

P.E.R.C. NO. 2016-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-060

HACKENSACK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Hackensack Board of Education's request for a restraint of binding arbitration of a grievance filed by the Hackensack Education Association. The grievance challenges the Board's refusal to grant salary guide advancement based upon completion of graduate courses. Finding that appropriate placement on a salary guide is mandatorily negotiable and is not preempted by N.J.S.A. 18A:6-8.5, the Commission holds that the dispute is arbitrable.

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, Richard E. Salkin, attorney
(Richard E. Salkin, of counsel)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum
& Friedman, attorneys (Genevieve M. Murphy-Bradacs, of
counsel and on the brief)

DECISION

On March 16, 2015, the Hackensack Board of Education filed a scope of negotiations petition seeking restraint of binding arbitration of a grievance filed by the Hackensack Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it denied two teachers' requests for salary guide advancement based on completion of graduate courses.

The parties filed briefs and exhibits. The Association filed the certification of its grievance chairperson; the Board did not file a certification.^{1/} These facts appear.

The Association represents a unit of all non-supervisory certified teachers, para-professionals, school nurses, guidance counselors, child study team members, librarians, and full-time certified athletic trainers 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 21 of the CNA provides, in pertinent part:

ARTICLE 21 - GRADUATE COURSES/SALARY ADJUSTMENTS

- A. Graduate courses must be taken at accredited institutions approved by the State of New Jersey in current area of assignment or one that is leading to certification or advanced education degree.

Courses must be approved by the superintendent or designee in advance if the staff member desires that the credits are to be applied toward salary guide advancement.

All course documentation must be submitted to the Superintendent in writing within two weeks of the commencement of the course. Proof of completion (official transcript and grades) with a minimum grade of B must

^{1/} N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

be submitted to the superintendent or designee prior to approval of credits.

- B. Each teacher is entitled to submit a maximum of 12 credits per school year (July 1 through June 30) toward salary guide advancement. In-district pre-approved in-service credits are not subject to the school year 12 credit restriction.

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:

§ 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.

In April 2014, two of the Board's high school health and physical education teachers applied for salary guide advancement based on graduate classes they completed online at Fresno Pacific University (FPU), which is accredited by the Western Association of Schools and Colleges (WASC). (Board Exhibits C, D; Association Exhibits 1, 2). On May 16, 2014, the Board denied one teacher's request to apply a course entitled "Elementary Sports Games Around the World" towards salary advancement and another teacher's request to apply a course entitled "Teaching Tennis" towards salary advancement. (Board Exhibits C, D; Association Exhibit 1). The Association filed a grievance asserting that the Board violated Article 21 of the CNA by unjustly denying graduate course approval for salary advancement. As a remedy, the grievance seeks approval for salary guide advancement based on the grievants' completion of graduate courses. On August 15, 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. Citing Hainesport Tp. Bd. of Ed., P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014), it argues that where the grievants had not obtained prior approval of the superintendent, they could

not receive additional compensation (salary guide advancement) for completion of graduate classes.

Citing Kingwood Tp. Bd. of Ed., P.E.R.C. No. 2014-34, 40 NJPER 260 (¶100 2013), the Association responds that N.J.S.A. 18A:6-8.5 does not preempt this dispute over the mandatorily negotiable term of appropriate placement on the salary guide.

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. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). Based on the mandates of N.J.S.A. 18A:6-8.5, a board of education could not negotiate away the minimum requirements that: courses approved for salary guide advancement be earned from "a duly authorized institution of higher education as defined in section 3 of P.L.1986, c.87 (C.18A:3-15.3)"; and "[A]dditional compensation shall be provided only for a course or degree related to the employee's current or future job responsibilities."

Here, not only has the Board not alleged that the grievants' salary guide advancement requests failed to meet either of those minimum requirements, but in Kingwood, supra, we found that an arbitrator could determine whether the grievant's coursework and

graduate degree met the requirements of N.J.S.A. 18A:6-8.5. We held:

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. 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).

[Kingwood, 40 NJPER at 263]

Consistent with Kingwood and the authority cited therein, we hold that the grievance concerns the mandatorily negotiable issue of placement on the appropriate step of the salary guide and is not preempted by N.J.S.A. 18A:6-8.5.

Our decision in Hainesport, supra, is distinguishable because it concerned the issue of tuition reimbursement and only dealt with the portion of the statute - N.J.S.A. 18A:6-8.5(b) - which is specifically limited to superintendent preapproval for enrollment in courses for which "tuition assistance" is sought. Section b. of the statute does not apply to the issue of "additional compensation" (salary guide advancement) for

coursework. The Board may assert any contractual requirements for course preapproval for salary advancement to the arbitrator.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: September 24, 2015

Trenton, New Jersey