

P.E.R.C. NO. 2016-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HILLSBOROUGH TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-079

HILLSBOROUGH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of a grievance contesting the Board's denial of several unit members' tuition reimbursement requests. 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 a 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, Fogarty & Hara, attorneys (Vittorio S. LaPira, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Randi Doner April, of counsel)

DECISION

On June 9, 2015, the Hillsborough Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of arbitration of a grievance filed by the Hillsborough Township Education Association. The grievance contests the denial of tuition reimbursement requests.

The parties have filed briefs, exhibits and certifications.^{1/} These facts appear.

^{1/} The Board filed the certification of its Assistant Superintendent of Schools with its Reply Brief. Ordinarily a certification filed by the Petitioner should accompany its initial brief so that the Respondent would have an opportunity to answer. See N.J.A.C. 19:13-3.6(b) through (d) and (f) (1).

The Association represents a broad-based unit of Board employees including teachers and instructional assistants. The Board and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2013 through June 30, 2016. The grievance procedure ends in binding arbitration.

The CNA, at Articles 18.1 and 24.5 respectively, allows for tuition reimbursements to both teachers and instructional assistants. Tuition reimbursement for both categories of employees is to conform to the terms of N.J.S.A. 18A:6-8.5, as the CNA (at Articles 18.1.3 and 24.5.1) stipulates:

The provisions of this article shall only be implemented to the extent permitted by N.J.S.A. 18A:6-8.5, or any other statutory provision or administrative regulation.

The referenced statute, which became effective July 1, 2010, provides in pertinent part:

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 ... 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 grievance covers the denial of tuition reimbursement requests filed by a teacher and three instructional assistants. The Board asserts that the requests are preempted by the title 18A statute. Based on the exhibits, certifications and undisputed facts, we set forth the context of each dispute.

Margaret Niemec

Niemec, a reading specialist, is pursuing a certificate in teaching English as a Second Language (ESL). On August 5, 2013 she submitted an approval form for a graduate course entitled "Second Language Acquisition" to begin on September 10. On September 24 her request was denied.^{2/} The reason given was that, as Niemec had always been employed as a Reading Specialist, her current and future job duties did not involve teaching ESL.

Kathleen Reddan

Reddan, an Instructional Assistant, submitted course approval forms on April 11 and September 4, 2013 for courses entitled "Language and Literacy for Teaching ESL," to begin April 30, and "Second Language Acquisition," to begin on September 10. Her reimbursement requests were denied on April 18 and September

^{2/} Niemec had taken three prior ESL classes.

24, respectively. The reason given was that the courses did not relate to her current or future job responsibilities.

Diane Degaris

DeGaris, also an Instructional Assistant, submitted a course approval form on August 7, 2013 for a course entitled "Second Language Acquisition," to begin on September 10. Her reimbursement request, received on August 23, was denied on September 24. The reason given was that the course did not relate to her current or future job responsibilities.

Jeanine Reilly

On May 14, 2013, Reilly, also an Instructional Assistant, submitted a course approval request for a "Clinical Seminar in Special Education," to begin on September 3. The Seminar was part of a program "Teaching Students with Disabilities." Her request was denied on June 3 with the notation that it does not comply with 18A:6-8.5.^{3/}

Other facts in common

As established by the approval forms submitted by each employee, their requests were all supported or endorsed by their supervisor or building principal.^{4/} All classes were part of a

^{3/} The Board is not asserting that the employees were seeking to take courses at other than approved institutions of higher education as required by the statute.

^{4/} The Association asserts that the employees were encouraged by their supervisors/administration to take the classes.

multi-course program and some of the employees had been reimbursed for tuition for earlier classes in their programs. The Association does not contest the Board's assertion that all requests were made after N.J.S.A. 18A:6-8.5 had taken effect.

On October 23, 2014 the Association filed a grievance contesting the denial of the tuition reimbursement requests.^{5/} The grievance was denied at the successive steps of the negotiated procedure, and on May 8, 2014 the Association demanded arbitration. It seeks tuition reimbursement for the courses and movement on the salary guide based on additional educational achievement. On May 9, 2015, the Board filed this petition.

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 Association's claimed violation of the agreement, as well as any contractual defenses asserted by the employer, are not in issue. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

^{5/} Although the Association's brief states that its grievance concerns the four employees named above, there is also a reference in the grievance to a fifth employee. According to the District's level three response to the grievance, that matter was resolved.

Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (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.

Because the Board asserts that arbitration is preempted by N.J.S.A. 18A:6-8.5, we must assess if that statute preempts the Association's tuition reimbursement grievance.

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).

The Board asserts that the Association's grievance is preempted. It relies on Hainesport Township Board of Education, P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014), where we held that the statute preempted arbitration of a dispute where the employee

had not obtained approval from the superintendent prior to enrollment in the course for which tuition reimbursement is sought.

The Association has submitted four arbitration decisions ruling on grievances contesting denial of tuition reimbursement requests. Some decisions grant the requests; others do not. It asserts that those cases affect the viability of Hainesport.

We disagree. To begin with, four of the five arbitration decisions predate Hainseport. Moreover, the Association, however subtly, is comparing apples (the merits of a grievance) to oranges (a grievance's legal negotiability). The arbitration decisions focused solely on the merits of the cases and not whether they would have been determined to be legally arbitrable had the boards of education filed scope of negotiations petitions seeking to restrain arbitration based on statutory preemption.

Here, as in Hainesport, we hold that N.J.S.A. 18A:6-8.5 preempts arbitration. The statute expressly, specifically, and comprehensively precludes a board from reimbursing an employee for coursework that does not meet each requirement set forth in the law. Here, the coursework was not approved by the Superintendent as it did not relate to the employee's current or future job responsibilities.

ORDER

The request of the Hillsborough Township Board of Education 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. None opposed. Commissioner Voos abstained from consideration. Commissioner Jones was not present.

ISSUED: March 31, 2016

Trenton, New Jersey