

P.E.R.C. NO. 2014-75

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2013-077

PARSIPPANY-TROY HILLS  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the Parsippany-Troy Hills Board of Education. The Board seeks a determination that a health benefits waiver reimbursement clause in a Memorandum of Agreement with the Parsippany-Troy Hills Education Association is not mandatorily negotiable. The Commission dismisses the petition finding that a dispute has not arisen during collective negotiations for a successor agreement and a grievance has not been filed concerning the disputed clause.

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, Weiner Lesniak, LLP, attorneys  
(Mark A. Tabakin, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Sanford R. Oxfeld, of counsel; Samuel B. Wenocur, on  
the brief)

DECISION

On June 27, 2013, the Parsippany-Troy Hills Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that a health benefits waiver reimbursement clause in a Memorandum of Agreement it entered into with the Parsippany-Troy Hills Education Association is not mandatorily negotiable. We dismiss the Board's petition.

The parties have filed briefs. The Board has submitted the certification of its counsel, Mark A. Tabakin, Esq. The Association has submitted the certification of its representative, Doug Finkel. These facts appear.

The Association represents a broad-based unit of Board employees including teachers, nurses, coaches, counselors, and other titles. The parties' previous CNA was effective from July 1, 2008 to June 30, 2011.

After negotiations sessions in 2011 and 2012, the parties were unable to reach an agreement on a successor agreement, and a joint Notice of Impasse was filed on June 21, 2012 (Docket No. I-2012-218). After multiple mediation sessions, the parties agreed on two separate Memoranda of Agreement ("MOA 1" and "MOA 2") on December 7, 2012. MOA 1 covered the period from July 1, 2011 through June 30, 2012. MOA 2 covers the period from July 1, 2012 through June 30, 2015. MOA 1 and MOA 2 were ratified by the Association on January 29, 2012 and approved by Board resolution on February 12, 2013.

Section 3, "Insurance Protection", of MOA 2 states, in pertinent part, as follows:

Effective January 1, 2013 (and for the remaining term of the Agreement), the PPO plan shall be revised as follows:

\* \* \*

(iv) employees electing to "opt out" of coverage shall be eligible to receive 40% of the annual cost of the premium of the employee's previous plan/coverage type (the "opt-out" payment shall be made two times a year- one-half on January 1<sup>st</sup> and the remaining one-half on June 30<sup>th</sup>, to be prorated to the date of when the opt out/opt in occurred).

The Board maintains that the language was meant to be an inducement for employees to "opt out" of the more costly PPO plan in favor of the less costly Direct Access Plan. The Association maintains that the language was meant to afford those employees who waive their right to health benefits coverage a payment equal to 40% of the Board's annual cost for providing such coverage. On June 11, 2013, the Association Grievance Chair sent an email to the Board president stating that the Board had violated the signed and ratified MOA 2 by stating publically that it would not pay employees who opt out of health insurance coverage 40% as set forth clearly in MOA 2, and that each member who had or would have opted out should be made whole.

The Commission's scope jurisdiction will normally be invoked in one of two ways. The first way it is invoked is during the course of collective negotiations where typically the public employer will resist negotiating with respect to a subject matter, asserting that it is statutorily preempted or a managerial prerogative. The second way it is invoked is when typically an employee organization seeks to have a matter arbitrated, and the public employer contends it is either statutorily preempted or a managerial prerogative. N.J.A.C. 19:13-2.2 (a) (4) (i-ii). On its scope of negotiations petition, the Board indicated that this dispute arose during the course of collective negotiations. However, this dispute did not arise during the course of collective negotiations since MOA 2 was

ratified by the Association and approved by the Board. The record does not contain any evidence that this matter is being submitted to binding arbitration, as there is no indication that any action was taken by the either party after the June 11, 2013 email. Finally, this Commission's scope jurisdiction may be invoked under "special circumstances" which are not present in this case. N.J.A.C. 19:13-2.2 (a)(4)(iv); Cinnaminson Twp. Bd. Of Ed., P.E.R.C. No. 78-11, 3 NJPER 323 (1977). Therefore, the Board is essentially asking us to issue an advisory opinion. Our scope of negotiations jurisdiction does not extend to issuing advisory opinions in the absence of an actual, as opposed to a potential, dispute. Id., Camden Cty., P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1980). Accordingly, we dismiss this scope petition. Should the Association seek to arbitrate a grievance on this matter, the Board can file a scope petition seeking a restraint of binding arbitration.

ORDER

The Parsippany Troy-Hills Board of Educations scope of negotiations petition is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: April 24, 2014

Trenton, New Jersey