P.E.R.C. NO. 2012-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUNTERDON-VOORHEES
REGIONAL HIGH SCHOOL BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-2011-063

NORTH HUNTERDON-VOORHEES
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the North Hunterdon-Voorhees Regional High School Board of Education for a restraint of binding arbitration of a grievance filed by the North Hunterdon-Voorhees Education Association. The grievance challenges the district's interpretation and application of P.L. 2010, c. 2, §13 and deduction of an 1.5% of base salary from the employees who are already contractually required to pay 10% of dependent health care premiums which is an amount greater than 1.5% of base salary. The Commission permits arbitration of the grievance because the statute does not preempt the issue of whether the employer was required to deduct 1.5% on top of the 10% of premium deductions.

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 Riker Danzig Scherer Hyland Perretti, attorneys (Brenda C. Liss, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Keith Waldman, of counsel)

DECISION

On February 15, 2011, the North Hunterdon-Voorhees 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 North Hunterdon-Voorhees Education Association. The grievance challenges the district's interpretation and application of P.L. 2010, c. 2, §13 to employees who have chosen to have their dependents covered by the Board's health insurance plan, provided through the School Employees' Health Benefits Program. The Association claims that the District has improperly deducted 1.5% of the base salary of

such employees, because they were already contractually required to pay 10% of dependent health care premiums, amounts that exceed 1.5% of the base salary of all affected employees. We deny the Board's request to restrain arbitration.

The parties have filed briefs, certifications and exhibits. These facts appear.[1/]

The Association represents the Board's non-supervisory professional and support staff employees. The Association and the Board are parties to a collectively negotiated agreement covering the period from July 1, 2008 through June 30, 2010 with a grievance procedure that ends in binding arbitration.

Article XXI, covering compensation and health care benefits, provides in pertinent part:

> A. The Board will provide each full-time employee defined in Article I with single, parent/child(ren), employee and spouse or family medical insurance with coverage similar to the School Employees Health Benefits Program (SEHBP).
>
> * * *
>
> D. The Board will pay one hundred (100) percent of the cost of employee coverage and 90 percent of the cost of dependent/Rx coverage. Employees may elect to waive dependent coverage.

P.L. 2010, c. 2, §13, codified as N.J.S.A. 18A:16-17b., provides:

> Commencing on the effective date of P.L.2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in

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1/ We deny the Board's request for oral argument. The parties have filed comprehensive briefs and pertinent exhibits.

> force on that effective date, employees of a local board of education shall pay 1.5 percent of base salary, through the withholding of the contribution from the pay, salary or other compensation, for health care benefits coverage provided pursuant to P.L.1979, c.391 (C.18A:16-12 et seq.), notwithstanding any other amount that may be required additionally pursuant to subsection a. of this section for such coverage. This subsection shall apply also when the health care benefits coverage is provided through an insurance fund or joint insurance fund or in any other manner.

Because the parties' agreement was still in force on May 22, 2010, the effective date of N.J.S.A. 18A:16-17b, the 1.5% requirement could not be applied until July 1, 2010.

On June 23, 2010, the Board's business administrator sent an e-mail to all employees advising that the 1.5% deductions would begin on July 15, 2010. In addition she advised:

> The new deduction is in addition to the previously negotiated/existing 10% contribution for employees with dependent coverage. The 10% contribution will be deducted as previously established (the first deduction beings with the September 15, 2010 payroll).

On September 28, 2010, the Association filed a grievance with the Superintendent asserting that the law required the deduction of 1.5% of employee base salary, or a previously established or negotiated deduction for health care costs, whichever amount was higher, but not both. The grievance referred to a Local Finance Notice issued by the Division of Local Government Services of the Department of Community Affairs,

containing examples and questions and answers as to how the 1.5% law was to be applied in various cases. The grievance quotes this example from the document.

> A local unit is currently in contract negotiations. Employees contribute only 10% of any dependent premium - -how would the 1.5% be applied?
>
> If the 10% premium is greater than 1.5% of the employee's base salary, then no additional contribution is required of that employee. The collective negotiations agreement should provide that to the extent the premium percentage is less than 1.5%, the contribution shall be equal to 1.5% of base salary.

The grievance sought that deductions for employees with dependent coverage be adjusted so that the employee pay either 1.5% of base salary or 10% of the dependent care premium, whichever is higher, and demanded refunds of excess deductions.

The grievance was denied by the Superintendent and at the remaining steps of the procedure.[2/] On January 18, 2011, the Association demanded arbitration. 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.

2/ On November 5, 2010, the Association filed an unfair practice charge alleging that the Board's action with respect to the excess payroll deductions, violated its duty to negotiate over changes in terms and conditions of employment. That case has been held in abeyance pending this determination.

> 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 these grievances or any contractual defenses the Board may have.

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

A subject is preempted from negotiations where a statue or regulation "expressly, specifically and comprehensively" sets the term and condition of employment. See Bethlehem Tp. Bd. of Ed. and Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 45-46 (1982). However,

even where the statute or regulation is preemptive, if the subject matter concerns a term and condition of employment, disputes over that issue can be subject to binding arbitration, but any decision may not contravene the pertinent statute or rule. See W. Windsor Tp. and PERC, 78 N.J. 98, 116 (1978).

The Board asserts that the dispute cannot be arbitrated because: it involves interpretation of a statute in Title 18A and any disputes arising under the school laws are within the sole jurisdiction of the Commissioner of Education; that the 1.5% law preempts collective negotiations over employee payroll contributions toward health care costs; and that the Board's decision may not be challenged because it was made to further the public policy of the State.

The Association disputes that the Commissioner of Education has sole jurisdiction simply because the dispute involves a Title 18A statute. It also responds: that the Board's action of assessing employees as additional 1.5% of base salary on top of their payment of 10% of the premium for health care coverage is not preempted by the 1.5% law; that health care costs are terms and conditions of employment and disputes over them are arbitrable; that legislators sponsoring the law and administrative agencies charged with administering it, in newsletters and FAQs, concur that the 1.5% contributions should not be added to existing health care contributions mandated by

negotiated agreements where those assessments had already exceeded 1.5% of base salary; and that arbitration of the dispute would create no significant interference with managerial or educational policies.

In reply, the Board acknowledges that the Commission may exercise its limited scope of negotiations jurisdiction to declare that the grievance is preempted and non-arbitrable and that the authority cited by the Association allowing arbitration of disputes over the working conditions of school employees, is distinguishable from the authority of the Commissioner of Education to construe the school laws.

Initially, we reject the Board's contention that disputes arising under a Title 18A statute addressing a term and condition of employment are within the sole jurisdiction of the Commissioner of Education and cannot be submitted to binding arbitration. See e.g. Hoboken Bd. of Ed. and Hoboken Teachers Ass'n, P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), app. dism. 93 N.J. 263 (1983) (although Title 18A statute barred carryover of more than 15 paid sick days per year, where employees received annual allotment of 20 days, dispute over how days were used up was arbitrable). In this regard we note that the Commissioner of Education has held that disputes over the interpretation of collective negotiations agreements are not normally within the jurisdiction of Department

of Education. Larsen v. Bd. of Ed. of Piscataway, 1982 S.L.D. (E.D.U. #1445-81 State Bd. Of Ed. 10/6/1982) (Jurisdiction under N.J.S.A. 18A:6-9 did not encompass interpreting or enforcing an employment contract). See also Hyman v. Bd. of Ed. of Tp. of Teaneck, 1985 S.L.D. 1940 (State Bd. of Ed.), aff'd App. Div. Dkt. No. A-3500-84T7 (2/26/86).

Employee contributions to the cost of health benefits are normally mandatorily negotiable terms and conditions of employment. See Bloomfield Bd. of Ed. v. Bloomfield Ed. Ass'n,, 251 N.J. Super. 379 (App. Div. 1990), aff'd 126 N.J. 300 (1991).

N.J.S.A. 18A:16-17b, speaks to the minimum amount that school employees must contribute toward the cost of health insurance provided by their public employers. The Board construes the 1.5% law as mandating that an assessment at that rate is to be placed on top of any existing contractual health insurance contributions, such as those required of employees choosing dependent care coverage. The Association, citing legislative and administrative interpretations, asserts that the law requires only 1.5 per cent of base salary or a different contractual assessment, whichever is higher, but not both.

The Association is not asking to negotiate a contract that would contain terms that conflict with the 1.5% law. Such a proposal would not be negotiable. See Bethlehem. But West Windsor permits arbitration of disputes over terms and conditions

of employment, even where a statute sets, or sets the parameters, of that working condition. This dispute is the type contemplated by West Windsor and may be resolved through binding arbitration. Any arbitration award must be cognizant of, and consistent with, the terms of N.J.S.A. 18A:16-17b.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: January 26, 2012

Trenton, New Jersey