

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1089-08T3

SOUTH AMBOY PBA LOCAL 63,

Plaintiff-Respondent,

v.

THE CITY OF SOUTH AMBOY,

Defendant-Appellant.

Argued October 1, 2009 - Decided January 5, 2010

Before Judges Payne, C.L. Miniman, and
Waugh.

On appeal from the Superior Court of New
Jersey, Chancery Division, Middlesex County,
Docket No. C-72-08.

Kenneth W. Thomas argued the cause for
appellant (Lanza & Lanza, LLP, attorneys;
Mr. Thomas, on the brief).

Michael A. Bukosky argued the cause for
respondent (Loccke, Correia, Schlager, Lim-
sky & Bukosky, attorneys; Gregory G. Watts,
on the brief).

Sidney H. Lehmann argued the cause for
amicus curiae New Jersey State Policemen's
Benevolent Association (Zazzali, Fagella,
Nowak, Kleinbaum & Friedman, attorneys; Paul
L. Kleinbaum, of counsel, Mr. Kleinbaum and
Colin M. Lynch, on the brief).

PER CURIAM

Defendant City of South Amboy (the City) appeals from a September 12, 2008, final order confirming an arbitration award in favor of plaintiff South Amboy PBA Local 63 (Local 63) concerning medical benefits for retired City police officers. The New Jersey State Policemen's Benevolent Association (PBA) filed an amicus curiae brief. We affirm.

I.

This case arises from actions undertaken by the City in March 2002 and June 2003. On the earlier date, the City notified current and retired police officers that the existing \$1 co-pay for prescriptions would be increased retroactively to March 1, 2001, to \$5 for generic drugs and \$10 for brand-name drugs. On the latter date, the City changed health insurance providers from its self-insured South Amboy Group Benefits Plan (SAGBP) to the State Health Benefits Plan (SHBP). Under the SAGBP and the Collective Negotiation Agreement (CNA) between Local 63 and the City, retirees received all medical coverage without cost. Under the SHBP, retirees were required to use Medicare as their primary insurance provider and incur Medicare Part B premiums at their own expense. As a result of these changes, the PBA filed a grievance.

The City and Local 63 were parties to a series of CNAs, which were renegotiated every three years. The CNA that expired

on June 30, 1999, provided that the City would "continue to pay the cost of all medical coverage" provided by the CNA,¹ for a "retiree, retiree's/decedent's spouse and retiree's/decedent's dependent children." The CNA also provided "that the City may exercise its right to change insurance carriers so long as the coverages enumerated in this agreement are maintained at their equivalent levels."

The prescription drug plan provisions in the CNA covering the period July 1, 1999, to June 30, 2002, were amended to provide as follows:

D. 1. Prescription plan with a one (\$1.00) Dollar deductible at a local pharmacy. Effective March 1, 2001 the public employer shall have the right to modify the prescription plan so as to provide for a \$5.00 co-payment for generic medication and a \$10.00 co-payment for brand name medication.

No other relevant change was made at that time to the medical-benefits provisions in the 1999-2002 CNA or in the CNA for the period July 1, 2002, to June 30, 2005.

Local 63 opposed the March 2002 and June 2003 changes to medical benefits and filed a grievance² in accordance with

¹ Those coverages were hospitalization equivalent to the former Blue Cross 365, Blue Shield UCR, Rider J, major medical and dental insurance coverage equivalent to the former Connecticut General plan, and a local pharmacy prescription drug plan for which there was a \$1 co-pay.

² The grievance is not in the record on appeal.

procedures set forth in the CNA. The grievance was not resolved by the two-step grievance procedure and the issue went to binding arbitration. The question posed by Local 63 was: "Did the [C]ity violate the contract and derivative interest of retirees when it changed health plans? If so, what shall be the remedy?" The City, on the other hand, posed the question as whether it violated the CNAs "when it changed health insurance carriers from the [SAGBP] to the [SHBP] effective July 1, 2003? If so, what shall be the remedy?" After opening arguments, the arbitrator found that "the question is actually a narrowly focused one specifically dealing with two aspects of the health insurance afforded to retirees: the prescription co-pay and the payment of the premium for Medicare Part B."

During arbitration, Local 63 contended that retirees have vested rights in continued health coverage, which are frozen and vested for life upon retirement. It further argued that the City was required to continue to pay the cost of all medical coverage for retirees and that requiring retirees to pay the Medicare Part B premiums was contrary to law and the express language of the CNA.

The City argued that retirees are not entitled to \$1 prescription co-payments for life, because health benefits are not vested for life unless expressly stated in the CNA. The City

further contended that it was in compliance with the CNA when it changed healthcare providers because it provided retirees with the same options it provided current employees.

After considering both arguments, the arbitrator made the following award on December 3, 2007:

The grievance is sustained as follows:

1) Officers who retired during the tenure of a collective bargaining agreement prior to July 1, 1999 are entitled to continue to pay the \$1 prescription co-pay. Upon an officer furnishing receipts, the city shall reimburse him (or her) for payment of any overage.

2) Officers who retired during the tenure of contracts starting with July 1, 1999, during which the city had the right to increase the prescription co-pay, must pay the increased amounts effective as of the date of change.

3) The city is responsible for payment of the Medicare Part B premium for all officers who retired prior to the current MOA. The city shall reimburse them for the premiums paid retroactively to the date they commenced payment and prospectively so long as the premiums are incurred.

On March 25, 2008, one hundred thirteen days after the arbitral award, Local 63 filed a complaint with the Superior Court requesting confirmation of the award, attorneys' fees and costs, interest, conversion of the award to a judgment, and enforcement of the judgment. On August 1, 2008, Local 63 filed a motion for summary judgment, which was heard and granted on

September 12, 2008, over the City's opposition. The City appealed on October 27, 2008, and then moved for a stay before the trial court, which was denied on December 19, 2008. The City then filed a motion for a stay with us, which we denied on February 4, 2009.

In this appeal, the City contends it may raise affirmative defenses to the award because Local 63 did not institute a summary action to confirm the award under N.J.S.A. 2A:24-7 within three months; the award violates a public policy to preserve the fiscal integrity of the City; and the award improperly added terms to the CNA to which the City did not agree.

Local 63 responds that the award was reasonably debatable; it did not violate any public policy; and the City is bound by the award because it failed to seek modification or vacation within three months of the award.

The PBA urges that medical benefits are earned compensation and constitute a vested property interest; that retirees' medical benefits are presumed vested absent contractual language to the contrary; and that confirmation of the award conformed to long-established standards for review of arbitral awards.

II.

The scope of our review of the judgment confirming an arbitral award is plenary because confirmation of such an award

presents a question of law. See generally, Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference").

New Jersey has a strong preference for confirming arbitral awards. Middletown Twp. PBA Local 124 v. Twp. of Middletown, 193 N.J. 1, 10 (2007) (Middletown II) (citing N.J. Tpk. Auth. v. Local 196, 190 N.J. 283, 292 (2007)). Under N.J.S.A. 2A:24-8, a court may vacate an arbitration award only on a few narrow grounds, including "[w]here the award was procured by corruption, fraud or undue means" or "[w]here the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made." N.J.S.A. 2A:24-8.

The review of an arbitration award resulting from a public-sector dispute is somewhat broader. Habick v. Liberty Mut. Fire Ins. Co., 320 N.J. Super. 244, 252 (App. Div.) ("The standard of review of the public sector arbitrator's decision . . . is broader than it would be for private, voluntary arbitration under Tretina."), certif. denied, 161 N.J. 149 (1999). We must uphold an arbitrator's decision so long as it is "reasonably debatable." Middletown II, supra, 193 N.J. at 11 (citations

omitted); N.J. Tpk. Auth., supra, 190 N.J. at 301; Office of Employee Relations v. Commc'n Workers of Am., 154 N.J. 98, 112 (1998). This means that a court "may not substitute its own judgment for that of the arbitrator." N.J. Transit Bus Operations v. Amalgamated Transit Union, 187 N.J. 546, 554 (2006). This is so "regardless of the court's view of the correctness of the arbitrator's interpretation." Ibid.

A summary action to confirm, vacate, or modify an arbitral award under the Arbitration Act, N.J.S.A. 2A:24-1 to -11, must be filed within three months after the award is delivered to the party filing the action. N.J.S.A. 2A:24-7. Where a party timely seeks to confirm an award, the opposing party may seek to vacate or modify it beyond the three-month period. Harris v. Sec. Ins. Group, 140 N.J. Super. 10, 12-13 (App. Div. 1976).

Where a party has lost the right to institute a summary action under N.J.S.A. 2A:24-7, as here, that party may nonetheless file a plenary common-law action for confirmation, Heffner v. Jacobson, 100 N.J. 550, 555 (1985), unless the parties required the Arbitration Act to be the exclusive remedy, Policeman's Benevolent Ass'n v. Borough of Mount Haledon, 158 N.J. 392, 399-400 (1999). Otherwise, the party opposing a common-law action for confirmation, as here, may only avoid confirmation if it can demonstrate that the award is "'contrary to existing law

or public policy.'" N.J. Tpk. Auth., supra, 190 N.J. at 294 (quoting Bd. of Educ. of Alpha v. Alpha Educ. Ass'n, 188 N.J. 595, 603, reprinted at 190 N.J. 34, 42 (2006) (citations omitted)). This is because "'[p]arties are presumed to have contracted with reference to existing law,' and such 'principles are especially pertinent where . . . the agreement was entered into pursuant to a specific authorizing statute.'" Middletown II, supra, 193 N.J. at 12 (quoting Red Bank Bd. of Educ. v. Warrington, 138 N.J. Super. 564, 568-69 (App. Div. 1976)).

A public policy is only sufficient to vacate an award if it is "embodied in legislative enactments, administrative regulations, or legal precedents, rather than based upon amorphous considerations of the common weal." N.J. Tpk. Auth., supra, 190 N.J. at 295. The public policy exception is construed very narrowly and should be found in only rare circumstances. Tretina Printing, Inc. v. Fitzpatrick & Assocs. Inc., 135 N.J. 349, 364 (1994).

III.

The City argues that the award violates public policy because it imposes an undue financial hardship on the City's taxpayers and threatens the integrity of the City's pension fund. Defendant relies heavily on one of our unpublished decisions, but such a decision does not constitute "existing

law" within the intendment of N.J. Tpk. Auth., supra, 190 N.J. at 294. See R. 1:36-3 ("No unpublished opinion shall constitute precedent or be binding upon any court [and] [n]o unpublished opinion shall be cited by any court."). Furthermore, there is no factual support in the record for the City's claims of financial hardship or a threat to the integrity of its pension fund. The expenses incurred through enforcement of the award would only be equivalent to those expenses that the City incurred prior to the changes in the medical-expense benefits. The City has not demonstrated how maintaining equivalent payments would unduly burden it or its taxpayers. We see no merit in this contention.

The City also contends that the award requires it to violate N.J.S.A. 40A:10-23, necessitating vacation of the award under Middletown Twp. Policemen's Benevolent Association, Local No. 124 v. Twp. of Middletown, 162 N.J. 361, 370-71 (2000) (Middletown I). The Middletown I Court decided a dispute between a retired police officer and the Township respecting the Township's obligation to continue to pay the entire cost of health coverage for all retired employees, as their CNA required. Middletown I, supra, 162 N.J. at 365. The Township contended that it was not permitted to do so by virtue of

N.J.S.A. 40A:10-23. Ibid. The version of the statute in effect when the police officer retired provided as follows:

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]

The employer may, in its discretion, assume the entire cost of such coverage and pay all of the premiums for employees who have retired on a disability pension or after 25 years['] or more service with the employer, or have retired and reached the age of 62 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.

[Id. at 369 (quoting N.J.S.A. 40A:10-23 (1988)).]

The Court found that the "contract . . . did not comply with the terms of N.J.S.A. 40A:10-23, because it permitted (in fact, required) benefits to be paid to employees who had not completed twenty-five years of 'service,' and therefore was ultra vires." Id. at 370-71. However, relying on our decision in Wood v. Borough of Wildwood Crest, 319 N.J. Super. 650, 660-61 (App. Div. 1999), the Court held "that the Township's extension of benefits . . . is ultra vires in the secondary sense because the Agreement was merely an 'irregular exercise of a basic power' of the Township." Id. at 371. Because an ultra vires act in the secondary sense is subject to equita-

ble principles, the Court concluded that the Township was estopped from denying benefits to the police officer, in part because he had relied on the Township's representations that he would continue to receive medical-expense benefits and retired in reliance on those representations. Id. at 372.

Indeed, reimbursement of health insurance premiums constitutes compensation in New Jersey. The Supreme Court in Gauer v. Essex County Div. of Welfare, 108 N.J. 140 (1987), addressed the County's attempt to rescind retiree medical benefits based on N.J.S.A. 40A:10-23. That statute at the time in issue was identical to the statute considered in Middleton I.

The Court rejected the County's contention that the statute barred such benefits:

We are persuaded that the reimbursement of health insurance premiums to long-standing employees was intended at least in part as compensation for extended tenure. See Maywood Educ. Ass'n, Inc. v. Maywood Bd. of Educ., 131 N.J. Super. 551, 557 (1974) ("Compensation paid to public employees whatever the label, is not a gift so long as it is included within the conditions of employment either by statutory discretion or contract negotiation"). Hence we are satisfied that, like pensions, these retirement benefits were sufficiently compensatory to afford the plaintiff some interest in their preservation.

[Gauer, supra, 108 N.J. at 149-150.]

The Court concluded that Essex County could not rescind the retiree's medical benefits.

Gauer was subsequently applied in Weiner v. County of Essex, 262 N.J. Super. 270 (Law. Div. 1992). Weiner involved the very same facts as Gauer except that plaintiffs had not retired at the time Gauer was decided. As in Gauer, Essex County sought to deny the plaintiffs retiree medical benefits. Id. at 279. Judge Villanueva, then sitting in the Law Division, found in favor of the plaintiffs. Id. at 294. He held that "post-retirement medical benefits . . . are property rights of employees employed at that time, which the County cannot unilaterally terminate." Id. at 275. As such, the plaintiff's interest in post-retirement medical benefits was subject to federal and state constitutional guarantees of due process of law. Id. at 287.

We have also considered whether a township acted unlawfully when it refused to adhere to a policy providing health insurance coverage for employees who retired with at least twenty-five years of service in Bonzella v. Monroe Twp., 367 N.J. Super. 581, 583 (App. Div. 2004). There, the township required a husband and wife, both of whom had been employed for twenty-five years by the Township, to elect coverage with one spouse as the insured and the other as a dependent rather than maintain cross-

coverage. Id. at 586. The result was that the retirees were deprived of the benefits of cross-coverage and incurred substantial additional healthcare expenses. Ibid. We applied the Supreme Court's analysis in Gauer and concluded

that the health benefits provided by the resolution are part of respondents' compensation. The benefits are a separate entitlement, personal to the employee, which the Township cannot take away to save costs. At the time the benefits were requested, respondents had each put in their twenty-five years of service to the Township and were ready to retire. They earned what the Township promised them and it is too late for the Township, by resolution or otherwise, to reduce the health benefits available to these two employees.

[Id. at 590.]

More recently, the Supreme Court considered the effect of the current version of N.J.S.A. 40A:10-23 adopted in 1995 on medical-expense benefits in Middletown II, supra, 193 N.J. at 1, which was an appeal from an order confirming an arbitration award. N.J.S.A. 40A:10-23 currently provides:

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

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 admin-

istered 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 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. . . .

In comparing the prior version with the 1995 version, the Court commented that the amended statute on its face "empowers the Township to award health benefits to an expanded class of employees—officers who have accreted twenty-five years of service and credits in one or more of the relevant governmental employers including the Township." Middletown II, supra, 193 N.J. at 14.

The Township interpreted the statute as requiring the enactment of an ordinance or resolution establishing the minimum period of service with the Township and, absent such a resolution, the minimum period must be twenty-five years of Township employment. Id. at 15. The Court rejected that interpretation. Ibid. "The employer has absolute hegemony over the issue. How-

ever, where the employer chooses not to establish such a floor, the statute is essentially self-executing; any combination of service and credit that totals twenty-five years will do." Id. at 15-16. The need for an ordinance is tied only to the establishment of a minimum period of municipal employment. Id. at 16 (declaring language in Middletown I to the contrary as dictum). The Court concluded that the arbitrator's award was not contrary to law and affirmed. Ibid.

The City contends that, to the extent the award requires it to provide medical-expenses benefits to retirees with less than twenty-five years service, it violates N.J.S.A. 40A:10-23. We disagree because the parties to the CNA are presumed to have contracted with reference to existing law, including N.J.S.A. 40A:10-23. That statute permits a municipality to assume the cost of retiree medical benefits for retirees "who have retired and reached the age of 62 years or older with at least 15 years of service with the employer." Furthermore, any violation of the act would only be ultra vires in the secondary sense and may be subject to equitable estoppel. Middletown I, supra, 162 N.J. at 368, 371-72. There simply are no facts in the record before us that would permit us to reach this hypothetical issue. We find no violation of public policy mandating vacation of the arbitral award in this case.

IV.

The City contends that the arbitrator failed to properly apply contract law to the interpretation of the CNA because its terms were clear and unambiguous and reflected the common intent of the parties. It argues that the judge erred in affirming the award. Local 63 and PBA respond that the trial court correctly confirmed the award at issue because the arbitrator's decision was "reasonably debatable."³

However, the "reasonably debatable" standard of review has only been applied where the appellant is challenging an arbitration award under the Arbitration Act. See, e.g., Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208, 227-229 (1979) (Pashman, J., concurring) (endorsing majority's application of "reasonably debatable" standard in reviewing arbitration challenges brought on statutory grounds). We have found no case in which that standard has been applied in a common-law action to confirm an arbitration award, as here, where the party opposing confirmation is limited to affirmative defenses, such as waiver, accord and satisfaction, estoppel, fraud, and laches. Indeed, our Supreme Court has held that a party opposing a common-law action for confirmation may only avoid confirmation

³ Middletown II, supra, 193 N.J. at 11 (citations omitted); N.J. Tpk. Auth., supra, 190 N.J. at 301; Comm'n Workers of Am., supra, 154 N.J. at 112.

if it can demonstrate that the award is "contrary to existing law or public policy." N.J. Tpk. Auth., supra, 190 N.J. at 294.

The City's argument that the arbitrator violated common-law principles of contract interpretation does not rise to the level of a demonstration that the award was "contrary to law." Even if it did, we find no such violation here as the arbitrator's award was solidly based on language in the CNA.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION