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parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3523-15T2

STATE OF NEW JERSEY
(DIVISION OF STATE POLICE),

Plaintiff-Respondent,

v.

STATE TROOPERS FRATERNAL
ASSOCIATION,

Defendant-Appellant.

Argued March 28, 2017 - Decided April 13, 2017

Before Judges Reisner and Rothstadt.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-132-16.

Michael A. Bukosky argued the cause for appellant (Loccke, Correia, & Bukosky, attorneys; Lauren Sandy, of counsel and on the briefs).

Christopher J. Hamner, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Sally Ann Fields, Senior Deputy Attorney General, on the brief).

PER CURIAM

Defendant State Troopers Fraternal Association (Association) appeals from an April 14, 2016 order granting an application by plaintiff Division of State Police (Division) to vacate an arbitration award, and from a second order of the same date denying the Association's application to confirm the award. The arbitration concerned a dispute over whether the Division was required to reimburse State Troopers for their personal commuting expenses on the State's major toll roads. We affirm for the reasons stated by the motion judge in his oral opinion issued April 14, 2016, and for the reasons stated below.

The essential facts were stipulated before the arbitrator, and they can be summarized briefly. For many years, the New Jersey Turnpike Authority and the South Jersey Transportation Authority - independent authorities that operate the State's major toll roads - allowed State Troopers to travel over those roads in their personal vehicles without paying tolls. As a result, the Troopers were able to commute to and from work without incurring that expense.

Nothing in the collective negotiation agreement (CNA) specifically addressed that issue. The Division never contractually agreed to pay the Troopers' travel expenses to get

to and from work, and never previously reimbursed them for their toll expenses. The Division had no agreement with the Authorities providing that those entities would give the Troopers free toll passage, and the Division "does not have any control over the [Authorities'] policies governing free toll passage."

As of November 2010, the two Authorities notified the Division that they would no longer provide toll-free passage for Troopers commuting to and from work. When the Division declined to reimburse the Troopers for their toll-related commuting expenses, the Association filed a grievance, claiming that the "unilateral suspension of non-revenue toll road passage" for their commuting violated the CNA.

The Association relied, in pertinent part, on Article XXVI of the CNA (the preservation of rights clause), which provided that "all mandatorily negotiable benefits, terms and conditions of employment relating to the status of Troopers . . . covered by this Agreement shall be maintained at standards existing at the time of the agreement." However, the only pertinent commuting expense covered by the CNA was in Article X, which provided a mileage expense for Troopers who had to commute more than twenty miles from their homes to their place of assignment.

The arbitrator reasoned that toll-free passage was a benefit, of a type that was negotiable. He also reasoned that the provision

of toll-free passage was an established "past practice." He reasoned that it therefore must be "an established term and condition of employment." The arbitrator acknowledged that the CNA specifically provided a mileage allowance and had no provision for toll-free commuting, but reasoned that the mileage allowance was "not at variance with the provision of free tolls."

In addressing the Division's argument that "the benefit was provided by the Authorities and as such it cannot be held responsible for the elimination of the benefit," the judge reasoned that "the [Association] has no relationship with the Authorities; its contractual relationship is with the State."

We agree with the motion judge that the arbitrator exceeded his authority and made a mistake of law, by reading into the contract a term that was not found there and was not "reasonably debatable" as an interpretation of the contract. See N.J.S.A. 2A:24-8(a), (d); Borough of E. Rutherford v. E. Rutherford PBA Local 275, 213 N.J. 190, 203 (2013); Office of Emp. Relations v. Commc'ns Workers of Am., 154 N.J. 98, 111-12 (1998). The fact that toll-free passage or toll reimbursement was "negotiable" did not mean that the parties in fact negotiated for it. To the contrary, they clearly did not, because the contract addressed commutation expenses in the form of a mileage allowance and did not provide for toll reimbursement.

Moreover, the arbitrator's discussion of the third-party nature of the benefit was illogical. Under the stipulated facts, the privilege of toll-free commutation was a gratuitous benefit provided by the Authorities, and not a benefit provided by, agreed to, or controlled by the Division. The toll-free arrangement was a "past practice" between the Authorities and the Troopers, not between the Troopers and the Division. State Troopers Fraternal Association v. State, 149 N.J. 38 (1997), on which the Association relies, is not on point, because that case concerned payments the Division had traditionally made to retired Troopers.

The Association's reliance on Borough of East Rutherford, supra, is likewise misplaced. That case concerned an increase in the co-payment charged to employees under a health care plan. However, in that case, the CNA specifically provided that the employer would pay for the employees' health care coverage and would pay any increases in premiums that might occur during the contract period. In those circumstances, the arbitrator reasonably "characterized the former level of co-payment required of PBA members as a past practice between the Borough and the PBA," which "must be maintained" under the preservation of rights clause in the CNA. Borough of E. Rutherford, supra, 213 N.J. at 204.

Unlike the co-payments, which were an integral part of a contractually-provided health care benefit, the privilege of toll-free passage did not relate to any agreed-on benefit in the contract. In fact, the contract only provided a mileage allowance, in limited circumstances. Nor was toll-free commutation ever a benefit actually provided by the employer, either directly or under an agreement with the Authorities. Therefore, it was not a past practice between the parties and it was not covered by the preservation of rights clause.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION