

P.E.R.C. NO. 2022-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2021-042

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Board's request for restraint of binding arbitration of the Association's grievance alleging that the Board violated the parties' collective negotiations agreement (CNA) by deducting health insurance contributions in excess of 1.5% and garnishing wages to recoup alleged healthcare contribution underpayments. The Commission finds that because the parties reached the Chapter 78 tier four health insurance contribution level in their previous contract, they were not statutorily preempted from negotiating a reduction in health insurance contributions in their current CNA. The Commission holds that whether the parties agreed to reduce contribution rates from the Chapter 78 statutory status quo, and what they agreed to, are legally arbitrable.

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, Porzio Bromberg & Newman, P.C.,  
attorneys (Kerri A. Wright, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen, of counsel and on the brief; Daniel  
R. Dowdy, on the brief)

DECISION

On May 11, 2021, the Ridgefield Park Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association (Association). The grievance alleged that the Board violated the parties' collective negotiations agreement (CNA) when it froze employees' salaries in order to recoup underpayment of healthcare contributions.

The Board filed briefs, exhibits, and the certification of its counsel, Kerri A. Wright.<sup>1/</sup> The Association filed a brief

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<sup>1/</sup> Wright's certification authenticated Board Exhibits A through P and provided the Board's summary and  
(continued...)

and an exhibit.<sup>2/</sup> These facts appear.

The Association represents a broad-based negotiations unit including teachers, librarians, nurses, speech and occupational therapists, guidance counselors, custodians, building and grounds workers, and other titles as enumerated in Article I of the CNA. The grievance procedure ends in binding arbitration. The Board and Association are parties to a CNA effective from July 1, 2018 through June 30, 2021.<sup>3/</sup>

Article XXIII(A)(3) of the CNA provides:

Employees covered under this Article shall contribute the following percentage of their salary towards health insurance: 1.5% or the minimum set forth by statute, regulation, or code. Contributions shall be made through payroll deduction.

By letter of June 17, 2019, the Board's School Business Administrator, James Tevis, informed the Association that health insurance contributions for the 2019-2020 school year would be 1.5% of salary. The letter referenced the parties' litigation concerning Association members' required health insurance premium contributions under P.L. 2011, §. 78 (Chapter 78) during the term

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1/ (...continued)  
interpretation of the exhibits.

2/ The Association did not submit a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certification(s) based upon personal knowledge.

3/ In 2018, the parties negotiated a MOA for the 2018-2021 contract period. The record does not include the dates the parties agreed to or ratified the 2018-2021 CNA.

of their prior CNA (2014-2018 CNA). See Ridgefield Park Bd. of Ed., P.E.R.C. No. 2018-14, 44 NJPER 167 (¶49 2017), rev'd and remanded, 459 N.J. Super. 57 (App. Div. 2019), rev'd and remanded, 244 N.J. 1 (2020). The letter noted the Board's disagreement with the Appellate Division's decision and stated that it had appealed and would reserve all rights, including the right to recoupment, depending on the outcome of its appeal. On August 28, 2020, Tevis sent a letter to Association President Mary Ellen Murphy stating, in pertinent part:

As I am sure you have heard, the New Jersey Supreme Court determined that members of the Association should have been contributing at "Tier 4" rates under Chapter 78 since July 1, 2015. Based on this Decision, the Court found that members underpaid their health insurance contribution. As a result of this finding, the District will be: (1) returning all Association members' contribution rates to "Tier 4" effective September 1, 2020 and; (2) correcting any improper contributions found to have occurred in the past. . . . With regard to the recoupment of the improper contribution amount, the District believes the fairest method is to freeze all impacted members' salary until the full amount is recovered.

By letter of December 17, 2020, Tevis reiterated his position to President Murphy that not only were Association members "required to contribute at Chapter 78 rates for the duration of the parties' 2014-2018 Collective Negotiations Agreement," but that they also made improper contributions of 1.5% in 2019-2020 so "the District must now recoup the difference of healthcare

contribution underpayments from Association members for the 2019-2020 year." The letter attached exhibits with calculations showing the alleged amount of health insurance contribution underpayments for each eligible Association member.

On September 21, 2020, the Association filed a grievance seeking for the Board to cease violating the contract and garnishing Association members' wages by deducting health insurance contributions in excess of 1.5%. On October 6, the Association filed a Level Two grievance seeking:

1. The District cease and desist from garnishing of employee wages immediately and honor the contract.
2. The Association requests that the District return to each member the salary that was taken in excess of contractually required 1.5% of their base salary back to July 1, 2018.
3. The Association requests that every member be paid interest at the rate provided by law on all money wrongfully taken from them, due to the additional personal financial hardship it has inflicted during the current COVID pandemic.
4. Any other remedy deemed appropriate by the parties.

On October 20, the Board denied the grievance. On October 26, the Association demanded binding arbitration. 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 merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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 Board asserts that arbitration should be restrained because the parties have not negotiated off of the Chapter 78 health benefits contributions levels that served as the status

quo following their 2014-2018 CNA. It argues that the 1.5% contribution contained in the 2018-2021 CNA is holdover language from prior contracts. The Board contends that this case is analogous to Ridgefield Park Bd. of Ed., P.E.R.C. No. 2021-27, 47 NJPER 328 (¶78 2021), in which the Commission found that the Board did not unilaterally change health benefits for a different negotiations unit because the parties had not agreed to reduce the contribution rate from Chapter 78 tier four.

The Association asserts that the issue of what health benefit contributions the parties agreed to in their 2018-2021 CNA is a legally arbitrable matter of contract interpretation. It argues that, under Chapter 78 and Ridgefield Park, 244 N.J. 1, health benefit contributions for the parties' 2018-2021 CNA were negotiable and not preempted. The Association asserts that the grievance does not involve its required Chapter 78 tier four contributions during the 2014-2018 CNA, but only relates to recouping funds that the Board improperly withheld during the 2018-2021 CNA when contributions should have been 1.5%.

Health benefits are mandatorily negotiable unless preempted by statute or regulation. In re Council of New Jersey State College Locals, 336 N.J. Super. 167 (App. Div. 2001); East Rutherford Bor., P.E.R.C. No. 2009-15, 34 NJPER 289 (¶103 2008), aff'd, 36 NJPER 33 (¶15 App. Div. 2010); West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd, NJPER

Supp.2d 291 (¶232 App. Div. 1993). 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. 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).

The Commission has held that following full implementation of the four Chapter 78 health insurance premium contributions tiers, contributions become negotiable again and are no longer specifically preempted by Chapter 78; however, the Chapter 78 tier four level is the status quo during negotiations for the CNA following the one in which the parties achieved full Chapter 78 implementation. See, e.g., Lacey Tp., P.E.R.C. No. 2020-47, 46 NJPER 447 (¶101 2020); Fairfield Tp., P.E.R.C. No. 2019-31, 45 NJPER 309 (¶80 2019); City of Plainfield, P.E.R.C. No. 2020-57, 46 NJPER 593 (¶135 2020); and Clementon Bd. of Ed., 42 NJPER 117 (¶34 2015), dism'd as moot, 43 NJPER 125 (¶38 App. Div. 2016).

In Ridgefield Park, 244 N.J. 1, supra, involving these same parties, the Supreme Court of New Jersey endorsed the Commission's Chapter 78 statutory interpretations concerning when health insurance premium contributions are preempted and when they are negotiable. The Court stated:



In its final sentence, N.J.S.A. 18A:16-17.2 provides that after "full implementation," the employees' contribution levels "shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties." The Legislature thus made the achieved Tier 4 contribution level the status quo for purposes of negotiating contributions for the successor contract. Accordingly, during the negotiations for the next CNA after full implementation is reached - here, the negotiations for the agreement that would succeed the 2014-2018 CNA - the Tier 4 contribution levels would constitute the status quo. . . . Here, the Legislature intended to prescribe employee health insurance contribution rates until the employees achieved full implementation of the premium share and the parties negotiated a successor CNA. N.J.S.A. 18A:16-17.2.

[244 N.J. at 20, 25.]

Ridgefield Park clarified that Association members were required to continue making Chapter 78 tier four contributions through the duration of their 2014-2018 CNA (even though they had reached tier four in year 1 of that CNA) until they negotiated otherwise in a successor agreement. The parties negotiated a 2018-2021 MOA in 2018 and subsequently negotiated a 2018-2021 CNA that includes the Article XXIII(A)(3) health insurance premium contribution language quoted earlier. Ridgefield Park and Commission precedent are clear that the Board and Association were free to negotiate a deviation from Chapter 78 tier four contribution levels for their 2018-2021 CNA. The 1.5% contribution level that the Association alleges the parties

agreed to in Article XXIII(A)(3) of the 2018-2021 CNA is not statutorily preempted from negotiations. Thus, the question of whether the parties actually agreed to that level of health insurance premium contributions is legally arbitrable.

Contrary to the Board's contention, this case is distinguishable from Ridgefield Park Bd. of Ed., P.E.R.C. No. 2021-27, 47 NJPER 328 (¶78 2021), which involved the Board and a different collective negotiations unit, the Ridgefield Park Administrators Association. The successor CNA in that case (following full Chapter 78 implementation) did not include the same contract language found in the Association's 2018-2021 CNA in this case. Indeed, the Administrators Association in that case argued that the Commission should have looked to the Association contract to understand the intent of the parties but the Commission disagreed, stating: "Unlike the Education Association's CNA, which provided for a contribution rate of 1.5% in the CNA, the [Administrators] Association's CNA is silent about the contribution rate." 47 NJPER at 330.

More significantly, P.E.R.C. No. 2021-27 was an unfair practice case and not a scope of negotiations case, so the legal standard of review required the Commission (and Director of Unfair Practices) to determine the merits of the Administrators Association's claims. The Commission evaluated the unfair practice allegation that the Board unilaterally increased health

insurance premium contributions and determined that the parties' successor CNA did not support a claim that they had negotiated a reduction to the contribution rate from the Chapter 78 tier four status quo. Here, in contrast, the Commission's scope of negotiations jurisdiction does not include interpreting the parties' 2018-2021 CNA or determining the intent of the parties during negotiations regarding health insurance contributions. Ridgefield, 78 N.J. 144, supra. Those questions are appropriate for the arbitrator.

ORDER

The request of the Ridgefield Park Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: September 30, 2021

Trenton, New Jersey