

P.E.R.C. NO. 2021-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE OF NEW JERSEY
(DEPARTMENT OF CORRECTIONS),

Petitioner,

-and-

Docket No. SN-2020-038

NEW JERSEY SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the State's motion for reconsideration of a Commission decision, P.E.R.C. No. 2021-3, denying the State's request to restrain binding arbitration of a grievance filed by the NJSOA. The grievance alleged that the State violated the parties' collective negotiations agreement by requiring the grievant to pay the same health insurance premium contribution while out on Workers' Compensation as when he was receiving his full salary. On reconsideration, the State asserts that even if the statutes enacting P.L. 2011, c. 78 (Chapter 78) that it cited in its original arguments do not preempt negotiations, that N.J.S.A. 52:14-17.28b, enacted as part of P.L. 2020, c. 2, prohibits health insurance premium contributions of less than 1.5% of base salary. The State also repeats its arguments asserting how to define base salary for purposes of health insurance premium contributions. The Commission, while finding no extraordinary circumstances warranting reconsideration of its original decision that Chapter 78 no longer preempts health insurance premium contributions, nonetheless clarifies its original decision to note that N.J.S.A. 52:14-17.28b preempts contributions of less than 1.5% base salary. However, the Commission does not find that the State proffered any statutes or regulations that expressly, specifically, and comprehensively define the term "base salary" for purposes of that 1.5% minimum contribution. Accordingly, the Commission finds that the arbitrator may consider the appropriate health insurance premium contribution while the grievant was on Workers' Compensation.

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, Gurbir S. Grewal, Attorney General,
Paul D. Nieves, Deputy Attorney General

For the Respondent, O'Brien, Belland & Bushinsky, LLC,
attorneys (Kevin D. Jarvis, of counsel and on the
brief; Matthew B. Madsen, on the brief)

DECISION

On September 17, 2020, the State of New Jersey, Department of Corrections (State) moved for reconsideration of P.E.R.C. No. 2021-3, 47 NJPER 108 (¶26 2020). In that decision, the Commission denied the State's request to restrain binding arbitration of a grievance filed by the New Jersey Superior Officers Association (NJSOA). The grievance alleged that the State violated the parties' collective negotiations agreement (CNA) by requiring the grievant, while he was on Workers' Compensation from December 18, 2018 until February 11, 2019, to pay the same amount for health care benefits as when he was working on full duty receiving his base salary. The State

asserted a contractual and statutory preemption defense based on CNA language referencing health insurance premium contributions in accordance with P.L. 2011, c. 78 (Chapter 78). However, the Commission found that because the parties had already achieved the full four-year implementation of Chapter 78 contributions on July 1, 2014, health insurance premium contributions were no longer preempted at the time of the grievant's claim. See N.J.S.A. 40A:10-21.1 and -21.2. Furthermore, because health insurance premium contributions were no longer preempted by Chapter 78 during the parties' 2015-2019 CNA that was in effect at the time the grievant received Workers' Compensation benefits, the various statutes proffered by the State for defining "base salary" for purposes of Chapter 78 contributions were no longer applicable for preemption purposes. Accordingly, the Commission held that neither health insurance premium contributions generally, nor whether to calculate them from base salary or Worker's Compensation while employees are out on Worker's Compensation, were expressly or specifically preempted following the parties' 2011-2014 CNA during which NJSOA unit employees reached full Chapter 78 implementation.

The State asserts that reconsideration is warranted because the Commission decision did not consider the effect of N.J.S.A. 52:14-17.28b, enacted as part of P.L. 2010, c. 2, which prohibits health insurance premium contributions of less than 1.5% of base

salary. It argues that allowing health insurance premium contributions to be based off of Workers' Compensation instead of base salary may lead to a contribution below the minimum prescribed in N.J.S.A. 52:14-17.28b. The State cites a Workers' Compensation statute^{1/} and a Police and Firemen's Retirement System of New Jersey (PFRS) statute^{2/} to support its contention

1/ The State cites N.J.S.A. 43:16A-15.2(a), which provides:

If any member of the retirement system receives periodic benefits payable under the Workers' Compensation Law during the course of his active service, in lieu of his normal compensation, his regular salary deductions shall be paid to the retirement system by his employer. Such payments shall be computed, in accordance with section 15 of P.L.1944, c. 255 (C. 43:16A-15), at the rate of contribution on the base salary subject to the retirement system, just prior to the receipt of the workers' compensation benefits. The moneys paid by the employer shall be credited to the member's account in the annuity savings fund and shall be treated as employee contributions for all purposes. The employer will terminate the payment of these moneys when the periodic benefits payable under the Workers' Compensation Law are terminated or when the member retires.

The member for whom the employer is making such payments, will be considered as if he were in the active service.

2/ The State cites N.J.S.A. 43:16A-1(26)(a), which provides:

"Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary
(continued...)

that "base salary" as used in 52:14-17.28b cannot mean Workers' Compensation.

The NJSOA responds that the State did not previously assert N.J.S.A. 52:14-17.28b and cannot raise it as a new legal argument on reconsideration. It contends that the State is also attempting to re-litigate its arguments concerning the definition of "base salary."

The State replies that it raised N.J.S.A. 52:14-17.28b by reference when it cited N.J.S.A. 40A:10-21.1, which provides a 1.5% floor for employee contributions under Chapter 78. It contends that because the Commission should now consider the applicability of N.J.S.A. 52:14-17.28b to health insurance premium contributions, then it must revisit the "base salary" arguments in the original scope petition.

The NJSOA replies that while N.J.S.A. 52:14-17.28b may interact with some statutory provisions of Chapter 78, the State never argued about the alleged relevance of that statute and cannot introduce these arguments on reconsideration.

A motion for reconsideration of a Commission scope of negotiations determination "will only be granted based on a demonstration of extraordinary circumstances and exceptional

2/ (...continued)

adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

importance.” N.J.A.C. 19:13-3.12. “The movant shall specify and bear the burden of establishing the grounds warranting reconsideration.” Id.

Having reviewed the Commission decision in light of the State’s arguments in support of its motion, we find no extraordinary circumstances warranting reconsideration. The case before the Commission was about whether NJSOA’s premium contributions continued to be preempted by Chapter 78 during the parties’ 2015-2019 CNA and, consequently, whether this dispute over the appropriate contribution amount by the grievant during his period of Workers’ Compensation in 2018-2019 is arbitrable.

Consistent with previous Commission decisions, the Commission held that following full implementation of the Chapter 78 contributions tiers, health insurance premium contributions became negotiable again and were no longer specifically preempted by Chapter 78. 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). Moreover, the Supreme Court of New Jersey endorsed the Commission’s statutory interpretation that while a union could not negotiate to reduce health insurance premium contributions from Chapter 78 Tier 4 levels during the CNA in which it reached Tier 4, it could re-negotiate contributions for the next CNA. Ridgefield Park Bd. of Ed., 244 N.J. 1, 28-38 (2020). The Supreme Court stated:

If a four-year CNA governing employees in a particular district went into effect in 2011, the year that Chapter 78 was enacted, those employees would achieve "full implementation" in the last year of that contract and could immediately negotiate health insurance premium contribution rates for the next CNA. . . . 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.

[244 N.J. at 36-37.]

The State now argues that if Chapter 78 does not preempt health insurance premium contributions, then a different law, P.L. 2010, c. 2, sets a floor for those contributions at 1.5% of base salary through N.J.S.A. 52:14-17.28b. The State did not raise these arguments in its briefs before us in P.E.R.C. No. 2021-3. Nonetheless, because the State has explicitly raised this partial preemption argument, we will make a point of clarification to our earlier decision. N.J.S.A. 52:14-17.28b provides that:

Commencing on the effective date [May 21, 2010] of P.L.2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, the amount of the contribution required pursuant to paragraph (1) of this subsection by State employees and employees of an independent State authority, board, commission, corporation, agency, or organization for whom there is a majority representative for collective negotiations purposes shall be 1.5% of base salary, notwithstanding any other amount that may be required additionally pursuant to this

paragraph by means of a binding collective negotiations agreement.

The Commission has held that P.L. 2010, c. 2, as codified through N.J.S.A. 52:14-17.28b and analogous statutes, specifically preempts negotiations over employee health insurance premium contributions below 1.5% of base salary. Ocean Cty. Voc. Bd. of Ed., P.E.R.C. No. 2014-53, 40 NJPER 405 (¶137 2014); and Fairfield Tp., supra, P.E.R.C. No. 2019-31. Accordingly, to the extent that the NJSOA's grievance may assert that the grievant's health insurance premium contribution while on Workers' Compensation should have been less than 1.5% of his base salary, it is preempted by N.J.S.A. 52:14-17.28b.

However, the State has not proffered any statutes or regulations that expressly, specifically, and comprehensively define "base salary" for purposes of determining health insurance premium contributions under N.J.S.A. 52:14-17.28b. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). Neither P.L. 2010, c. 2 nor P.L. 2011, c. 78 defined "base salary" for purposes of determining the contributions required under their respective provisions.

The State has asserted that a Workers' Compensation statute and a PFRS pension statute support its interpretation that "base salary" in the health benefits statutes cannot mean Workers' Compensation. We do not find that any of those statutes expressly, specifically, and comprehensively preempt the

definition of base salary for purposes of calculating health benefits contributions when an employee is receiving Workers' Compensation benefits. The State may pursue its statutory interpretation and application arguments, along with its contractual defenses, before the arbitrator.^{3/}

Based upon the above, we do not find that the State has demonstrated extraordinary circumstances or that this is a case of exceptional importance so as to warrant reconsideration.

ORDER

The State of New Jersey, Department of Corrections' motion for reconsideration is denied. The Commission decision in P.E.R.C. No. 2021-3 is clarified to note that N.J.S.A. 52:14-17.28b preempts negotiations over employee health insurance premium contributions below 1.5% of base salary.

BY ORDER OF THE COMMISSION

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

ISSUED: November 12, 2020

Trenton, New Jersey

^{3/} The arbitrator may also consider the secondary sources, e.g., Division of Pensions and Benefits Fact Sheets and Division of Local Government Services Local Finance Notices, that the State raised in its original scope briefs in support of its interpretation of "base salary" for purposes of health benefit contributions.