

In the Matter of Arbitration Between

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NEW JERSEY SUPERIOR OFFICERS LAW :  
ENFORCEMENT ASSOCIATION, INC. :  
AFFILIATED WITH THE NEW JERSEY STATE :  
FRATERNAL ORDER OF POLICE AS :  
NEW JERSEY SUPERIOR OFFICERS LODGE 183 :  
 :  
"FOP/Union" :  
 :  
AND :  
 :  
THE STATE OF NEW JERSEY :  
DEPARTMENT OF CORRECTIONS :  
 :  
"State" :  
 :  
OER-4398 :  
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OPINION  
AND  
AWARD

This case arose when the State deducted health benefit premiums from several non-correction Lieutenants ("Grievants"). The Union contends these deductions were a violation of Article XXXV, Section C of the parties' Collective Bargaining Agreement ("CBA"). The State contends that the grievance is without merit.

The arbitration hearing in this matter took place in Trenton, New Jersey. The State was represented by Karen M. Selby, Deputy Attorney General. Mario A. Iavicoli, Esquire represented the Union. Both parties submitted post-hearing written argument.

ISSUE

"Did the State of New Jersey violate Article XXXV, Paragraph C of the Collective Bargaining Agreement with the FOP, Lodge 183, when the State deducted a share of the health benefits premium for the State Health Benefits Plan from the pay of certain employees? If so, what shall be the remedy?"

CONTRACT PROVISION

Article XXXV - Fringe Benefits

\* \* \*

C. Health Benefits

The following provisions shall apply to all persons hired after October 31, 2002 into titles other than Correction Lieutenant; Correction Lieutenant Juvenile Justice.

1. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.

2. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health benefits Commission.

3. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

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FACTS

The Union represents a bargaining unit comprised of Correction Lieutenants, as well as non-correction Lieutenants who work for various State agencies. The non-correction Lieutenants are collectively placed into Unit J, a small subsection of the overall

bargaining unit. The great majority of bargaining unit members are Correction Lieutenants.

There exist additional collective bargaining units of State employees which include individuals who work in the correctional system. The "rank and file" unit includes employees who work in corrections and a relatively small number of employees who work in non-correction positions in various other areas (F Unit). The bargaining unit for Sergeants includes those who work in the correctional system and a relatively small number of Sergeants who work in non-correctional positions (K Unit).

In the early part of this decade, the rank and file, Sergeants and Lieutenants bargaining units were all involved in interest arbitration proceedings which ultimately resulted in Interest Arbitration Awards issued by three different Interest Arbitrators. The Award involving the rank and file unit (IA-2000-4) was issued on June 30, 2000. The Award involving Lieutenants (IA-2001-3) was issued on October 31, 2002 and the Award involving Sergeants (IA-2001-35) was issued on November 1, 2002.

Concerning health benefits, the rank and file Award included the following provisions concerning health care:

Article XXXVIII shall be unchanged for all Corrections Officers in PBA 105 and the Juvenile Justice Center (L Unit) and all employees in the F Unit.

For all employees within the F Unit hired after the date of this Award, modify Article XXXVIII A. to incorporate the following:

- A. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.

- B. Effective July 1, 2000, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- C. Effective July 1, 2000, employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

\* \* \*

The October 31, 2002 Interest Arbitration Award concerning Lieutenants contained the following provisions concerning health care:

Article XXXV shall be unchanged for all persons who are members of the bargaining unit as of the date of this Award. For all members of the bargaining unit hired after the date of this Award into non-correction Lieutenant positions (Unit J), Article XXXV shall be modified to incorporate the following:

- A. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without any premium payment during the term of this Agreement.
- B. Effective on the first day of the next open enrollment period, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- C. Effective on the first day of the next open enrollment period, employees who elect coverage in an HMO plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

\* \* \*

The November 1, 2002 Interest Arbitration Award concerning Sergeants contained the following provisions concerning health benefits:

Article XXXVI shall be unchanged for all Corrections/JJC Sergeants and all current employees in the K Unit. 32

For all employees within the K Unit hired after the date of this Award, modify Article XXXVI (A) to incorporate the following:

- A. The State of New Jersey Managed Care/Point of Service (New Jersey Plus) will remain without premium payment during the term of this Agreement.
- B. Effective November 1, 2002, employees who elect coverage in the Traditional Plan shall pay 25% of the cost of the premium of that Plan as established by the State Health Benefits Commission.
- C. Effective November 1, 2000, employees who elect coverage in an HMO Plan shall pay 5% of the cost of the premium of that Plan as established by the State Health Benefits Commission.

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32. Rank-and-file Correction Officers and F Unit employees promoted into F Unit positions in this bargaining unit from the SLEC bargaining unit shall retain their health benefits upon promotion. This means that F Unit employees hired on or after July 1, 2000 promoted into F Unit positions will be subject to premium contribution upon promotion.

The parties subsequently reduced these three Interest Arbitration Awards into three new Collective Bargaining Agreements. In the Lieutenants Contract the relevant health benefits language was set forth in Article XXXV, Section C, as noted above.

Insofar as it is relevant to the instant case, no dispute arose between the State and representatives of the rank and file (State Law Enforcement Conference) and Sergeants (New Jersey Law Enforcement Supervisors Association) concerning interpretation and application of the health benefits language. A dispute did arise, however, between the State and Union (New Jersey Superior Officers Law Enforcement Association) concerning the health benefits of

Lieutenants.

More specifically, the State began imposing health benefit premium sharing for the "traditional" and "HMO" plans upon individuals who were "promoted", rather than "hired", into non-correction Lieutenant positions after October 31, 2002. The Union took the position that this violated Article XXXV, Section C of the Collective Bargaining Agreement. Accordingly, on or about April 5, 2004, the Union submitted the instant grievance.

The parties were unable to resolve this grievance. The Union therefore processed the grievance to arbitration. This Award now results.

#### POSITION OF THE UNION

The Lieutenants Interest Arbitration Award indicates that premium sharing for Lieutenants in the non-correction unit will occur only as to those Lieutenants who are "hired after the date of this Award." The State has chosen to ignore this language and deducted premium sharing payments from the salaries of non-correction Lieutenants who were "hired" before the Lieutenants Interest Arbitration Award but were "promoted" to Lieutenant after the date of the Award.

The State's action concerning non-correction Lieutenants is contrary to its action concerning the Sergeants bargaining unit. The Sergeants Interest Arbitration Award contains the exact same language as is contained in the Lieutenants Unit Award/Contract, that is, that the premium sharing is for those non-correction

Sergeants who were "hired after the date of this Award." The State has applied this Award language, and the CBA language which resulted, so as not to charge premium sharing to a Sergeant who was "hired" as a State employee before the date of the Sergeants Interest Arbitration Award, regardless of the fact that the individual was promoted to Sergeant after the date of the Award.

The State's actions concerning non-correction Lieutenants is also contrary to its actions concerning non-correction Officers. The rank and file Interest Arbitration Award contains the exact same language as that contained in the Lieutenants Award/Contract, and in the Sergeants Award/Contract, that is, that the premium sharing is for those non-correction Officers who were "hired after the date of this Award."

In the rank and file Unit, an individual is initially hired as a Trainee. The individual is then promoted from the initial title of Trainee to the title of Recruit in four to six months. The individual is later promoted from Recruit to the title of Senior Officer after a period of one year. Nonetheless, the State has applied the rank and file Award and Contract language to charge premium sharing only as to those Officers who were hired as State employees after the date of the Interest Arbitration Award, regardless of when the individual is promoted from Trainee to Recruit to Senior Officer.

The State's position in the instant case is contrary to the position it took during the interest arbitration process involving the rank and file, Sergeants and Lieutenants Unions. The rank and

file Award was rendered two years before the Sergeants and Lieutenants Awards. In the interest arbitration for the Sergeants and Lieutenants, the State was pushing for parity among all three Contracts. The State argued that the 10,000 or so correction and non-correction employees should receive the same exact percentage increases in income and receive the same benefits.

The Interest Arbitrators did in fact adopt the State's position of parity regarding raises and benefits. All three Arbitrators used the same language as to premium sharing for non-correction Officers, that is, that it applies only to those employees "hired after the date of this Award."

The State has now abandoned its policy of parity as to a handful of non-correction Lieutenants and is now treating them differently as to premium sharing for health benefits coverage. Lieutenant Smith, President of the Lieutenants Union, testified that of the 10,000 plus Officers covered by the rank and file, Sergeants and Lieutenants CBAs, only a handful of Lieutenants are being treated differently than their co-Officers. These Grievants are being charged premium sharing by the State based on the date they were promoted to Lieutenant even though they were hired before the date of the Award.

The undisputed evidence is that the non-correction Senior Officers and non-correction Sergeants who were hired before the rank and file and Sergeants Interest Arbitration Awards, but promoted after the Awards, are not being charged premium sharing. There is no evidence in the record that Trainees and Recruits are



being treated any differently than Senior Officers and Sergeants regarding premium sharing. It is only the handful of non-correction Lieutenants that are being treated differently and are being charged premium sharing.

In charging premium sharing for the handful of non-correction Lieutenants, the State is acting in violation of the Interest Arbitration Award and CBA resulting from that Award. The State is further violating its own announced goal of seeking to achieve parity among the 10,000 plus correction and non-correction Officers, which the State pressed and argued for in all three interest arbitrations, and which was adopted by all three Interest Arbitrators.

The grievance must therefore be sustained and the State be ordered to comply with the Lieutenants Interest Arbitration Award and resulting CBA. More specifically, the State must be ordered not to charge premium sharing for any non-correction Lieutenant who was hired as a State employee before the date of the Lieutenants Interest Arbitration Award, regardless of the date the individual was promoted to the title of non-correction Lieutenant. The State must further be ordered to return all such premium sharing money collected from the non-correction Lieutenants who were hired before the Interest Arbitration Award, regardless of whether the promotion occurred after that Award.

POSITION OF THE STATE

Pursuant to the Lieutenants Interest Arbitration Award issued on or about October 31, 2002, non-correction Lieutenants received a 14.5% pay increase. In exchange for the pay increase, Article XXXV, Health Benefits, of the CBA was changed to reflect that all members of the bargaining unit hired into non-correction Lieutenant positions after the date of the Award would pay 25% of the cost of health care premium for the State's Traditional Plan and 5% of the cost of health care premium for the State's HMO Plan. Thereafter, the State properly interpreted "hired" to mean "promoted", and accordingly applied the provisions of Article XXXV to all employees who were promoted into non-correction Lieutenant positions after the date of the Award.

Pursuant to N.J.A.C. 4A:4-2.3(a), "Vacancies shall be filled by promotion examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination". At least one of the five following conditions must be met in order to announce an open competitive examination:

- 1.) the vacancy is an entry level title;
- 2.) there are fewer than three qualified permanent employees in appropriate lower titles;
- 3.) there is more than one vacancy and the number of qualified permanent employees in lower titles exceed by fewer than three the total number of vacancies;
- 4.) the promotional exam list will be exhausted before all present or anticipated vacancies are filled; and
- 5.) The title requires special, technical or professional training or qualifications which are not required in lower titles. N.J.A.C. 4A:4-2.3(a).

In accordance with the mandates of the N.J.A.C. 4A:4-2.3, all Lieutenant vacancies must be filled by promotional examination.

Evidence reveals that in the past five years there have been no new hires in the non-correction Lieutenant position. Every employee who has entered this position has done so by being promoted. Even in State institutions, such as Montclair State University, which employ a small number of Sergeants and Lieutenants, all of the Lieutenants have been promoted from the position of Sergeant.

The Union's position that the provisions of Article XXXV of the Agreement are only applicable to Lieutenants who are "hired" after the date of the Interest Arbitration Award is flawed. Pursuant to the regulations and the data provided by centralized payroll, Lieutenants are not "hired", they are promoted from the position of Sergeant.

In order to give credence to the Union's interpretation of the word "hired", as used in the Interest Arbitration Award, one must essentially assume that the State afforded non-correction Lieutenants a 14.5% pay increase without receiving any benefit in exchange for such a lofty raise. This is simply not the case. It is clear that the 14.5% pay increase was agreed upon in exchange for non-correction Lieutenants agreeing to share in the cost of health insurance premiums. As such, the word "hired", as used in the Award, must be interpreted to mean "promoted", and the provisions of Article XXXV must be applicable to all non-correction Lieutenants promoted into these positions after the date of the Interest Arbitration Award.

Therefore, the grievance must be denied.

OPINION

Although I served as the Interest Arbitrator in the Lieutenants Interest Arbitration Award, I sit in the instant case as a grievance Arbitrator. My function is therefore to interpret and apply the parties' Collective Bargaining Agreement.

The relevant provision of the parties' Contract is contained in Article XXXV, Section C (Health Benefits). That provision contains language concerning health benefit premium sharing for non-correction Lieutenants "...hired after October 31, 2002..." i.e., the date of the Award. The language of the Interest Arbitration Award upon which this Contract was based likewise contains language requiring health benefit premium sharing for non-correction Lieutenants "...hired after the date of this Award...".

While the State now skillfully argues that the word "hired" must be interpreted as "promoted", I find to the contrary. It is apparent that the word "hired", rather than "promoted", was deliberately used in the Lieutenants Interest Arbitration Award, as well as the Contract which followed that Award. The relevant language used in the Lieutenants Interest Arbitration Award tracks language contained in the rank and file Award, which was issued years previous to the Lieutenants Interest Arbitration Award.

While the State has in this grievance arbitration proceeding presented evidence that since October 31, 2002 no one has been "hired" into a Lieutenant's position, and further presented testimony that it is "unlikely" that this would occur in the future in light of regulations which normally require the promotion of

individuals into Lieutenant positions, the evidence does not reflect that this was a focus of importance during the interest arbitration proceeding. The evidence does reflect, however, that parity between the rank and file, Sergeants and Lieutenants units was a focus of importance during the Sergeants and Lieutenants interest arbitration proceedings.

It is obvious that the Interest Arbitrator in the Sergeants case, as well as the Lieutenants case, chose to track the rank and file Award on the matters of salary and health care. The Sergeants Interest Arbitration Award also contains language referring to health benefits premium sharing for non-correction Sergeants "...hired after the date of this Award...".

It is therefore significant for purposes of interpreting and applying the Lieutenants Collective Bargaining Agreement how the State has applied the Sergeants Award on the matter of health care premium sharing. The evidence before me reveals that the State has interpreted and applied the Sergeants Interest Arbitration Award, and resulting Contract, so as currently not to require health benefits premium sharing from Sergeants, regardless of the fact that some individuals were "promoted" to Sergeant after the date of the Interest Arbitration Award.

After careful consideration, I conclude that the language of Article XXXV, Section C of the State/ Lieutenants CBA must now be interpreted and applied to reach the same result. Simply stated, there is insufficient justification for interpreting and applying the Lieutenants and Sergeants CBAs differently on the matter now in

dispute.

While the language of the two Contracts, and the Awards upon which they were based, are not identical, they are substantially similar. Both Awards refer to identical changes in health benefits for non-correction personnel "...hired after the date of this Award...". While the Interest Arbitrator in the Sergeants Award was more precise than the Interest Arbitrator in the Lieutenants Award in setting forth his intent, in that he included a footnote clarifying his intent, the absence of such a footnote in the Lieutenants Interest Arbitration Award is not dispositive of the outcome of the instant case. While in hindsight it would have been advisable if I had included such a footnote in the Lieutenants Award, the principles involved in the situation involving the Sergeants is still the same as that involving the Lieutenants.

In this regard, there is no reason to believe that it is any more likely that someone would be "hired" rather than "promoted" into the position of Sergeant then Lieutenant. To the contrary, the testimony presented was that the possibility of such an occurrence would be "equally likely". Moreover, while the State contends it could not have intended to give a 14.5% increase in salary without requiring premium sharing from those "promoted" into Lieutenant positions, this is exactly the situation which exists regarding Sergeants.


Accordingly, the instant grievance must be sustained. As a remedy, the State shall cease imposing health care premium sharing upon the Grievants. The State is further ordered to reimburse to

the Grievants all such premium sharing money collected.

AWARD

The grievance is sustained. The remedy is as set forth in the above Opinion.

Signed this 31<sup>st</sup> day of January, 2006.

  
SCOTT E. BUCHHEIT, ARBITRATOR

*State of New Jersey  
County of Camden  
Matter of Kayle  
Commission Expires  
February 9, 2009*