

P.E.R.C. NO. 2014-93

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-2014-029

PARSIPPANY-TROY HILLS EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it denied horizontal salary guide movement for teachers who completed in-service credit. The Commission holds that the mandatory negotiability of the salary guide movement is not preempted by N.J.S.A. 18A:6-8.5, which bars the use of previously earned in-service credits, because the law grants an exception for obligations contained in collective negotiations agreements in effect when the law was enacted.

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.

P.E.R.C. NO. 2014-93

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-2014-029

PARSIPPANY-TROY HILLS EDUCATION ASSOCIATION,

Respondent.

Appearances:

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

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Samuel Wenocur, of counsel)

DECISION

On October 31, 2013, the Parsippany-Troy Hills Board of Education filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that the Board violated the collective negotiations agreement (Agreement) when it denied horizontal salary guide movement for teachers who completed in-service credit. We deny the request for a restraint of binding arbitration.

The parties have filed briefs and exhibits. The Board has filed the certification of its attorney Mark A. Tabakin. The Association has filed the certification of Douglas Finkel, a Uniserv representative. These facts appear.

The Association represents teachers, among various other professionals, employed by the Board. The Association and the Board are parties to an Agreement effective from July 1, 2008 through June 30, 2011.^{1/} Article XVII is entitled "Professional Development", and subsection E provides in relevant part that "[i]n-service courses designed for professional growth and development shall carry credit for salary guide purposes up to a career maximum of twenty-four credits."

N.J.S.A. 18A:6-8.5 is entitled "requirements for receipt of employee tuition assistance, additional compensation" and provides as follows:

In order for a board of education to provide to an employee tuition assistance for course work 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

P.L. 2010, c. 13, the enabling legislation for N.J.S.A. 18A:6-8.5, states in section 3 that "[t]his act shall take effect on July 1 of the school year next following the date of enactment, except that this act shall not be deemed to impair an obligation set forth in a collective negotiations agreement or an

^{1/} The Association and the Board ratified and approved two Memoranda of Agreement on or around February 12, 2013.

individual contract of employment in effect on that effective date." The law was approved on May 6, 2010.

In June 2012, the Board received applications from six Association teachers for horizontal advancements on the salary guide. The applications were based mostly upon the accrual of in-service credits earned prior to the expiration of the Agreement on June 30, 2011.^{2/} On June 12, 2012, the Superintendent responded, in pertinent part, to the applications as follows:

Effective with the 2011-2012 school year, an employee may only receive additional compensation, i.e. movement on the salary guide, for academic credits taken at an institution of higher learning Unfortunately, Parsippany-Troy Hills School District does NOT qualify as a duly authorized institution of higher education. The law does state that this act shall not be deemed to impair an obligation set forth in a collective negotiations agreement in effect on the effective date of the Act, July 1, 2011. Unfortunately, your collective bargaining agreement expired June 30, 2011, Therefore, the District can no longer provide movement on the salary guide for courses offered by the district and completed after July 1, 2011.

On July 16, 2012, Paul Saxton, the District's Personnel Director, returned the applications stating that "as of June 30,

^{2/} There was a range of two to fourteen courses listed on each application, and a total of five of the in-district courses listed appeared to have occurred after June 30, 2011. Some of the applications included college-level courses in addition to in-district courses.

2011, district in-service credits may no longer be used to upgrade to the next training level.”

On July 9 and 30, 2013, the Association filed grievances contesting the denial of the applications, which were denied. On September 24, 2013, the Association demanded arbitration, and this petition ensued.

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]

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

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

The Board asserts that this matter is preempted by N.J.S.A. 18A:6-8.5, which retroactively applies to bar the use of previously earned in-service credits. The Association disputes this position based on the absence of language in the statute to that effect.

Based upon the express language of P.L. 2010, c. 13, we disagree with the Board. Section 3 of that law states that "[t]his act shall take effect on July 1 of the school year next following the date of enactment, except that 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 that effective date." The law was approved on May 6, 2010, and therefore became effective July 1, 2010. However, given the exception in the law for obligations set forth in collective negotiations agreements, the restrictions imposed by

it did not become effective for Association members until the expiration of the Agreement on June 30, 2011. With regard to the applications that sought horizontal salary guide movement for in-district courses completed before the expiration of the Agreement on June 30, 2011, this matter is not preempted by N.J.S.A.

18A:6-8.5.

ORDER

The Parsippany-Troy Hills Board of Education's request for a restraint of binding arbitration 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: June 26, 2014

Trenton, New Jersey