

P.E.R.C. NO. 2014-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED
SCHOOL DISTRICT,

Petitioner,

and

Docket No. SN-2011-087

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Paterson State-Operated School District for a restraint of binding arbitration of a grievance filed by the Paterson Education Association. The grievance asserts that the District violated the parties' collective negotiations agreement by ceasing to permit employees choosing the "summer payment option" to request and receive portions of their summer salary payments during the school year. The Commission holds that N.J.S.A. 18A:29-3 bars payment of funds earmarked for the summer payment plan at times other than the three ways enumerated in the statute, and therefore negotiations over payments during the school year are preempted.

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, Robert E. Murray, of counsel

For the Respondent, Sasha Wolf, NJEA UniServ
Representative.

DECISION

On May 26, 2011, the State Operated School District of Paterson petitioned for a scope of negotiation determination seeking to restrain binding arbitration of a grievance filed by the Paterson Education Association. The grievance seeks a determination that employees who have chosen to have their salaries paid out under the "Summer Payment Option Program," can request that compensation set aside for "summer payment," can instead be disbursed during the school year. We will restrain arbitration as the result sought by the Association conflicts with, and is therefore preempted by, a state statute.

The Board has filed exhibits and legal argument in support

of its position. The Association has not submitted legal arguments.^{1/} Although neither party submitted a certification, these facts surrounding the dispute emerge from the parties submissions.

The Association represents the District's professional staff. The District submitted two pages from an expired contract between the parties that contains Article 12, Salaries.^{2/} Article 12:2-3, "Summer Payment Option," provides in pertinent part:

Each employee may individually elect to have ten percent (10%) of his/her monthly salary deducted from his/her pay. These funds shall be paid to the employee or his/her estate on the final pay day in June, or according to a schedule of payment throughout the summer as requested by the employee, or upon death or termination of employment, if earlier.

The Association asserts, without contradiction, that employees who had chosen the summer payment option were nonetheless permitted to request and receive, during the school year, portions of salary that were earmarked for summer payment.

1/ On April 23, 2013, a letter was sent to the parties setting May 2 as the deadline for further submissions and legal argument in support of each party's position. The Association responded that a conference be held or that the petition be processed "in accordance with N.J.A.C. 19:13-3 et seq." The Association did not submit legal argument.

2/ Because only an excerpt was submitted we are unable to tell from which prior agreement it was taken. The parties are currently engaged in Fact-Finding seeking an agreement on a successor contract.

After being advised by an internal auditor that making payments during the school year violated state law, the District revised its practices and advised that it would no longer honor such requests, relying on N.J.S.A. 18A:29-3 which provides:

Whenever persons employed for an academic year by a board of education shall indicate in writing their desire to participate in a summer payment plan, and such board of education approves such participation, then, and thereupon, the proper disbursing officer of the board of education, under such rules as may be promulgated by the commissioner with the approval of the State board, is hereby empowered and directed to deduct and withhold an amount equal to 10% of each semimonthly or monthly salary installment, from the payments of the salaries made to such employees as shall participate in such plan and the accumulated deductions for any academic year shall be paid to the employee or his estate under such rules as may be established by the board of education in one of the following ways: (1) at the end of the academic year; (2) in one or more installments after the end of the academic year but prior to September 1; (3) upon death or termination of employment if earlier. Such deductions may be deposited by the board of education in an interest bearing account in any financial institution having its principal office in the State of New Jersey.

Following the District's action, the Association filed a grievance. The grievance asserts that the past practice of the two parties was to allow a mid-year withdrawal of the funds in the summer payment plan. The District denied the grievance and 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. 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 District may have.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982), sets the test for determining if 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.

Further, where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so

expressly, specifically, and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982).

The District asserts that arbitration of the grievance is preempted by N.J.S.A. 18A:29-3, barring any distribution of summer payment plan funds other than: 1) at the end of the academic year; (2) in one or more installments after the academic year, but before September 1; or (3) occurring upon an employee's death or termination of employment.^{3/} The District argues that the Association's grievance is preempted and not arbitrable.

The Association asserts that, based on both contract language and past practices of the parties, employees may withdraw funds from summer payment accounts: (1) on the final pay day in June; (2) according to a schedule of payment throughout the summer; (3) upon death or termination of employment; (4) by a mid-year withdrawal. The Association contends that the District unilaterally denied summer payment participants the ability to withdraw funds mid-year.

We hold that N.J.S.A. 18A:29-3 bars payment of funds earmarked for the summer payment plan at times other than the

^{3/} The District asserts, without contradiction, that the employee who sought and was denied a mid-year payout continued to be employed by the District.

three ways listed by the statute.^{4/} A payment during the middle of a school year is not one of those options and is preempted.^{5/}

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Jones abstained from consideration. Commissioner Voos was not present.

ISSUED: September 26, 2013

Trenton, New Jersey

4/ N.J.A.C. 6A:23A-16.9, a rule adopted to implement the statute, provides in pertinent part:

A district board of education, in accordance with N.J.S.A. 18A:29-3, shall establish a Summer Payment Plan which will provide for withholding 10 percent of the salary of 10-month employees during the academic year. The district board of education shall ensure that the amount withheld earns interest and is available to the employee either at the end of the academic year or in installments prior to September 1.

5/ Even accepting the Association's contention that, in accordance with a long-standing practice, employees participating in the summer payment plan have been permitted to make mid-year withdrawals is not determinative of negotiability or arbitrability of the dispute. See Mt Holly Tp., P.E.R.C. No. 2011-41, 36 NJPER 423 (¶164 2010).