

P.E.R.C. NO. 2013-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST WINDSOR,

Petitioner,

-and-

Docket No. SN-2012-028

WEST WINDSOR POLICEMEN'S
BENEVOLENT ASSOCIATION
LOCAL 271,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of West Windsor for a restraint of binding arbitration of a grievance filed by West Windsor Policemen's Benevolent Association Local 271. The grievance asserts that the Township violated the parties' collective negotiations agreement by refusing to pay tuition reimbursement to two officers. The Commission holds that the subject of tuition reimbursement is at least permissively negotiable and therefore legally arbitrable.

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, Ruderman & Glickman, P.C.,
attorneys (John A. Boppert, of counsel)

For the Respondent, Klatsky Sciarabon & DeFillippo,
attorneys (David J. De Fillippo, of counsel)

DECISION

On December 20, 2011, the Township of West Windsor petitioned the Public Employment Relations Commission for a scope of negotiations determination. The Township seeks to restrain binding arbitration of a grievance filed by West Windsor Policemen's Benevolent Association Local 271. The grievance asserts that the Township violated the parties' collective negotiations agreement by refusing to pay tuition for Patrolman Frank Bal to pursue a "Bachelor of Science in Professional Pilots/Aviation," that includes helicopter flying lessons, and for Lieutenant Pat McCormick, seeking a Bachelor of Science in "Aviation Flight Technology." We decline to restrain arbitration

as we find that the grievance is at least permissively negotiable and is legally arbitrable.^{1/}

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

The PBA represents the Township's Patrolmen and Sergeants. Their most recent agreement has a term of January 1, 2007 through December 31, 2009. Article 13, Education provides in part:

F. Educational Cost Reimbursement

The Township shall reimburse an employee for 100 per cent of the cost incurred for courses taken. These courses may be taken at accredited four year colleges, accredited two year colleges, extension divisions of accredited colleges, county community colleges' technical or business schools, and/or through continuing education programs. For the purposes of establishing an annual budget amount, employees shall request the needed reimbursement by December 1 of the year prior to enrolling in the requested course(s).

PROCEDURE

For Undergraduate and Graduate Level College Courses:

Definition - Any undergraduate or graduate level course that can be used as credit in

^{1/} A similar grievance was initiated about a month prior to August 1, 2011 when the PBA filed a demand for arbitration with the Commission (Docket No. AR-2012-064). That grievance was withdrawn after the Township reimbursed officer Bal, who is also the PBA President, for costs incurred in the Spring of 2011. The second grievance, seeking reimbursement for Bal and Lt. McCormick, was filed on November 22. A demand for arbitration was filed December 15 (Docket No. AR-2012-340).

any associates, bachelors, or masters degree producing program only. Employees enrolled in a higher level degree program as of the signing date of this contract shall be allowed to complete their current degree program.

These courses are automatically approved. Notice must be given to the Chief of Police stating the courses/credits that will be taken, the anticipated date of attendance (semester, etc.) and estimated cost of the course, fees and books. Actual costs should be submitted as soon as they are specifically identified.^{2/}

The certification of PBA President and grievant Bal recites that, in addition to the claims for reimbursement filed by himself and McCormick, the Township, prior to the issuance of the

2/ Educational Incentive/Tuition Reimbursement was an issue during negotiations and interest arbitration proceedings aimed at securing a successor agreement. On November 23, 2011, an interest arbitration award issued setting the terms of a successor agreement covering January 1, 2010, through December 31, 2012. Both parties had submitted proposed changes in the educational incentive/tuition reimbursement article. The arbitrator awarded the following:

Effective January 1, 2012, the following change is awarded for Educational Incentive: In addition to other compensation provided for in this agreement, officers who have earned college credits for a degree in Police Science, Police Administration, Public Safety, Criminal Justice or similar police-related course of instruction are entitled to the Educational Incentive/Reimbursement Program of the Township.

However, all those officers currently enrolled in a degree program shall be grandfathered or otherwise exempt from the new language effective January 1, 2012 for Educational Incentive.

interest arbitration award had reimbursed 13 other officers for tuition costs, including one officer, now deceased, who had taken flight lessons.^{3/}

Township Business Administrator Robert Hary initially denied the claim for reimbursement for Bal's Spring 2011 course work.^{4/} His written response to the request states, "[G]iven today's economy, to approve this request during these economically challenging times would be a difficult decision to justify." Hary asserts that the Township has no information confirming that the aviation programs being taken by Bal and McCormick will lead to a degree. He further certifies that the Township does not have a helicopter or other aviation program and has never deployed police as pilots. He maintains that training any officer as a professional helicopter pilot would waste tax revenue as that job does not apply to Township police work.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

^{3/} Other degrees/fields of study listed in Bal's certification, for which officers have apparently received tuition reimbursement, include: Criminal Justice; computers; Administration of Justice; Human Services Administration; Adult Development and Aging; Individual Study; Administrative Science; Engineering; General Education and Business; Human Resources Training; Communications and Network Management; Business Administration; and Psychology.

^{4/} A Statement of debits and credits, dated June 21, 2011 issued by Helicopter Flight Services of Medford, primarily lists charges and payments for ground school and dual flights on various dates.

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.^{5/}

In addition, in assessing the negotiability of the subject matter of any grievance, we do not second-guess any party's decision to agree to the pertinent contract language. See In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 27 (App. Div. 1977) aff'g in pert. part., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), where the Court quoted, with approval, our observation that:

[I]t is necessary to distinguish between the wisdom of agreeing to a particular proposal relating to a term or condition of employment and whether that proposal relates to a term and condition of employment. The fact that it would not be responsible or prudent to accept

^{5/} We specifically do not determine whether the merits of this dispute are governed by the language of the 2007 through 2009 agreement or, as argued by the Township, the modifications made by the interest arbitrator in the Educational Incentive/Tuition Reimbursement language of the new contract. In addition, whether Bal and McCormick are in programs leading to a degree, and whether being in such a program is a prerequisite to obtaining reimbursement, are also issues outside our limited jurisdiction.

a proposal does not by itself render the proposal something other than a term and condition of employment and therefore nonnegotiable. The task confronting us is to decide whether the disputed matters are terms and conditions of employment, not whether the Board should accede to the Association's proposals.^{6/}

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), permits arbitration of grievances filed by police unions if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983). Paterson bars arbitration only if the agreement alleged to have been violated is preempted or would substantially limit government's policymaking powers. Preemption is not raised here.

Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1, 8 (1973) holds that tuition reimbursement is mandatorily negotiable and enforceable through binding grievance arbitration.^{7/} See also Township of Wayne, P.E.R.C. No. 98-85, 24 NJPER 71, 73 (¶29040 1997) where we distinguished between training mandated by the employer and tuition reimbursement provisions.

^{6/} Byram expressly declined to define permissively negotiable subjects as that issue was not before it. 152 N.J. Super. at 17-18.

^{7/} The grievance was filed for a teacher seeking reimbursement for courses titled "Community Analysis" and "School Business Administration."

The employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained. See, e.g., Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). . . . However, an employer may agree to reimburse employees for tuition payments for work-related courses. Dunellen; Hackettstown; Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989).

The Township relies on the cases involving an employer's right to assign personnel to training programs. Wayne recognizes that mandated training differs from tuition reimbursement. And, the tuition reimbursement cases the Township cites, Wayne, Dunellen, and Hackettstown, all arose during successor contract negotiations where an employer may refuse to negotiate any subjects that are not mandatorily negotiable. See N.J.S.A. 34:13A-16f(4). Thus, permissive negotiability was not at issue.

Given the parameters set by Ridgefield Park and Byram, we do not determine the following:

Whether the tuition reimbursement claims for Bal and Lt. McCormick are covered by the language of the 2007-2009 agreement;

The extent to which the interest arbitration award modified that language;^{8/}

The effective date of the changes and whether they affect the tuition reimbursement grievance;

^{8/} The Township notes that it did not appeal the interest arbitration award. Its failure to do so does not bar it from seeking to restrain arbitration of this grievance.

Whether the grievance should be sustained or denied and;

Assuming, *arguendo*, that Article 13F applies, whether it was prudent for the Township to agree to that language.

We hold only that the grievance presents an issue that is legally arbitrable.

ORDER

The request of the Township of West Windsor for a restraint of binding arbitration (Docket No. AR-2012-340) filed by West Windsor Policemen's Benevolent Association Local 271 is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 19, 2012

Trenton, New Jersey