

P.E.R.C. NO. 2016-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-066

WASHINGTON TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Washington Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Washington Township Education Association. The grievance contests the Board's denial of tuition reimbursement requests after using tuition reimbursement funds for another program. The Commission holds that the grievance does not contest the Board's managerial prerogative to establish another program and that, although N.J.S.A. 18A:6-8.5(b) provides an employee with the right to appeal to the Board, same does not preclude an employee from pursuing an alternate appeal procedure.

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.

P.E.R.C. NO. 2016-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WASHINGTON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-066

WASHINGTON TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Fogarty & Hara, attorneys (Stephen R. Fogarty, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Gail Oxfeld Kanef, of counsel)

DECISION

On April 14, 2015, the Washington Township Board of Education (Board) filed a scope of negotiations petition seeking restraint of arbitration of a grievance filed by the Washington Township Education Association (Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) by denying tuition reimbursement requests after using tuition reimbursement funds for another program. We deny the Board's request for a restraint of binding arbitration.

The Board filed briefs, exhibits, and the certification of the Superintendent of Schools (Superintendent). The Association filed a brief only.^{1/} These facts appear.

The Association represents certified personnel, secretaries, custodians, and food service employees. The Board and the Association are parties to a CNA in effect from July 1, 2011 through June 30, 2014. The grievance procedure ends in binding arbitration.

Article X, TEACHER COURSE CREDITS AND PROFESSIONAL GROWTH AND DEVELOPMENT DAYS, Section A, Teacher Graduate Course Credits and Horizontal Moves, provides in pertinent part:

To be eligible to receive tuition reimbursement and/or course credits to qualify for horizontal movement, in addition to the requirements set forth below, teachers must receive prior written approval from the Superintendent for courses.

1. The Board agrees to reimburse the cost of tuition for fully certified, full-time teachers, up to the following amounts per teacher, under the terms and agreement set forth below.

2. Courses taken by teachers in approved graduate programs leading to a Masters and/or Doctoral Degree, in a subject related to the teacher's current certification(s), will be reimbursed and will qualify for horizontal advancement, except as provided under number 3 & 4 below, if approved by the

^{1/} Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall...[r]ecite all pertinent facts supported by certification(s) based upon personal knowledge."

Superintendent and the college advisor of graduate studies, where applicable.

* * *

5. Courses that do not meet the above criteria but might be beneficial to the district may be approved by the Superintendent for reimbursement and horizontal move. All decisions by the Superintendent will be final.

* * *

7. The Board shall allocate a sum not to exceed \$97,200 for the 2011-2012 school year, \$100,200 for the 2012-2013 school year and \$103,200 for the 2013-2014 school year.

* * *

9. Once the funds available for tuition reimbursement are within \$5,000 of being exhausted, the Superintendent shall notify the Association of the balance remaining. At this point, preference for reimbursement shall be given to those applicants who are within six (6) credits of horizontal movement. Thereafter, preference for the remaining funds shall be given in the order of the date the application is submitted to the Superintendent's office. In the event of ties in the above categories, the balance shall be distributed equally in dollars per credit among the applicants.

* * *

[emphasis added]

On May 6, 2010, the State Legislature approved P.L.2010, c.13, (N.J.S.A. 18A:6-8.5), an amendment to the education law. N.J.S.A. 18A:6-8.5 provides the following:

§ 18A:6-8.5. Requirements for receipt of employee tuition assistance, additional compensation

In order for a board of education to provide to an employee tuition assistance for course work taken at an institution of higher education or additional compensation upon the acquisition of additional academic credits or completion of a degree program at an institution of higher education:

a. The institution shall be a duly authorized institution of higher education as defined in section 3 of P.L.1986, c.87 (C.18A:3-15.3);

b. The employee shall obtain approval from the superintendent of schools prior to enrollment in any course for which tuition assistance is sought. In the event that the superintendent denies the approval, the employee may appeal the denial to the board of education.

In the case of a superintendent, the approval shall be obtained from the board of education; and

c. The tuition assistance or additional compensation shall be provided only for a course or degree related to the employee's current or future job responsibilities.

[emphasis added]

The grievants are 10 teachers whose requests for tuition reimbursement between June through August 2014 were denied by the Superintendent because there were no tuition reimbursement funds remaining from the total amount allocated pursuant to Article X(A) (7). However, the grievants' requests for horizontal movement on the salary guide were granted.

The grievants did not appeal the Superintendent's decision to the Board pursuant to N.J.S.A. 18A:6-8.5(b). Instead, on October 7, 2014, the Association filed a grievance alleging that "[m]embers being denied tuition reimbursement for courses they put in for because funds from Article X of the Collective Bargaining Agreements between WTEA and Washington Township BOE were used up due to the UPenn program brought in by the Board where members were given the opportunity to apply but only a few were selected." As a remedy, the Association sought that "the District will not use contractual tuition reimbursement money in Article X for this or similar course work. The amount of money removed from the Article X tuition reimbursement funds will be replaced and any other remedy that the arbitrator determines."

On October 14, 2014, the Superintendent denied the Association's grievance on several grounds, stating in pertinent part:

[T]he allegations of this grievance are not subject to the grievance procedure pursuant to the CNA between the Board and the Association. That notwithstanding, the District maintains that the allocation of funds complied with the requirements of Article X of the CNA.

* * *

By way of background, the deadline to apply for the University of Pennsylvania (hereinafter referred as to [sic] 'UPenn') program was on or about April 30, 2014. The program provided District teachers an opportunity to receive credits from UPenn on

site in the District. The tuition reimbursement funds, allotted in Article X, were properly used for those teachers who qualified for the program. The first denial of an Association member's tuition reimbursement due to insufficient funds, among other reasons, occurred on or about June 16, 2014. Subsequently, and approximately three and [sic] half months later, the instant grievance was filed contesting the tuition reimbursement denials. However, under the CNA, the term 'grievance' shall not apply to 'any matter for which a specific method or review is prescribed and expressly set forth by law.' New Jersey's tuition assistance statute provides for a method of appeal when the superintendent denies an employee's tuition reimbursement request. Specifically, N.J.S.A. 18A:6-8.5(b) states that, '[i]n the event that the superintendent denies the approval, the employee may appeal the denial to the board of education.' Thus, the appropriate recourse to contest the denial of any tuition reimbursement is by way of a direct appeal to the Board, not through the grievance procedure prescribed under the CNA. Accordingly, this grievance will be denied upon procedural grounds.

Even if the District were to disregard this clear preemption, and proceed with the grievance procedures set forth in the CNA, this grievance would be denied because it is untimely.

* * *

As previously mentioned, the first denial for tuition reimbursement, due to insufficient funds, was on or about June 16, 2014. Therefore, a complaint should have been submitted, in writing, by on or about September 15, 2014.

* * *

Moreover, the parties...CNA clearly sets out the parameters with regard to the tuition

reimbursement . . . [in] Article X, Section A(7)...[and] Article X, Section A(9).
. . . The Association was made aware that the funds for tuition reimbursement were within \$5,000 of being exhausted on or about June 10, 2014. Given the funds were distributed appropriately and the District's notification to the Association complied with the CNA, this grievance will also be denied upon substantive grounds.

On January 8, 2015, the Association filed a Request for Submission of a Panel of Arbitrators. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states: "The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations." In addition, we do not consider the wisdom of the contract language in question, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982) states:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a

subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

The Board asserts that arbitration is preempted by N.J.S.A. 18A:6-8.5(b), which precludes a board of education from providing tuition assistance unless certain requirements are met and specifically provides an appeal process for denial of tuition assistance. It argues that the grievants did not obtain the requisite superintendent approval and did not exercise the statutory appeal process.

The Association focuses on use of the word "may" within the appeal provision of N.J.S.A. 18A:6-8.5(b) and argues that because same does not speak in the imperative, it is not preemptive. The Association maintains that N.J.S.A. 18A:6-8.5 does not entirely preempt collective negotiations on certain aspects of tuition reimbursement.

The Board replies that, pursuant to N.J.S.A. 34:13A-5.3, grievance procedures and other similarly negotiated procedures may not replace or be inconsistent with any alternative statutory appeal procedure. The Board maintains that an appeal to the Board after a Superintendent's denial of tuition reimbursement is the sole remedy for teachers who have been denied tuition reimbursement.

This case triggers the second prong of the Local 195 test and causes us to consider whether N.J.S.A. 18A:6-8.5(b) preempts

an assertion that tuition reimbursement denials were caused by tuition reimbursement funds being used for the UPenn program. We find that the answer to that question is no.

Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively in order to prevent otherwise required employer-employee negotiations on the subject matter. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982); see also Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). A public employer has a prerogative to require training and to determine how to train employees. See, e.g., Borough of Avalon, P.E.R.C. No. 93-105, 19 NJPER 270 (¶24135 1993); Orange Tp., P.E.R.C. No. 90-119, 16 NJPER 392 (¶21162 1990); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Millburn Tp., P.E.R.C. No. 84-110, 10 NJPER 224 (¶15113 1984); Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Monroe Tp. Bd. of Ed., P.E.R.C. No. 93-9, 18 NJPER 428 (¶23194 1992); City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1996); Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986); Franklin Tp., P.E.R.C. No. 86-83, 12 NJPER 98 (¶17037 1985); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985).

In this case, the grievance does not contest the Board's managerial prerogative to establish the UPenn program. Rather, the grievance asserts that tuition reimbursement denials were caused by tuition reimbursement funds being used for the UPenn program. N.J.S.A. 18A:6-8.5(b) states that after a Superintendent denies a tuition reimbursement request, "the employee may appeal the denial to the board of education." (emphasis added). Therefore, the statute "expressly, specifically and comprehensively" provides that an employee has a right to appeal to the Board of Education, but does not mandate that such denials are not mandatorily negotiable. Neither subsection b nor any other part of the statute "expressly, specifically and comprehensively" precludes employees from pursuing an alternate appeal procedure aside from an appeal to the Board.

We have decided several cases interpreting whether N.J.S.A. 18A:6-8.5 preempts issues relating to tuition reimbursement. In Kingwood Tp. Bd. of Ed., P.E.R.C. No. 2014-34, 40 NJPER 260 (¶100 2013) and Hackensack Bd. of Ed., P.E.R.C. No. 2016-20, ___ NJPER ___ (¶ ____), we found that N.J.S.A. 18A:6-8.5 does not preempt a Board's refusal to grant salary guide advancement based upon completion of graduate courses. Hainesport Tp. Bd. of Ed., P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014), addressed whether N.J.S.A. 18A:6-8.5 preempted arbitration over denial of a tuition

reimbursement request. However, our analysis focused on the first sentence of N.J.S.A. 18A:6-8.5(b) and whether approval for tuition reimbursement in a graduate program from a prior Superintendent should apply to future course work for that employee. The Supreme Court has directed that negotiability rulings are to be made on the facts and circumstances of each case. See Jersey City v. POBA and PSOA, 154 N.J. 555, 574 (1998); Troy v. Rutgers, 168 N.J. 354, 383 (2001).

Accordingly, the Board's request to restrain arbitration is denied.

ORDER

The request of the Washington Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Voos voted in favor of this decision. None opposed. Commissioners Jones and Wall were not present.

ISSUED: October 29, 2015

Trenton, New Jersey