P.E.R.C. NO. 2001-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON CENTRAL REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-2001-4

HUNTERDON CENTRAL REGIONAL HIGH
SCHOOL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hunterdon Central Regional High School Board of Education for a restraint of binding arbitration of a grievance filed by the Hunterdon Central Regional High School Education Association. The grievance contests the Board's refusal to provide health insurance benefits to replacement teachers. The Commission concludes that health benefits are mandatorily negotiable unless preempted by statute or regulation. The Commission finds that N.J.S.A. 18A:16-12 does not prohibit arbitration of a grievance protesting the violation of an alleged contractual agreement to provide health benefits to replacement teachers employed under one-year contract.

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, James P. Granello, attorney

For the Respondent, Klausner, Hunter & Rosenberg, attorneys (Stephen E. Klausner, on the brief)

DECISION

On August 7, 2000, the Hunterdon Central Regional High School Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Hunterdon Central Regional High School Education Association. The grievance contests the Board's refusal to provide health insurance benefits to replacement teachers.

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

The Association represents teachers and certain other personnel. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1998 through June 30, 2001. The recognition clause excludes substitute teachers and summer employees.

On June 14, 1999, the Board and Brad Siegel entered into a one-year employment contract for the 1999-2000 school year. The contract specified that Siegel was to be employed as a social studies "replacement teacher," a term the Board uses to describe a teacher who is assigned to a position in which the incumbent is on leave. For example, Seigel was hired to replace a social studies teacher who was granted an unpaid child care leave for the entire 1999-2000 school year. Teachers on such leave are not provided with Board-paid health insurance.

Siegel was placed on Step 1 of the salary guide for first-year teachers. Aside from Board-paid health insurance, he received all the benefits of a regular teacher, including sick and personal days. There were no reductions in his salary for holidays, recesses or emergency closings. He also paid union dues.

Board Policy 3420 states:

> The Board of Education reserves the right to establish benefits for staff members not covered by the terms of a negotiated agreement.
>
> Full-time Employees
>
> Full-time non-probationary staff members will receive employment benefits equivalent to other such employees.
>
> Temporary, including temporary replacement staff are not eligible for benefits.
>
> N.J.S.A. 18A:6-6; 18A:16-12 et seq.

The Board is not a member of the State Health Benefits Program (SHBP). It provides health benefits coverage through the Blue Select, Blue Choice and HMO Blue plans.

On February 25, 2000, the Association met with the Board's human resources director and business administrator, Judy Gray, to discuss health benefits for replacement teachers. At the Association's request, Gray reviewed the personnel files of three individuals who had been hired as replacement teachers between 1995 and 1998. While Gray advised that each of the teachers had received Board-paid health insurance, she explained that "extenuating circumstances" had led to that result.1/

On May 30, 2000, the Association filed a grievance alleging that, in violation of the parties' contract, Brad Siegel and possibly other teachers were not receiving health benefits. On July 20, the Board rejected the grievance, stating that it involved the interpretation of N.J.S.A. 18A:16-12 and could not be submitted to an arbitrator. On July 25, the Association demanded arbitration. This petition ensued.

1/ In one instance, a teacher was hired into a new half-year position in September and then worked the remainder of the year as a replacement. Gray stated that the individual received benefits as a new teacher in September, and that the Board did not want to discontinue benefits mid-year. In a second case, a teacher was hired to replace a teacher on child care leave, who had in turn informally advised the Board that she would not return to work after the birth of her child. Based on that information, the Board decided to provide benefits to the "replacement" teacher from September, even though the teacher on leave did not officially resign until December. The third instance occurred before Gray was employed by the district so she could not address why the teacher received health benefits as a replacement teacher.

The Board asserts that arbitration of this grievance is preempted by N.J.S.A. 18A:16-12, which defines those employees for whom a board may purchase group health insurance. N.J.S.A. 18A:16-12b provides:

> "Employees" may, at the option of the local board of education, include elected officials, but shall not include persons employed on a short-term, seasonal, intermittent or emergency basis, persons compensated on a fee basis, or persons whose compensation from the local board of education is limited to reimbursement of necessary expenses actually incurred in the discharge of their duties.

The Board also argues that even if N.J.S.A. 18A:16-12 permits a Board to provide health benefits for a replacement teacher, the Commissioner of Education, not an arbitrator, should make that determination under N.J.S.A. 18A:6-9 (Commissioner shall have jurisdiction to hear and determine all controversies and disputes arising under school laws). Finally, the Board argues that a Commissioner of Education decision, Kafes v. Upper Freehold Bd. of Ed. Reg. Sch. Dist. (5/5/80) aff'd by State Bd. of Ed. (1/22/81), supports its position that replacement teachers are not eligible for health benefits.

The Association counters that health benefits are mandatorily negotiable; that N.J.S.A. 18A:16-12 does not expressly bar health benefits for replacement teachers; and that the statute gives a board discretion to distinguish between substitute and replacement teachers. It asserts that the Board's inconsistent past practice of providing health benefits to some replacement teachers supports this statutory interpretation.

Further, the Association argues that it is not seeking to enforce a statutory right or benefit under the education laws and that, therefore, the dispute should not be decided by the Commissioner. It contends that the dispute involves eligibility for negotiated benefits and that it is well-settled that the Commissioner does not have jurisdiction over the interpretation and application of collective negotiations agreements. It also maintains that, in exercising our scope of negotiations jurisdiction, we have the authority to construe statutes other than the Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

The Board responds that it must comply with N.J.S.A. 18A:16-12 and that it is the Commissioner of Education, not an arbitrator, who must interpret this statute.

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 Association's grievance or the Board's defenses.

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 employer 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 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]

Health benefits are mandatorily negotiable unless preempted. See, e.g., State of New Jersey (OER), P.E.R.C. No. 2000-36, 26 NJPER 12 (¶31001 1999), recon. granted and order reaffirmed, 26 NJPER 171 (¶31068 2000); Hudson Cty., P.E.R.C. No. 2000-53, 26 NJPER 71 (¶31026 1999), app. pending, App. Div. Dkt. No. A-2763-99T2; Stratford Tp. Bd. of Ed., P.E.R.C. No. 94-65, 20 NJPER 55 (¶25019 1993); Newark Bd. of Ed., P.E.R.C. No. 94-52, 19 NJPER 588 (¶24282 1993); Tenafly Bd. of Ed., P.E.R.C. No. 93-83, 19 NJPER 210 (¶24100 1993); West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd NJPER Supp.2d. 291 (¶232 App. Div. 1993); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, 6 NJPER 338 (¶11169 App. Div. 1980). However, all or part of a generally negotiable

subject may be set by statute or regulation and thereby removed from the scope of negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State Supervisory at 80-82.

In applying this preemption analysis, we have the power and the duty to interpret statutes other than the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 314-315 (1979); see also Hunterdon Central H.S. Bd. of Ed., 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981). Thus, we have considered claims that Title 18A -- or statutes and regulations governing the State Health Benefits Program -- preempted negotiations over proposals concerning health benefits. See, e.g., Hopewell Valley Reg. Bd. of Ed., P.E.R.C. No. 97-91, 23 NJPER 133 (¶28065 1997)(N.J.S.A. 18A:16-6, N.J.S.A. 18A:30-6 and N.J.S.A. 18A:30-7 did not prohibit negotiations over health benefits for employees on unpaid leave); Frankford Bd. of Ed., P.E.R.C. No. 98-60, 23 NJPER 625 (¶28304 1997)(SHBP regulation did not eliminate the discretion of local employers to negotiate over the number of work hours necessary for eligibility in the SHBP); Hudson Cty. (SHBP statutes and regulations did not preempt arbitration of a grievance protesting change in prescription drug

co-payments); State of New Jersey (OER), P.E.R.C. No. 99-40, 24 NJPER 522 (¶29243 1998)(SHBP statute authorized State Health Benefits Commission to equalize medical co-payments and eliminate duplicative benefits and preempted arbitration of grievance protesting those actions). In considering those claims, we necessarily construed the allegedly preemptive statutes or regulations. We do so here as well.2/

As noted, N.J.S.A. 18A:16-12 prohibits a board from providing health insurance for persons employed on a short-term, seasonal, intermittent or emergency basis. The Board contends that a replacement teacher such as Siegel is necessarily a "short-term" employee within the meaning of that statute. We disagree.

While we have found no cases construing the phrase "short-term" as used in N.J.S.A. 18A:16-12, the statute does not expressly prohibit a board from providing health insurance for an individual employed under a one-year contract to replace another teacher for a full school year. Further, we conclude that, in the context of public school employment, individuals so situated need

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2/ We recognize that outside the scope of negotiations context, the Commissioner of Education has ruled on the nature of a Board's authority under N.J.S.A. 18A:16-12 et seq. See Keyport Teachers Ass'n v. Atlantic City Bd. of Ed., 95 N.J.A.R.2d (EDU) 61 (1994), aff'd St. Bd. 95 N.J.A.R.2d (EDU) 208 (1995), aff'd 299 N.J. Super. 649 (App. Div. 1997)(holding that boards lack statutory authority to self-insure for health benefits).

not and perhaps cannot be considered "short-term."[3/] Our conclusion is supported by the language of N.J.S.A. 18A:16-12; by statutes governing the employment of teaching staff members; and by an Appellate Division decision considering when a board may employ a "long-term" substitute.

By excluding short-term, intermittent, or seasonal employees, or those employed on an emergency basis, from the broader class of employees for whom a board can provide health insurance, the Legislature likely intended to preclude coverage for individuals who had atypical and impermanent employment relationships with the board, in terms of either duration or regularity of employment. However, in the context of public school employment, a one-year contract for the school year is far from atypical and, indeed, is the standard for non-tenured teaching staff members. Title 18A contemplates that non-tenured teaching staff members will be hired under one-year contracts; sets forth notice requirements keyed to a one-year term; and provides that teaching staff members obtain tenure only after employment for one of the time periods specified in N.J.S.A. 18A:28-5. See N.J.S.A. 18A:27-3; N.J.S.A. 18A:27-10. Reading N.J.S.A. 18A:16-12 against the backdrop of the statutory tenure

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3/ We need not resolve how much flexibility the statute gives to a board and a majority representative to negotiate over what constitutes "short-term." While there may be some such flexibility, we think that the Legislature may well have intended that some employees must be considered short-term and that others cannot be.

scheme, we conclude that employment under a one-year contract is not "short-term" employment. Indeed, if one were to accept the Board's argument that it is prohibited from providing health insurance for employees such as Siegel then, by logical extension, it would also be precluded from providing health insurance to non-tenured teaching staff. We do not believe the Legislature intended this result when the statutory authorization to provide health insurance is not tied to tenure status.4/

This reading of N.J.S.A. 18A:16-12 is supported by Sayreville Ed. Ass'n v. Sayreville Bd. of Ed., 193 N.J. Super. 424 (App. Div. 1984). In that case, the Appellate Division considered whether teachers hired in February and March for the balance of the school year could, consistent with N.J.S.A. 18A:16-1.1, be considered "long-term" substitutes who were not eligible for either the statutory benefits that attach to teaching staff member status or the contractual benefits negotiated by the teachers' association. The Court noted that N.J.S.A. 18A:16-1.1 authorizes boards to hire substitutes to "act in the place of" an officer or employee and specifies that such service does not count toward tenure acquisition. Sayreville concluded that because the teachers in question had been employed to replace teachers who had resigned, not teachers who were on leave, they were not acting in

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4/ Replacement teachers presumably do not have a guarantee of reemployment, but neither do non-tenured teachers. See Dore v. Bedminster Bd. of Ed., 185 N.J. Super. 447 (App. Div. 1982).

the place of another and could not be considered long-term substitutes. Contrast Lammers v. Point Pleasant Bd. of Ed., 134 N.J. 264 (1993)(teacher's one-year absence on child care leave did not create a vacancy within the meaning of N.J.S.A. 18A:28-12, thereby entitling another tenured teacher to "bump" into the absent teacher's position after a reduction in force).

Siegel was hired for 1999-2000 to replace a teacher on leave.5/ However, Sayreville is instructive for our purposes because it considered that teachers who worked from February or March until the end of the school year were hired on a "long-term" basis; commented that they had all the responsibilities of regular teachers; and saw no distinction between filling a vacancy with a substitute for a "full academic year" and doing so for a substantial part of the year. 193 N.J. Super. at 428-429. Sayreville thus supports our view that employment under a one-year contract is not short-term employment.

Finally, the Commissioner of Education decision in Kafes v. Upper Freehold does not favor a different result. In that case, the petitioner was hired as a long-term substitute from January until the end of the school year, but claimed the superintendent had promised that she would receive the same medical benefits as regular teachers. The board was a member of the SHBP and SHBP regulations prohibit persons employed on a

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5/ The Association states that tenure acquisition is not at issue.

short-term, seasonal, intermittent or emergency basis from being eligible for program benefits. They also make ineligible persons who are compensated "for brief periods at intervals such as substitute teachers." Focusing on the "substitute teacher" language, the Commissioner held that the petitioner had knowingly accepted employment as a substitute and that the superintendent had no authority to bind the board to provide benefits.

Kafes is inapt because the Board is not a member of the SHBP. Further, the Commissioner in that case focused only on the substitute teacher language and did not find that employment for a full year was short-term employment.

For all these reasons, we hold that N.J.S.A. 18A:16-12 does not bar arbitration of a grievance protesting the violation of an alleged contractual agreement to provide health benefits to replacement teachers employed under one-year contracts.

ORDER

The request of the Hunterdon Central Regional High School Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: October 30, 2000
Trenton, New Jersey
ISSUED: October 31, 2000