

P.E.R.C. NO. 2010-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-2009-084

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the State-Operated School District of the City of Paterson's request for a restraint of binding arbitration of two grievances filed by the Paterson Education Association. The grievances assert that the District violated the parties' collective negotiations agreement when the District's school board failed to vote on the decision to withhold the increments of two teaching staff members. The Commission restrains arbitration because a State statute vests authority in the State district superintendent to withhold increments.

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, Schenck, Price, Smith & King, LLP,
attorneys (Sidney A. Sayovitz, on the brief)

For the Respondent, NJEA UniServ Representative (Sasha
Wolf, on the brief)

DECISION

On June 29, 2009, the State-Operated School District of the City of Paterson petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of two grievances that the Paterson Education Association seeks to submit to binding arbitration. The grievances assert that the District violated the parties' collective negotiations agreement when the District's school board failed to vote on the decision to withhold the increments of two teaching staff members. We restrain arbitration because a State statute vests authority in the State district superintendent to withhold increments.

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

The Association represents District employees including those in instructional certificated positions. The parties entered into a collective negotiations agreement effective from July 1, 2005 through June 30, 2008. The grievance procedure ends in binding arbitration.

Article 3:1-1 defines a grievance as:

a claim by an employee or the Association based upon the interpretation, application, or violation of the Agreement, policies or administrative decisions affecting the terms and conditions of employment of an employee or a group of employees.

Two teaching staff members were notified by the State District Superintendent that their increments were to be withheld for the 2008-2009 school year. The Association filed a grievance claiming that the withholdings violated the contract because the District allegedly violated Board Policy 3152 when it failed to vote on the decision to withhold the increments. That policy states:

The Board of Education may determine, by recorded roll call majority vote of the full membership and at any time prior to the commencement of the school year or contract year in which the employee's salary will vest, to withhold any or all of the increments indicated by the salary guide or by Board policy. . . . The Board shall, within ten days of its formal action to withhold an increment, give written notice to

the affected employee of both the action and the reason or reasons for which it was taken.

The Association demanded arbitration and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.

[Id. at 154]

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]

In evaluating whether a statute or regulation is preemptive, we consider whether it speaks in the imperative and expressly, specifically and comprehensively sets an employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The District argues that N.J.S.A. 18A:7A-35 and N.J.S.A. 18A:7A-47, which establish the authority of a State district superintendent, preempt arbitration of the Association's claims. N.J.S.A. 18A:7A-35 provides, in pertinent part:

a. The schools of a school district under full State intervention may be conducted by and under the supervision of a State district superintendent of schools appointed by the State board upon recommendation of the commissioner. . . ;

* * *

d. The State district superintendent shall perform such duties and possess such powers as deemed appropriate by the commissioner.

e. Except as otherwise provided in this amendatory and supplementary act, the State district superintendent shall have the power to perform all acts and do all things that

the commissioner deems necessary for the proper conduct, maintenance and supervision of the schools in the district.

N.J.S.A. 18A:7A-47(a) provides, in pertinent part:

The State board shall retain the board of education in place at the time that the State board issues the administrative order creating the school district under full State intervention. . . . The board of education shall have only those rights, powers and privileges of an advisory board.

The District asserts that these two statutes speak in the imperative to grant the State District Superintendent the broad power to take all action necessary to conduct, maintain and supervise the District's schools, including the power to withhold increments. The District contends that Board Policy No. 3152 improperly attempts to give that power back to the District's Advisory Board.

The Association responds that N.J.S.A. 18A:7A-35 and 47 do not preempt having an advisory board vote on personnel matters. The Association argues that the rules established to implement the New Jersey Quality Single Accountability Continuum ("NJQSAC") system, N.J.A.C. 6A:30, mandate that an advisory board vote on all personnel matters. In particular, the Association refers to section G.3 of the District Performance Review under NJQSAC which states:

The school board approves appointments and transfers and removes or renews certificated and non-certificated officers and employees only by a roll call majority vote. . . .

Advisory Board Only

The advisory board reviews appointments, transfers, removal or renewal of certificated and non-certificated officers and employees.

Finally, the Association argues that past Board minutes indicate that the Board voted to approve the personnel recommendations of the superintendent, including increment withholdings. The minutes reflect that the Board prefaced its motion with this statement:

Motion to acknowledge that the advisory board of the Paterson Public Schools has reviewed the recommendation of the State District Superintendent and made comments as appropriate on the personnel recommendations. . . . Further the advisory board communicates its expectations that such recommendations are made . . . in compliance with contractual and/or statutory requirements.

The District replies that the NJQSAC does not require that an advisory board vote on increment withholdings.

We agree with the Board that N.J.S.A. 18A:7A-35 and N.J.S.A. 18A:7A-47 preempt arbitration of the Association's claims. Those statutes grant the State District Superintendent with the authority to take personnel actions such as increment withholdings and establish that the school board shall function in an advisory capacity only. The NJQSAC does not contradict that authority or grant an advisory board the power to approve or disapprove increment withholdings. Thus, the Association may not pursue these grievances that seek to require the District

Superintendent to get the advisory board's approval of these increment withholdings. The final decision to withhold an increment rests with the District Superintendent.

The Association states that the grievances are procedural challenges to the District's decision to withhold the increments of the two teachers and that, therefore, we need not address whether one of the teacher's increments was withheld for predominately disciplinary or evaluative reasons under N.J.S.A. 34:13A-27(d). We accept that representation and assume that the Association does not seeks to arbitrate the merits of the withholding.

ORDER

The request of the Paterson State-Operated School District for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: February 25, 2010

Trenton, New Jersey