

P.E.R.C. NO. 2015-41

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAINESPORT TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-095

HAINESPORT EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Hainesport Township Board of Education for a restraint of binding arbitration of a grievance filed by the Hainesport Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it denied a teacher's request for tuition reimbursement for two master's degree graduate courses. The Commission holds that N.J.S.A. 18A-6:8.5 preempts arbitration because it requires that an employee obtain approval from the superintendent prior to enrollment in any course for which tuition is sought, and it is undisputed that such approval was not obtained.

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, Capehart Scatchard, attorneys  
(Robert A. Muccilli, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Keith Waldman, of counsel)

DECISION

On April 24, 2014, the Hainesport Township Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of a grievance filed by the Hainesport Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it denied a teacher's request for tuition reimbursement for two master's degree graduate courses. We restrain arbitration.

The Board has filed briefs, exhibits, and the certification of Joseph Campisi, Ph.D., Superintendent. The Association has filed a brief, exhibits, and the certification of the grievant, a middle school social studies teacher. These facts appear.

The Association represents a unit of all certified teachers, as well as custodian, maintenance, courier, secretarial, clerk, and paraprofessional personnel employed by the Board. The Board and Association are parties to a CNA effective from July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

Article XVII of the CNA is entitled "Professional Development and Improvement." Article XVII, paragraph A. provides, in pertinent part:

- A. For courses taken at an accredited college/university, employees shall receive tuition reimbursement equal to 70% of the Rutgers University rate based upon the following criteria:
1. Pre-approval by the superintendent must be obtained.
  2. A minimum grade of "B" must be achieved. For non-graded courses, a passing grade or a certificate of completion must be earned.
  3. A maximum of nine (9) credits during the period September 1 to August 31 annually will be eligible for reimbursement.

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.

The grievant is a middle school social studies teacher with a N-8 teacher certification. She certifies that prior to enrolling in a master's degree program in school administration, she received encouragement from then-Superintendent Virginia Grossman and Supervisor of Special Services and Curriculum Jonathan Hart, including letters of recommendation supporting her application. She certifies that after completing her first nine credit hours towards her degree, she was reimbursed by then-Superintendent Joe Miller according to the CNA.

In December 2013, the grievant notified Campisi of her intention to continue her graduate education and requested

approval for two school administration courses. Campisi denied the grievant's request for approval and tuition reimbursement.

Campisi certifies that after he denied the grievant's graduate course reimbursement request, she did not appeal such decision to the Board and did not obtain Board approval prior to enrolling in the spring 2014 courses.

On December 17, 2013, the Association filed a grievance asserting that the Board violated the CNA by denying approval of a teacher's two master's degree graduate courses for purposes of tuition reimbursement. As a remedy, the grievance seeks approval for reimbursement of the grievant's graduate courses.

On January 4, 2014, Campisi denied the grievance. On March 31, 2014, the Association demanded binding arbitration. This petition ensued. The Commission's inquiry on a scope of negotiations petition is quite narrow. We are addressing a single issue in the abstract: whether the subject matter in dispute is within the scope of collective negotiations. The merits of the union's claimed violation of the agreement, as well as the employer's contractual defenses, are not in issue, because those are matters for the arbitrator to decide if the Commission determines that the question is one that may be arbitrated.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

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 asserts that arbitration is preempted by N.J.S.A. 18A:6-8.5 which precludes a board of education from providing tuition assistance for coursework unless certain requirements are met. It argues that the grievant did not obtain the requisite superintendent approval prior to enrolling in the courses.

The Association asserts that the Commission has long held that tuition reimbursement is a term and condition of employment that does not affect any major educational policies. It argues

that N.J.S.A. 18A-6:8.5 does not specifically preempt arbitration in this case because the grievant had already (after the enactment of the new law) been granted permission from the superintendent to obtain her master's degree in school administration, and the Board had already approved tuition reimbursement for her first nine credits.<sup>1/</sup>

The Board replies that subsection (b) of the statute requires approval prior to enrollment "in any course for which tuition is sought," (emphasis supplied by Board) rather than using the terms "in a degree program" or "in a course of study." Therefore it argues that the Board's failure to approve the grievant's 2014 courses, regardless of prior course approvals as part of the same graduate program, makes her statutorily precluded from seeking reimbursement for those particular courses. The Board also asserts that Kingwood is distinguishable because it did not involve failure to obtain approval prior to enrollment in courses, but involved denial of salary guide movement following completion of a master's degree.

Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively, thereby eliminating the employer's discretion to vary that condition. Bethlehem Tp.

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<sup>1/</sup> Citing Kingwood Tp. Bd. of Ed., P.E.R.C. No. 2014-34, 40 NJPER 260 (¶100 2013) for support.

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

We hold that N.J.S.A. 18A-6:8.5 preempts the arbitration of the dispute in the instant matter. The statute requires that an employee obtain approval from the superintendent prior to enrollment in any course for which tuition assistance is sought. It is undisputed that the superintendent did not approve the grievant's request for tuition reimbursement for her 2014 courses.<sup>2/</sup> The fact that a previous superintendent approved the grievant's earlier request for tuition assistance for other courses, and reimbursed her, is not relevant to the requirements under N.J.S.A. 18A-6:8.5(b).

ORDER

The request of the Hainesport Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau and Eskilson voted in favor of this decision. Commissioners Jones and Voos voted against this decision.

ISSUED: December 18, 2014

Trenton, New Jersey

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<sup>2/</sup> Under N.J.S.A. 18A-6:8.5(b), the grievant had the option to appeal the denial to the board of education, but she and/or the Association have not exercised that statutory right.