

P.E.R.C. NO. 2017-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STERLING BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-031

STERLING 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 two unit members' tuition reimbursement requests. The Commission holds that N.J.S.A. 18A-6:8.5(b) 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.

P.E.R.C. NO. 2017-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STERLING BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-031

STERLING EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Comegno Law Group, P.C., attorneys
(Jeffrey R. Caccese, on the brief)

For the Respondent, Zeller & Wieliczko, LLP, attorneys
(Amy L. Gillette, on the brief)

DECISION

On March 8, 2017, the Sterling Regional Board of Education (Board) filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of a grievance filed by the Sterling Education Association (Association). The grievance asserts that the Board violated the parties' collective negotiations agreement (CNA) when it denied two teachers' requests for tuition reimbursement for graduate courses.

The Board has filed a brief, exhibits, and the certification of Mark Napoleon, Superintendent. The Association has filed a brief, exhibits, and the certification of James Blumenstein, Association President. These facts appear.

The Association represents a unit of all certified personnel, as well as clerical personnel, custodial, and maintenance employees. The Board and Association are parties to a CNA in effect from July 1, 2015 through June 30, 2018. The grievance procedure ends in binding arbitration.

Article 23, section (C)(1) of the CNA is entitled "Tuition Reimbursement Plan" and provides:

There shall be a tuition reimbursement plan for all unit employees to take course work reflecting their areas of certification and/or employment. In addition, teachers are covered by this reimbursement plan for courses taken outside their area of certification and/or employment.

In December 2016, grievant J.G. submitted Request for Course Approval/Tuition Reimbursement forms seeking reimbursement for the following six Masters level courses:

- The Principalship: PreK -8
- The Principalship: 9-12
- Curriculum Leadership
- Curriculum Development
- Supervisory Leadership: Staff Selection, Appraisal, and Renewal
- Measurement, Accountability, and Student Learning

On December 21, 2016, Superintendent Napoleon denied five of J.G.'s six course tuition reimbursement requests, determining that the coursework was not related to his current or future job responsibilities in accordance with state statute.

In December 2016, grievant D.R. submitted Request for Course Approval/Tuition Reimbursement forms seeking reimbursement for the following four Masters level courses:

- Supervisory Leadership: Staff Selection, Appraisal, and Renewal
- Curriculum Development
- Curriculum Leadership
- The Principalship: 9-12

On December 22, Superintendent Napoleon denied all four of D.R.'s tuition reimbursement requests, determining that the coursework was not related to his current or future job responsibilities in accordance with state statute.

On December 23, the Association filed a grievance on behalf of J.G. and D.R. asserting that Article 23(C)(1) of the CNA entitles employees to receive tuition reimbursement for courses taken both in and outside of their areas of certification and/or employment. The grievance was denied at each level of the grievance process.

On January 10, 2017, J.G. and D.R. appealed the denial of tuition reimbursement to the Board. On January 27, the Board President sent the grievants a letter advising them that after reviewing the facts and circumstances of their appeal, the Board determined that the requested courses were not part of the employees' current or future job responsibilities. The Association has filed a demand for arbitration with the American Arbitration Association. 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 Association'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 of this grievance is preempted by N.J.S.A. 18A:6-8.5, which requires that an employee obtain approval from the superintendent prior to enrollment in a course for which tuition assistance is sought. It argues that because Superintendent Napoleon denied the grievants' request for tuition reimbursement, their only right of appeal per N.J.S.A. 18A:6-8.5 was to the Board, which upheld the denials.

The Association asserts that this matter can be arbitrated consistent with N.J.S.A. 18A:6-8.5 because the statute does not provide a complete clarification of the types of courses for which an employee would be entitled to tuition reimbursement. It argues that the determination of whether the coursework relates to an employee's current or future job responsibilities allows for further interpretation that can be collectively negotiated into specific contract language and interpreted by an arbitrator.

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).

N.J.S.A. 18A:6-8.5 provides, in pertinent part:

§ 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 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 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 Commission has held, and the Appellate Division has affirmed, that N.J.S.A. 18A:6-8.5 preempts arbitration of a superintendent's denial of tuition reimbursement. See Hillsborough Tp. Bd. of Ed., P.E.R.C. No. 2016-64, 42 NJPER 475 (¶130 2016), aff'd, 43 NJPER 341 (¶96 App. Div. 2017), 2017 N.J. Super. Unpub. LEXIS 547; and Hainesport Tp. Bd. of Ed., P.E.R.C. No. 2015-41, 41 NJPER 274 (¶92 2014). The statute requires that "the employee shall obtain approval from the superintendent of schools prior to enrollment in any course for which tuition

assistance is sought," and it is undisputed here that Superintendent Napoleon did not approve these tuition reimbursement requests. Furthermore, the Appellate Division has held that the determination of whether the course is "related to the employee's current or future job responsibilities" is non-negotiable, and therefore non-arbitrable. Hillsborough, supra, 43 NJPER at 343-344. The only appeal of the superintendent's denial permitted under the statute is to the Board; the Association utilized that process. N.J.S.A. 18:6-8.5(b).^{1/} Accordingly, as in Hillsborough and Hainesport, we hold that N.J.S.A. 18A:6-8.5 preempts binding arbitration of this dispute.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: June 29, 2017

Trenton, New Jersey

^{1/} The Appellate Division noted that the Board's determination, in turn, is reviewable by the State Commissioner of Education, whose decision may be appealed to the Appellate Division. Hillsborough, supra, 43 NJPER at 344.