

P.E.R.C. NO. 93-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TENAFLY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-41

TENAFLY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Tenafly Education Association against the Tenafly Board of Education to the extent, if any, the grievance seeks to have a teacher receive State Health Benefits Plan benefits without receiving a salary or wages for an average of 20 hours per week. The grievance asserts that the teacher, in fact, works an average of 20 hours per week.

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Appearances:

For the Petitioner, Sills Cummis Zuckerman Radin Tischman
Epstein & Gross, attorneys (Frank D'Ambra, of counsel)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION AND ORDER

On November 25, 1992, the Tenafly Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Tenafly Education Association. That grievance asserts that a teacher is contractually entitled to receive health insurance benefits.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's classroom teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1991 to June 30, 1993. Article VII is entitled Health Insurance. Section A provides:

The Board shall, pursuant to appropriate rules and regulations relating to State Health Benefits Program, pay one hundred (100) percent of the cost of the State Health Benefits Plan (which shall include Blue Cross, Blue Shield, Rider J and Major Medical) for those staff members herein covered who receive a salary or wages for a minimum of twenty (20) in-school work day hours per week, and for the spouses and dependent children of such staff members.

The grievance procedure ends in binding arbitration.

Cordelia Bergamo is an elementary school music teacher. Since 1983, she has been a part-time employee with a salary set at .5 of a full-time equivalent salary. Full-time elementary school teachers have an in-school work day of six hours and twenty-five minutes, exclusive of a 45 minute duty-free lunch. According to the Board, Bergamo's assigned contractual time under her 1992-1993 work schedule totals half that amount: 16 hours and 2 1/2 minutes per week. According to the Association's brief, Bergamo works more than 20 hours per week.

On February 26, 1986, the Assistant Superintendent informed Bergamo that her health benefits would be terminated 60 days after March 1, 1986. The memorandum stated that the Assistant Superintendent had been advised by the Chief of the State Health Benefits Bureau that Bergamo's coverage "should be terminated as long as [she's] a .5 part-time elementary music teacher working approximately 16 hours per week."

On November 25, 1991, the Association filed a grievance seeking reinstatement of Bergamo's health insurance benefits. The

Superintendent denied the grievance, stating that it was untimely and that Bergamo was ineligible for benefits. The Board also denied the grievance as untimely.

The Association demanded binding arbitration. This petition ensued.

Health insurance benefits are mandatorily negotiable unless preempted. West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd App. Div. Dkt. No. A-5196-91T2 (3/2/93). The Board contends that regulations governing the State Health Benefits Plan ("SHBP") preempt arbitration over Bergamo's claim for health insurance benefits. N.J.A.C. 17:9-4.3 makes any person whose services are not full-time ineligible for SHBP coverage. N.J.S.A. 17:9-4.6(a)(1), in turn, defines "full-time" to mean "[e]mployment of any eligible employees who appear on a regular payroll and who receive a salary or wages for an average of 20 hours per week." These regulations preclude Bergamo from receiving SHBP benefits unless she "receives a salary or wages for an average of 20 hours per week."

That ruling does not end this dispute since the Association asserts that Bergamo does work an average of 20 hours per week. Collective negotiations agreements incorporate by reference statutes and regulations setting terms and conditions of employment. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). Indeed, Section A of Article VII expressly incorporates the eligibility restrictions of N.J.A.C. 17:9-4.6(a)(1) by limiting

coverage to those employees who receive a salary or wages for a minimum of 20 work hours per week. Factual disputes over incorporated regulations may be arbitrated. Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9, 15 (1983).^{1/} We do not have the power to determine whether Bergamo works 20 work hours per week since that factual dispute goes to the merits of the Association's contractual claim. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). We also cannot address the timeliness of the grievance. Id.

ORDER

The request of the Tenafly Board of Education for a restraint of binding arbitration is granted to the extent, if any, the grievance seeks to have Cordelia Bergamo receive SHBP benefits without receiving a salary or wages for an average of 20 hours per week.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: March 29, 1993
Trenton, New Jersey
ISSUED: March 30, 1993

^{1/} The 1986 advice of the Chief of the State Health Benefits Bureau, based on the Board's submissions only, that Bergamo was ineligible as long as she worked 16 hours a week does not preempt a claim that Bergamo is eligible now because she works 20 hours a week.