

P.E.R.C. NO. 2016-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEARNY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-036

KEARNY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of salary schedules in an expired collective negotiations agreement between the Board and Association providing for horizontal movement based on "equivalency credits," rather than only academic credits. The Commission determines that the disputed salary schedules are preempted by N.J.S.A. 18A:6-8.5 and may not be included in a successor agreement because they tie compensation to equivalency credits in violation of the statute.

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, Genova Burns, LLC, attorneys
(Joseph M. Hannon, of counsel and on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Gail
Oxfeld Kanef, on the brief)

DECISION

On December 11, 2015, the Kearny Board of Education petitioned for a scope of negotiations determination. The Board seeks a ruling that portions of its most recent collective negotiations agreement with the Kearny Education Association conflict with a state education statute and cannot be carried over into a successor CNA.

The parties have filed briefs and exhibits. The Board also filed the certification of its Superintendent. These facts appear.

The Association represents a unit of the Board's certified personnel including teachers. The Board and the Association are parties to a CNA in effect from July 1, 2011 through June 30,

2014. The parties are engaged in collective negotiations to set the terms of a successor agreement.

Schedules A, B and C of the CNA set forth base salaries for the three years covered by the agreement. In typical fashion they provide for vertical step movement based upon years of experience, and horizontal movement based upon academic degrees and/or progress towards the next degree. However, the horizontal steps that are in between degrees are not all tied to academic credits.

The columns on the guides are headed: "B.A., ½ EQ., EQ.5, M.A., EQ.6, M.A.+32, and Ph.D." The designation "EQ" refers to "equivalency credits." Like academic credits, equivalency credits ("EQs") are a mechanism by which teaching staff members have been able to move horizontally on the salary guide.

Schedule I of the CNA provides that half of the credits needed at the B.A.+16, B.A.+32, B.A.+64, and M.A.+32 levels "shall be academic credits gained from accredited institutions," which credits "may or may not be" in the staff member's field, and that the balance of credits may be composed of approved professional activities or undergraduate degrees or both. The Superintendent certifies that ½ EQ, EQ.5, and EQ.6, respectively, correspond to B.A.+16, B.A.+32, and B.A.+64, respectively.

Schedule I contains a multi-faceted guide for determining and approving equivalency credits. Its introduction reads:

The general purpose of the . . . following Equivalency Credits (academic/non-academic credits) policy is to provide means whereby teachers who participate in activities and academic courses which are beneficial to the school and indicative of their professional growth may attain credit toward advancement on the salary guide. Activity credits are considered by the [Board] as a supplement to, and a substitute for, a specified number of college or university credits. Accordingly the [Board] uses this means of recognizing certain special services and professional contributions of teachers in the school system.

The purpose of this outline is to inform teachers regarding those activities in which equivalency credits may be granted, maximum of such credit and the procedures employed in their evaluation.

The Schedule describes the composition and appointment procedures for a committee of four teachers to evaluate and approve applications for EQs with a right of appeal to the district superintendent. Two of the four teachers are selected by the Association's Executive Board; two by the superintendent. The Schedule further provides:

- EQs shall not be available for activities for which negotiated remuneration is awarded (e.g., coaching stipends);
- EQs shall only be awarded for activities performed before or after the regular school day.

Schedule I lists the activities eligible for the award of EQs and, with certain exceptions, the number of hours that must be spent engaging in the activity in order to earn one EQ. These are:

1. Curriculum and other committees: 30 hours = 1 credit;
2. Organized non-credit courses and study under a private tutor: 30 hours = 1 credit;

3. Specified extracurricular activities (namely, coaching of drama or debating and faculty advisorship of school publications or other service groups): maximum of 8 credits;^{1/}
4. Cultural and research studies: 45 hours = 1 credit;
5. Long years of service: 4 credits for 20 years and 4 more credits for each additional five years of service; and
6. Innovative programs: 30 hours = 1 credit.

"Organized non-credit courses" include "courses offered by accredited educational institutions, industrial organizations, or other approved sponsorship" if the courses are directly related to the individual's teaching or professional responsibilities.

"Study under a private tutor" may be approved by the Committee if the tutoring is directly related to the individual's teaching or professional responsibilities but requires Superintendent approval if outside the teacher's current certifications.

"Cultural and research studies" provide EQs for travel that contributes to "the cultural background and professional training" of the staff member. "Innovative programs" include "mini courses, summer institutes, leadership institutes, [and] study/research groups" where approved by the Committee and Superintendent.

During collective negotiations for a successor agreement, the Board proposed eliminating Article XXV, Section B - equivalency credits, asserting that it violated N.J.S.A. 18A:6-

^{1/} The 8 credit maximum does not indicate whether the same ratio of 30 hours = 1 credit applies.

8.5. The Association rejected the Board's proposal, and this petition ensued.

The referenced statute, N.J.S.A. 18A:6-8.5, 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 . . .

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.

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.

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 Educ. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). If a subject is preempted, it cannot be the subject of a negotiated agreement or arbitrated.

The Board argues that the use of equivalency credits for advancement on the salary guide in the manner provided by Article XXV, Section B of the CNA and Schedule I thereto is preempted by N.J.S.A. 18A:8-6.5. It contends that providing credits, and in turn, additional compensation for coursework that is not job-related, taken at an accredited institution, and pre-approved by the Superintendent is prohibited by the statute. The Association counters that nothing in the statute precludes a school district from providing a salary increase for reasons other than a completed academic degree.

In Hainesport Township Bd. of Educ., P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014) and Hillsborough Tp. Bd. of Educ.,

P.E.R.C. No. 2015-079, ___ NJPER ___ (¶___ 2016), we held that N.J.S.A. 18A:6-8.5 preempted arbitration of grievances seeking tuition reimbursement or additional compensation for coursework that did not comply with or meet the requirements of the statute. We find here, similarly, that the Board's compensation scheme, by providing horizontal salary guide movement tied to attainment of coursework that does not conform to the limitations set forth in N.J.S.A. 18A:6-8.5, is preempted and may not be included in a successor agreement. As indicated above, the compensation scheme allows movement to the BA+16, B.A.+32, B.A.+64, and M.A.+32 levels for courses that are not necessarily related to the employee's current or future job responsibilities, for courses that are not taken at accredited institutions as defined by N.J.S.A. 18A:3-15.3, and for courses that are not necessarily pre-approved by the Superintendent. Thus, the scheme conflicts with N.J.S.A. 18A:6-8.5 and is preempted.

Our holding is limited to the specific facts of this case and the specific compensation scheme at issue. We have held in other circumstances that compensation for the performance of duties and activities similar to those listed in Schedule I was mandatorily negotiable. See, e.g., North Burlington Cnty. Reg. Bd. of Ed., P.E.R.C. No. 2013-53, 39 NJPER 303 (¶103 2013) (compensation for curriculum committee work); Hackettstown Bd. of Ed., P.E.R.C. No. 2005-5, 30 NJPER 328 (¶107 2004) (compensation

for chaperoning overnight student trip); Wood-Ridge Bd. of Ed., P.E.R.C. No. 94-101, 20 NJPER 200 (¶25095 1994) (compensation for advisor to student club); Moorestown Bd. of Ed., P.E.R.C. No. 94-20, 19 NJPER 454 (¶24214 1993) (negotiated stipends for faculty directors of student plays); City of Newark, P.E.R.C. No. 2007-24, 32 NJPER 342 (¶143 2006) (longevity payments). Since the parties have not raised an issue as to whether compensation for the similar activities and duties in Schedule I may be included in the successor agreement as long as it is not tied to guide movement for educational attainment, we have no occasion to address that issue in this case.

We also note the following from the Board's brief:

[T]he Board is not contending that longevity cannot be provided, it already exists in its collective negotiations, just that the statute forbids the types of methods used for equivalency credits for advancement on a salary guide.

We leave it to the parties to determine how those issues should be treated going forward other than by awarding EQs to support horizontal salary guide movement. We limit our determination to holding that the parties' most recent salary guide conflicts with and is preempted by N.J.S.A. 18A:6-8.5.

Lastly, we note that in a scope of negotiations case arising during collective negotiations, we normally do not comment on the wisdom or efficacy of contract proposals or existing contract

terms. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

ORDER

The Salary Guide in the Board-Association 2011 through 2014 CNA conflicts with and is preempted by N.J.S.A. 18A:6-8.5. The salary guide in the parties' successor CNA may not provide for horizontal step advancement based on "Equivalency Credits" as currently set forth in the 2011 through 2014 agreement. No determination is made on the negotiability of any related issues.

BY ORDER OF THE COMMISSION

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

ISSUED: April 28, 2016

Trenton, New Jersey