

P.E.R.C. NO. 2023-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET HILLS BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2023-016

SOMERSET HILLS EDUCATION
ASSOCIATION,

Respondent

SYNOPSIS

The Public Employment Relations Commission grants, in part, and denies, in part, the Board's request for a restraint of binding arbitration of the Association's grievance. The grievance asserts that the Board violated the parties' collective negotiations agreement when it denied the grievant course approval for a second masters degree, thereby preventing him from advancement on the salary guide. The Commission finds that to the extent that the Association's grievance is challenging the superintendent's denial of the grievant's tuition reimbursement for a second masters degree, that issue is preempted by N.J.S.A. 18A:6-8.5 and not legally arbitrable. The Commission further finds the Association's grievance is not preempted by N.J.S.A. 18A:6-8.5 to the extent it is challenging the Board's denial of the grievant's advancement on the salary guide for completed graduate coursework.

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.

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Appearances:

For the Petitioner, Adams, Gutierrez & Lattiboudere, LLC, attorneys (John E. Croot, Jr. of counsel and on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Raymond M. Baldino, Esq., of counsel and on the brief)

DECISION

On November 3, 2022, Somerset Hills Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by Somerset Hills Education Association (Association). The grievance asserts the Board violated Article IX (Tuition Reimbursement and Staff Development) of the parties' collective negotiations agreement (CNA) when it denied the grievant course approval for a Master of Fine Arts program, thereby preventing him from advancement on the salary guide.

The Board filed briefs, exhibits, and the certification of its Superintendent, Dr. Gretchen Dempsey. The Association filed a brief.^{1/} These facts appear.

The Association is the exclusive representative of all certified personnel including teachers, co-curricular personnel, support staff and technology technicians. The Board and the Association are parties to an expired CNA with a term of July 1, 2018 through June 30, 2021, which was extended by a Memorandum of Agreement with a term of July 1, 2021 through June 30, 2022 that continues to be in effect. The grievance procedure ends in binding arbitration.

Article IX of the parties' CNA provides the following, in pertinent part:

A. TUITION REIMBURSEMENT

The tuition for graduate courses and monies paid for books and fees shall be reimbursed by the Board of Education subject to the following conditions:

1. Courses (in person, online or hybrid) are approved by the Superintendent of schools prior to enrollment, and denial of same is non-arbitrable. The institution must be accredited as a duly authorized institution of higher learning.

* * *

^{1/} The Association did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certification(s) based upon personal knowledge.

16. Effective 7/1/2019, in cases where a teacher qualifies for movements to a different salary column, movement will only take place one time in each school year. Evidence of completion of graduate level courses must be submitted to Superintendent of Schools no later than October 1st for movement to the new salary guide column retroactive to the beginning of the school year.

Effective 7/1/2019, courses for salary guide movement must be previously approved by the Superintendent of Schools and must be graduate level courses, and professional development courses taken outside of the school district.

Dempsey certifies that the grievant is an elementary school art teacher. The Board provided tuition reimbursement for the grievant's Master in Fine Arts degree from Kean University (Kean) in 2008. Dempsey certifies that, in October 2021, the grievant sought approval again for tuition reimbursement for a second Master of Fine Arts, for a program from the Savannah College of Arts and Design (SCAD). Dempsey further certifies that he advised the grievant at the time of his tuition reimbursement request that he did not feel comfortable approving the SCAD program since the grievant already had a Master in Fine Arts. Dempsey certifies that the grievant advised him that the two masters programs were different because the Kean Masters was focused on art education while the SCAD Masters emphasized painting.

Dempsey certifies that the Association filed a grievance on December 17, 2021, and she denied it on January 6, 2022. The Association's grievance states, in pertinent part:

(1) Statement of Grievance: [The grievant] has been denied course approval to take a Master Fine Arts Program.

(2) Relief Sought: This administrative decision violates Article IX. [The Association] sees this denial by the superintendent as a means of preventing certified staff from moving across the salary guide. We are considering other legal routes for this issue. We are asking this decision to be reversed.

Dempsey certifies that the Association requested a hearing before the Board of Education "outside of the grievance process" pursuant to N.J.S.A. 18A:6-8.5. On February 23, 2022, the Board denied the grievance and denied a request for a hearing pursuant to the contractual grievance process, but indicated the request for a hearing under Title 18A would be addressed separately. On February 28, the Association filed a Request for Submission of Panel of Arbitrators, and the arbitration has been held in abeyance pending resolution of the instant scope of negotiations petition. Dempsey further certifies that on March 16, the grievant had a hearing before the Board pursuant to N.J.S.A. 18A:6-8.5 and, on March 18, the Board denied the grievant's request for tuition reimbursement for the SCAD masters program because the additional masters degree was not related to his current or future job responsibilities. On June 2, the grievant

filed a Petition of Appeal with the Commissioner of Education seeking to reverse the Board's decision regarding tuition reimbursement for the SCAD masters program, and the appeal has subsequently been referred to the Office of Administrative Law.

In response to the Board's denial of the grievant's tuition reimbursement request, the Association asserts that it is clear that the SCAD masters degree is related to the grievant's job responsibilities as an art teacher. The Association claims that, in December 2021, the Board approved reimbursement for a 3-credit course at SCAD, but then denied reimbursement for further courses. It further asserts that as a result of denying reimbursement, the Board is preventing the grievant from obtaining additional credits that will entitle him to advance on the salary guide. The Association asserts that the CNA does not contemplate refusal of tuition reimbursement if a course is related to a teacher's job responsibilities.

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. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those

are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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.

[Id. at 404-405].

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. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). We

must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

N.J.S.A. 18A:6-8.5 provides, in pertinent part:

§ 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; 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.

The Board argues that the Association's grievance is statutorily preempted by N.J.S.A. 18A:6-8.5(c). Relying on Hillsborough Tp. Bd. of Ed. and Hillsborough Tp. Ed. Ass'n, 2017 N.J. Super. Unpub. LEXIS 547 (2017), aff'g P.E.R.C. NO. 2016-64, 42 NJPER 475 (¶130 2016), the Board argues that N.J.S.A. 18A:6-

8.5(c) sets an express, specific, and comprehensive condition for tuition reimbursement that in order for the Board to provide tuition assistance it shall be provided only for a course or degree related to the employee's current or future job responsibilities. The Board asserts that the superintendent, pursuant to the statute, made the determination that the grievant's SCAD masters program did not qualify for tuition reimbursement because it did not relate to the grievant's current or future job responsibilities and that decision is non-arbitrable.

The Association argues that N.J.S.A. 18A:6-8.5 does not preempt its grievance because the arbitrable issue is whether the Board's denial of the grievant's tuition reimbursement request violated the CNA by preventing the grievant from advancement on the salary guide. The Association argues that the statute leaves the decision to approve tuition reimbursement to the discretion of the superintendent subject to the minimum requirement that the course or degree must be related to the employee's current or future job responsibilities. The Association asserts that the Board's determination that the SCAD courses are unrelated to the grievant's current or future job responsibilities is undermined by the Board's decision to approve reimbursement for a 3-credit course at SCAD in December 2021, but then denying reimbursement for further courses. Citing Commission precedent, the

Association argues that the statute does not expressly preclude employees from pursuing an alternate appeal procedure, such as contractual grievance arbitration, aside from an appeal to the Board. Additionally, the Association asserts that the statute does not preempt grievances challenging a Board's refusal to grant salary guide advancement based upon completion of graduate courses.

In its reply brief, the Board argues that the statute's requirement that the superintendent approve of all coursework applies to both requests for tuition reimbursement and additional compensation for completed graduate courses i.e. advancement on the salary guide. The Board argues that the Commission cases relied on by the Association are inapposite to the instant matter. The Board further argues that the CNA, at paragraph 16 of Article IX, reserves the right to the superintendent to determine whether coursework shall be counted towards advancement on the salary guide. In response to the Association's assertion that the superintendent's approval of tuition reimbursement for one of the SCAD courses contradicts her denial for further courses, the Board asserts that the superintendent determined that the one course was related to the grievant's present or future job responsibilities. The Board maintains that determination was within the superintendent's discretion pursuant to both the law and the terms of the CNA.

N.J.S.A. 18A-6:8.5 preempts grievances challenging a superintendent's denial of tuition reimbursement requests. See Sterling Bd. of Ed., P.E.R.C. No. 2017-75, 44 NJPER 36 (¶11 2017) (restraining arbitration of a grievance contesting the Board's denial of two unit members' tuition reimbursement requests because N.J.S.A. 18A-6:8.5(b) requires that an employee obtain approval from the superintendent prior to enrollment in a course for which tuition is sought, and such approval was not obtained); see also, Hillsborough Tp. Bd. of Ed., supra; Hainesport Tp. Bd. of Ed. P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014). Thus, to the extent that the Association is challenging the superintendent's denial of the grievant's tuition reimbursement for a second masters degree, that issue is preempted by N.J.S.A. 18A:6-8.5 and not legally arbitrable.^{2/}

However, N.J.S.A. 18A-6:8.5 does not preempt grievances claiming that the grievant was entitled to advancement on a salary guide due to completion of graduate coursework. In Monmouth County Vocational Bd. of Ed., P.E.R.C. No. 2018-49, 44 NJPER 458 (¶127 2018), we held as follows:

^{2/} A superintendent's denial of tuition reimbursement is appealable to the Board of Education pursuant to N.J.S.A. 18A:6-8.5b. The Board's decision is appealable to the Commissioner of Education (COE). Hillsborough, 2017 N.J. Super. Unpub. LEXIS 547 (2017). Grievant has a pending appeal with the COE with regard to the Superintendent's denial of his tuition reimbursement request.

We disagree with the Board that this matter is preempted by N.J.S.A. 18A:6-8.5c. Subsection c. establishes the requirement that additional compensation (upon the acquisition of additional academic credits or completion of a degree program at an institution of higher education) shall be provided only for a course or degree related to an employee's current or future job responsibilities. For purposes of obtaining additional compensation, whether a course or degree is related to an employee's current or future job responsibilities is a factual determination. Subsection c. does not expressly, specifically or comprehensively set out who must make that factual determination. In contrast, the statute addresses the handling of tuition assistance differently. While tuition assistance shall also be provided only for a course or degree related to the employee's current or future job responsibilities, subsection b. specifies that when tuition assistance is sought, approval must be obtained from the Superintendent, whose decision is appealable to the Board of Education. No such review process is required for an employee who seeks additional compensation.

[Emphasis added.]

See also, Hackensack Bd. of Ed., P.E.R.C. No. 2016-20, 42 NJPER 192 (¶51 2015) (finding that appropriate placement on a salary guide after completion of graduate courses is not preempted by N.J.S.A. 18A:6-8.5); Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 2014-93, 41 NJPER 66 (¶20 2014); Kingwood Tp. Bd. of Ed., P.E.R.C. No. 2014-34, 40 NJPER 260 (¶100 2013). Thus, we find the Association's grievance is not preempted by N.J.S.A. 18A:6-8.5, to the extent it is challenging the Board's denial of the grievant's advancement on the salary guide for completed graduate

coursework. Whether the grievant was improperly denied salary guide advancement for the SCAD coursework already completed - whether for the one completed course or the entire masters program - is a finding of fact to be determined by the arbitrator.

In sum, we conclude that N.J.S.A. 18A:6-8.5 preempts the Association's grievance to the extent it challenges the superintendent's denial of the grievant's tuition reimbursement for the SCAD courses. However, to the extent the Association's grievance concerns grievant's movement on the salary guide due to completed graduate coursework, it is legally arbitrable. Lastly, the Board's assertion that the CNA renders non-arbitrable the superintendent's decision regarding approval of coursework for tuition reimbursement or salary guide advancement is a contractual defense for an arbitrator to determine. Ridgefield Park.

ORDER

The Somerset Hills Board of Education's request for a restraint of binding arbitration is granted to the extent the Association's grievance is challenging the Board's denial of the grievant's tuition reimbursement. To the extent the Association's grievance is challenging the Board's denial of the grievant's advancement on the salary guide for completed graduate coursework, the Board's request is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos
voted in favor of this decision. None opposed.

ISSUED: May 25, 2023

Trenton, New Jersey