic Cty., P.E.R.C. No. 95-66, 21 NJPER 127 (¶26079 1995). Negotiations will not be preempted unless a statute or regulation speaks in the imperative by fixing an employment condition and eliminating the employer's discretion to vary it through negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The employer contends that N.J.S.A. 40A:10-23 preempts negotiations. That statute provides, in part:

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....[Emphasis supplied].

The Borough's specific argument is that N.J.S.A. 40A:10-23 prohibits the payment of premiums for retirees on disability pensions unless the employer has first adopted an enabling ordinance or resolution. But the statutory text does not support that argument. The provisions concerning ordinances and resolutions are set forth in subparts b and c, not a. Moreover, the ordinance or resolution language is not preemptive since it assumes that the employer has the discretion contemplated by State Supervisory. That discretion can be exercised through a collective negotiations agreement, subject to later incorporation in an ordinance or resolution. Atlantic Cty. For these reasons, we decline to restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

Millicent A. Wasell  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Ricci and Sandman voted in favor of this decision. Commissioner Muscato was not present. Commissioner Madonna abstained from consideration. None opposed.

DATED: May 25, 2000  
Trenton, New Jersey  
ISSUED: May 26, 2000