

**READING LODGE NO 9 FRATERNAL  
ORDER OF POLICE,**  
Plaintiff

VS.

**CITY OF READING,**  
Defendant

: IN THE COURT OF COMMON PLEAS  
: OF BERKS COUNTY, PENNSYLVANIA  
:  
:  
: CIVIL ACTION-LAW  
:  
: NO. 18 19904  
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**OPINION**

Appellant, Reading Lodge No 9 Fraternal Order of Police, appeals from the arbitration award of November 14, 2018, issued by Walt De Treux, Esquire. The history of the parties in this case is rife with collective bargaining agreements and arbitration interpretations. The arbitration award that is before this court was issued by Walt De Treux, Esquire, on November 19, 2018. It was preceded, five years earlier, by an arbitration award, on June 4, 2013, entered by Ralph H. Colflesh, Jr. Esquire.

This court sustains the Arbitration Awarded and denies the petition to vacate.

**Facts**

Past arbitration awards have interpreted the Collective Bargaining Agreements as granting retired City of Reading police officers' medical benefits after retirement. Thus, the 22 retired City of Reading police officers continue to receive medical benefits specifically until Medicare coverage is reached or until equivalent benefit coverage is obtained by the retiree's spouse or through the retiree's new employer providing similar coverage.

The Issue: Prescription Drugs. Is it Separate from Medical Benefits?

Appellant's sole basis in seeking to vacate the November 2018 De Treux Award is the arbitrator's inclusion of prescription drug benefits along with other medical benefits in the overall determination of whether a retired officer can be removed from the City of Reading's postretirement healthcare coverage. The consideration of prescription drugs along with the other portions of the medical and health insurance came from the earlier Colflesh Arbitration Award, not the present De Treux Arbitration Award. Arbitrator De Treux based his inclusion of prescription drug benefits on the clear and unambiguous language of the 2013 Colflesh Award, which interpreted the post-retirement medical plans and determined that any analysis of such benefits had to include a review of prescription drugs.

Legal Standard

In a grievance arbitration appeal arising under Act 111, the court's review is in the nature of narrow certiorari. Pennsylvania State Police v. Pennsylvania State Troopers' Association (Bentancourt), 540 Pa. 66 (1995). This scope of review prohibits a court from reviewing an arbitration award except under very few limited circumstances none of which are applicable in this case: (1) the jurisdiction of the arbitrator; (2) the regularity of the proceedings; (3) an excess of the arbitrator's powers; or (4) deprivation of constitutional rights. Id. The narrow certiorari scope of review "embodies a balancing of the legislative policy objective of shielding arbitration awards from judicial modification, with the residual need to avoid giving arbitrators unlimited powers."

Department of Corrections v. Pennsylvania State Corrections Officer Ass'n. 12 A.3d 346, 355 (Pa. 2011).

Timeliness Issue

Appellant's instant Petition attempts to overturn a requirement of the Colflesh Award of June 4, 2013. Pursuant to the Judicial Code, "an appeal from a tribunal or other governmental unit to a court . . . must be commenced within 30 days after the entry of an order from which the appeal is taken . . ." 42 Pa.C.S. § 5571. Thus, Appellant had to file an appeal no later than July 5, 2013. Instead, it raises this issue in the current appeal.

Discussion

Appellant contends that the evolution of the contracts has created two separate provisions, one covering medical benefits and the other covering only prescription benefits. In 2001, retirees were granted a \$1 prescription co-pay "for life." The 2007 contract maintained that benefit for existing retirees and increased it to a \$5 co-pay "for-life" for officers retiring after January 1, 2007. Appellant argues that the Colflesh Award's directive to compare retiree health benefits with those benefits received from another employer or a spouse's employer referred only to medical benefits and not to the prescription coverage.

Even assuming arguendo that the appellate issue before this court is not barred by failing to timely file an appeal, the arbitrator did not err in this case. The arbitrator found, after a consideration of employee benefits covered in the plan along with the

required employee premium contributions, that the County plans are roughly similar to or better than the City plans. This court agrees with the arbitrator's decision.

Appellant did not raise, and therefore Arbitrator Colflesh did not address, any distinction between medical benefits and prescription benefits. There is no question that the City's health insurance plan includes prescription benefits, as does the County plan. Arbitrator Colflesh was clearly considering the entire health plan coverage and not separating out prescription coverage. When declaring that a comparison between the City's plan and another employer or spouse's plan requires an objective review, he wrote:

Such a review must not only consider the plans in general for comparability as to coverages, deductibles, co-payments and other factors, but also make allowances for the current health status of the retiree and spouse in regard to costs, services procedures, devices, **and drugs** provided under each. (*Emphasis added*)

Clearly, Arbitrator Colflesh addressed the plans in general, not just the medical benefits. He stated that the drugs provided under each plan had to be reviewed to determine comparability.

The 1987 interest arbitration award that originally inserted the language regarding comparable plans from other employers or a retiree's spouse did not differentiate between medical benefits and prescription coverage. Neither did Arbitrator Colflesh. To the contrary, it specifically noted that an objective review of competing health insurance plans included a consideration of the drugs provided under those plans.

Thus the City properly disqualified former City officers now employed fulltime by the County of Berks from continuing to receive City-provided health insurance benefits because the County plans meet the Colflesh standard.

Alleged Prescription Drug Benefit Distinction Never Raised in the Testimony Before the Arbitrator

Finally, for the first time, the FOP raised the argument that prescription benefits are a stand-alone health care benefit not subject to the Colflesh Award in its arbitration brief filed *after* the trial before Arbitrator De Treux.

Findings

For these reasons, this court agrees with Arbitrator De Treux and finds no merit to the Appellant's argument that the prescription benefit enjoyed by retirees under the City's plan is a stand-alone benefit unaffected by the Colflesh Award.

Accordingly, this court denies the Petition to Vacate and sustains the Grievance Arbitration Award.

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ORDER

AND NOW, this 16 day of April, 2019, upon consideration of the Petition to Review and Vacate the Grievance Award and the City of Reading's response thereto, it is hereby ORDERED and DECREED that Petition to Vacate is DENIED and Arbitrator De Treux's Grievance Arbitration Award is SUSTAINED.

BY THE COURT:

  
JEFFREY K. SPRECHER, J.