

P.E.R.C. NO. 2014-34

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KINGWOOD TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2013-046

KINGWOOD TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Kingwood Township Board of Education for a restraint of binding arbitration of a grievance filed by the Kingwood Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it denied a teacher's request to move up on the salary guide after obtaining a masters degree. The Commission finds that, generally, the determination of what graduate work is relevant to a teacher's current or future class assignments is related to educational policy. However, in this case an administrator had approved a professional development goal for the grievant to complete the masters degree which the Board later decided was not educationally relevant. The Commission holds that the issue of whether the grievant is entitled to advancement on the salary guide for the degree predominately concerns the mandatorily negotiable issue of compensation, and that the arbitrator may determine whether the degree was related to her job as required by N.J.S.A. 18A:6-8.5(c).

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, Fogarty & Hara, attorneys (Stephen R. Fogarty, of counsel)

For the Respondent, Selikoff & Cohen, PA, attorneys (Keith Waldman, of counsel; Stacey C. Schor, on the brief)

DECISION

On January 24, 2013, the Kingwood Township Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of a grievance filed by the Kingwood Township Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it denied a teacher's salary guide movement for completion of a masters degree.

The Board has filed briefs, exhibits, and the certifications of the Board's Chief School Administrator, and the Board's former President. The Association has filed a brief and exhibit. These facts appear.

The Association represents a unit of certified teaching personnel, nurses, librarians, and child study team members. The Board and Association are parties to a CNA ratified on February 28, 2012 for the period of July 1, 2011 through June 30, 2014. The previous CNA was effective July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration.

Article X of the CNA is entitled "Salaries". Article X, paragraph D., in both the 2008-11 CNA and 2011-14 CNA states:

D. The salary guide shall include columns recognizing the Bachelor's degree and Master's degree plus graduate credits earned beyond those required for either of these degrees as follows: BA, BA+15, BA+30, MA, MA+15, MA+30. All teachers will be eligible to advance to the higher education columns on the basis of graduate credits or degrees earned. (emphasis added)

On May 6, 2010, the State Legislature approved P.L. 2010, c.13, (N.J.S.A. 18A:6-8.5), an amendment to the education law. N.J.S.A. 18A:6-8.5 provides the following:

§ 18A:6-8.5. Requirements for receipt of employee tuition assistance, additional compensation

In order for a board of education to provide to an employee tuition assistance for coursework taken at an institution of higher education or additional compensation upon the acquisition of additional academic credits or completion of a degree program at an institution of higher education:

a. The institution shall be a duly authorized institution of higher education as defined in section 3 of P.L.1986, c.87 (C.18A:3-15.3);

b. The employee shall obtain approval from the superintendent of schools prior to enrollment in any course for which tuition assistance is sought. In the event that the superintendent denies the approval, the employee may appeal the denial to the board of education.

In the case of a superintendent, the approval shall be obtained from the board of education; and

c. The tuition assistance or additional compensation shall be provided only for a course or degree related to the employee's current or future job responsibilities.

(emphasis added)<sup>1/</sup>

The Chief School Administrator certified that the grievant has been employed as a middle school Spanish teacher since September 2003. In October 2010, the grievant began course work toward obtaining a Master of Education degree in Teaching English to Speakers of Other Languages (TESOL) through Grand Canyon University (GCU).

The grievant received two Professional Development Plans (PIP) for the 2010/2011 school year. The first occurred in October 2010. The second occurred in February 2011 and was marked 'revised'. It was identical in all respects to the October 2010 PIP, except it added the following professional

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<sup>1/</sup> N.J.S.A. 18A:6-8.5 became effective July 1, 2010, but for school districts under a CNA at that time it did not become effective until the next CNA. Section 3 of P.L.2010, c.13 provides: "...this act shall not be deemed to impair an obligation set forth in a collective negotiations agreement or an individual contract of employment in effect on the effective date."

development goal: to attend GCU to obtain a masters degree in TESOL. The PIP noted that this goal would "increase [grievant's] ability to successfully aid in instruction of teachers and students in the acquisition of English, while also increasing [her] effectiveness as a Spanish teacher." The Chief School Administrator signed off on the revised PIP on February 9, 2011.

In February 2011, the grievant submitted a request for tuition reimbursement for three of her graduate courses. The Chief School Administrator and the Board approved tuition reimbursement for one of the classes, and denied reimbursement for the other two classes.<sup>2/</sup> In June 2011, the grievant submitted a "Request for Movement on the Salary Guide" for movement from the BA level to the BA+15 level based on four graduate courses she had taken until that point. On June 10, 2011 and February 28, 2012, respectively, the Chief School Administrator and the Board approved the movement.

On June 6, 2012 the grievant was awarded her Master's degree in TESOL from GCU. On June 13, she applied for movement from the BA+15 level to the Masters degree level based on completion of her Master's degree. On July 31, the Chief School Administrator denied the grievant's request for movement to the Masters level, stating as follows:

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<sup>2/</sup> The record is devoid of information explaining the basis for the denial.

On June 13, 2012, you requested movement on the salary guide for the completion of your degree in Master of Education in Teaching English to Speakers of Other Languages (TESOL). Grand Canyon University's description of this program indicates that this degree is "designed for licensed teachers or administrators with an interest in working with ESL students in or out of the classroom" and it is not eligible for institutional recommendation. After reviewing your coursework and degree, your request for movement on the guide is being denied under P.L. 2010, Chapter 13, enacted May 6, 2010. Under this law, tuition assistance or additional compensation shall be provided only for course [sic] or degree related to the employee's current or future job responsibilities. As I have stated to you in a previous conversation, I do not foresee the degree related [sic] to your current or future job responsibilities.

On September 12, 2012, the Association filed a grievance asserting that the Board violated Article X paragraph D. of the CNA by denying salary guide movement to the grievant at the completion of her Master's degree. On September 26, the Chief School Administrator denied the grievance, stating, in relevant part:

Article X, provision D of the CNA addresses teachers' eligibility for movement on the salary guide upon completion of graduate credits or degrees. Completion of such a degree does not, however, establish an outright entitlement to movement on the guide....

Contrary to your assertion, a Master's degree in TESOL is not related to [Grievant]'s current or future job responsibilities as a World Language teacher. Such a degree is designed specifically for

those who either teach or wish to teach the English language to non-native speakers. As [Grievant] teaches neither English nor English as a Second Language, the requisite nexus to her current or future job responsibilities, as mandated by subsection (c) of N.J.S.A. 18A-6:8.5, is not present.

On October 19, 2012, the Board's President denied the grievance stating, in pertinent part, as follows:

...You argue that [Grievant]'s completion of her Master in Education in Teaching English to Speakers of Other Languages (TESOL) is directly related to her current teaching position as a World Language teacher of Spanish and that, throughout her pursuit of this degree, she was given no reason to believe that her course work would not result in her advancement on the guide. The Board has carefully considered your position, as well as the underlying record, and has concluded that [Grievant]'s grievance must be denied for the following procedural and substantive reasons.

On substantive grounds, the Board found that [Grievant]'s Master in Education in TESOL does not satisfy the requirements of N.J.S.A. 18A-6:8.5(c).

...Article X, provision D of the CNA addresses teachers' eligibility for movement on the salary guide upon completion of graduate credits or degrees. However, under N.J.S.A. 18A-6:8.5(c), eligibility for salary advancement requires that the course or degree completed be related to the employee's current or future job responsibilities. As the name of the TESOL program completed by [Grievant] reflects, its predominant focus is to teach skills that will enhance one's ability to teach the English language to non-native speakers. Much attention was devoted to [Grievant]'s assertion that, through the TESOL program, she acquired skills translatable to her role as a Spanish

teacher. While the Board acknowledges the potential for conceptual overlap, any courses taken by [Grievant] in which she learned general language acquisition concepts were not unique to the TESOL program in which she enrolled. By her own admission, [Grievant] gained exposure to such concepts while pursuing her undergraduate degree in Spanish. It is the undeniable substantive difference between the degree obtained and the language taught that precludes a finding of the nexus required by N.J.S.A. 18A:6-8.5(c). Had [Grievant] elected to pursue an advanced degree focused on teaching Spanish language skills, she would undoubtedly be entitled to movement on the salary guide. The Board has therefore determined that a Master's degree in TESOL is not sufficiently related to [Grievant]'s current or future job responsibilities as a Spanish teacher to warrant movement on the salary guide.

Furthermore, the Board has determined that the circumstances did not give rise to a reasonable expectation on the part of [Grievant] that completion of the TESOL program would result in her movement on the salary guide. The Administration approved tuition reimbursement for only one of the three courses requested by [Grievant]'s February 9, 2011 request for reimbursement. The KTEA presented no documentation to substantiate its allegation that a lack of available tuition reimbursement funds prompted the Administration's decision to reject reimbursement for two courses. Clearly, the Administration rejected her reimbursement request for those courses because they bore no relation to her role as a teacher of the Spanish language. Moreover, merely approving of [Grievant]'s Professional Improvement Plans (hereinafter referred to as "PIPs") cannot be interpreted as the functional equivalent of an implied promise to acknowledge her subsequent completion of an advanced degree program unrelated to the class that she teaches.



On October 23, 2013, the Association demanded binding 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. 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.

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].

We must balance the parties' interests in light of the particular facts and arguments presented. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

The Board does not argue that this matter is preempted by N.J.S.A. 18A:6-8.5. Rather, it argues that the eligibility assessment for additional compensation set forth in N.J.S.A. 18A:6-8.5 (c) involves a determination of sensitive educational policy, and therefore its action is only reviewable by the Commissioner of Education, not by an arbitrator.

The Association asserts that compensation is a mandatorily negotiable term of employment unless a particular type of compensation is explicitly preempted from negotiations. It argues that N.J.S.A. 18A:6-8.5 merely sets a minimum threshold that Boards must follow, but does not delegate any authority to the Board with regard to additional compensation for credit, and does not contain any language directing the Board to determine what is or is not related to an employee's current or future job responsibilities. The Association notes that N.J.S.A. 18A:6-8.5 does not explicitly provide for an appeal to the Commissioner of education.<sup>3/</sup>

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<sup>3/</sup> Contrast with N.J.S.A. 18A:29-14, the increment withholding (continued...)

Under the specific facts of this case, we do not agree with the Board that the interplay of N.J.S.A. 18A:6-8.5 (c) in this dispute prevents it from being legally arbitrable. While the determination of what additional graduate work is relevant to a teacher's current or future class assignments is, in the abstract, related to educational policy, it is undisputed that, on February 9, 2011, the Chief School Administrator approved a PIP that was revised for the purpose of including, as a professional development goal, grievant finishing her masters degree in TESOL at GCU. The PIP stated that completion of that goal would "increase [grievant's] effectiveness as a Spanish teacher." The issuance of that PIP could allow the arbitrator to determine that the Board, through the action of its administrator, had determined that the grievant's course work and resultant Master's degree was "related to the employee's current or future job responsibilities," as set forth in N.J.S.A. 18A:6-8.5c. Thus, the overriding issue presented by the grievance is whether the grievant was placed on the appropriate step of the salary guide, which predominately concerns compensation and is a mandatorily negotiable term and condition of employment.

Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n., 81 N.J. 582, 589 (1980); Englewood Bd. Of Ed. v.

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3/ (...continued)  
statute, which does explicitly provide for appeal to the Commissioner of Education.

Englewood Teachers Ass'n., 64 N.J. 1, 7 - 8 (1973). Moreover, the Supreme Court has held that disputes over terms and conditions of employment that are regulated by statute can be resolved through binding arbitration provided the arbitrator's determination is consistent with the terms of the statute and court decisions construing it. See West Windsor Tp. v. Public Employment Relations Comm., 78 N.J. 98, 116 (1978).

ORDER

The request of the Kingwood Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson, Voos and Wall voted in favor of this decision. None opposed. Commissioners Bonanni and Jones were not present.

ISSUED: November 21, 2013

Trenton, New Jersey