

P.E.R.C. NO. 2024-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2024-017

MATAWAN-ABERDEEN REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission denies the Matawan-Aberdeen Regional Board of Education's scope of negotiations petition seeking a restraint of binding arbitration of the Association's grievance challenging the Board's unilateral policy requiring unit members to submit bank/credit card statements or canceled checks as proof of payment in order to process contractual reimbursement requests. The Commission finds: (1) the issue is not preempted by statute or regulation; (2) the Association has a valid interest in safeguarding the security of its members' personal financial information, which the Board's policy does not address; and (3) on balance, negotiation over procedures for the verification of contractual reimbursement requests would not significantly interfere with the Board's managerial prerogative to determine major educational policy.

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, David B. Rubin, P.C., attorneys
(David B. Rubin, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Keith Waldman, of counsel and on the brief; Liz Pudol,
on the brief)

DECISION

On October 10, 2023, the Matawan-Aberdeen Regional Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Matawan-Aberdeen Regional Education Association (Association or MAREA). The grievance asserts that the Board violated the parties' collective negotiations agreements (CNAs) by requiring unit members to submit bank/credit card statements or canceled checks as proof of payment in order to process reimbursements pertaining to meals, optical, tuition, and licenses.

The Board filed a brief, exhibits and the certification of its School Business Administrator/Board Secretary, Lindsey Case.^{1/} The Association filed a brief, exhibits, and the certification of its President, Casey Barilka. These facts appear.

On May 17, 2022, the Board's Director of Personnel issued a memorandum addressed to MAREA teachers, clerical, and maintenance workers, regarding "Tuition Reimbursement Procedure - 2022-2023." The memorandum stated, in pertinent part (emphasis in original):

Actual reimbursement for summer and fall courses shall be made on or about March 1, 2023 **when the Official Transcript (reflecting a grade of B or better), completed Tuition Reimbursement Voucher, Paid Tuition Receipt, including a credit-card statement or cancelled check showing payment was made, has been submitted.** In the case of a pass-fail grading system, pass is acceptable. Actual reimbursement for spring courses shall be made by June 30, 2023 assuming all required paperwork is submitted.

On May 18, 2022, the District's Personnel Office emailed a copy of the memorandum to District staff, along with two related forms: "Application for Tuition Reimbursement/Authorization for Reimbursement," and "Tuition Reimbursement Voucher". Case certifies that during the 2022-2023 school year, the District also required similar documentation for other contractual reimbursement requests.

^{1/} Case certifies that the facts asserted by the Board in its brief are true.

The Board and Association are parties to various CNAs in effect from July 1, 2021 through June 30, 2024. The grievance at issue alleges the Board's reimbursement verification policy involves provisions of CNAs covering the following negotiations units represented by the Association: teachers; clerical employees; bus drivers; and custodial, maintenance, and technology employees.^{2/} The grievance procedure of each CNA ends in binding arbitration.

Each CNA provides for optical reimbursement of up to either \$300.00 (for clerical employees) or \$200.00 (for teachers, bus drivers, and maintenance employees) annually. These provisions do not specify any particular procedure for verifying that an employee personally incurred such an expense before seeking reimbursement. The subject of tuition reimbursement is addressed only in the respective CNAs covering teachers, clerical employees, and maintenance employees.^{3/} Each provides that the

2/ The Board employees covered by these CNAs include, in brief: a teachers unit of all certified personnel; a unit of all clerical employees and assistants; a unit of all school bus drivers, transportation assistants, and transportation dispatchers; and a unit of all custodial, maintenance, and technology employees.

3/ The following tuition reimbursement requirements common to all three CNAs are not challenged by the grievance at issue: employees must obtain advance approval from the Superintendent prior to the start of any course for which tuition reimbursement is sought; the courses must be taken at duly authorized institutions of higher education; and

(continued...)

maximum reimbursement, per employee, is the cost of a 3-credit graduate course at Rutgers. All three contain an identical tuition reimbursement procedure that does not expressly require an employee's credit-card statement or cancelled check showing tuition payment was made. The CNA for bus drivers contains other reimbursement provisions (covering special license fees and meals for trips made during non-regular hours) that also do not specify any particular procedure for verifying that an employee personally incurred such expenses before seeking reimbursement.

The Association certifies that the negotiated tuition reimbursement verification policy has not changed since at least 1973, citing a provision of the parties' 1973-1975 CNA that is substantially similar to the current provision.

The grievance was filed on March 27, 2023, on behalf of a teacher, J.R., who was denied "optical reimbursement" from the District because she did not submit "personal financial statements" such as "bank and/or credit card statements" as proof of payment. The grievance further stated:

The MAREA has advised its members that it believes that submitting personal financial statements is not required per the contract. However, since the Board will not process reimbursements without such proof, the MAREA has advised its members to redact all non

3/ (...continued)
tuition reimbursement will be provided only for courses or degrees that are related to the employee's current or future job responsibilities.

pertinent information from any bank or credit card statements and to submit them so its members can receive reimbursement while this matter is being resolved. Submitting such records in no way indicates the MAREA's acceptance of requesting personal financial statements as a means of proof of payment.

Case certifies that she began working with the District in April 2021 and that as the District's chief financial officer, she is responsible for overseeing contractual reimbursement for various out-of-pocket expenses under the CNA, such as tuition for approved coursework, optical expenses, travel, and meals.

Case certifies that she discovered inconsistencies in the documentary proof of payment required of employees with regard to the District's day-to-day reimbursement practices in place prior to her arrival: sometimes they would submit canceled checks or credit card receipts; other times, they would be paid based on a mere "paid" invoice. Case certifies she was concerned that this compromised her ability to fulfill her statutory obligation to "verify" the validity of all claims for money before they were paid out. Case certifies that over the course of the 2021-2022 school year, she insisted on documentation, such as a canceled check or credit card receipt, as evidence that the employees themselves had paid the amounts, rather than just a "paid" invoice or, in the case of tuition reimbursement, a transcript showing the course was completed.

Case further certifies that during the 2021-2022 school year there were "at least several" instances where employees did not submit the required documentation, and that when questioned, it turned out some had not actually incurred that total cost themselves.^{4/} Accordingly, Case certifies, the District's Personnel Office issued the above-quoted May 17, 2022 memorandum to all staff addressing tuition reimbursement procedures for the 2022-2023 school year.

Case further certifies that, so far as she is aware, in each instance where some employees continued to seek reimbursements without presenting canceled checks, credit card receipts or other clear proof they had personally laid out the funds, they were required to submit such proof, including the grievant, J.R.

The Association President certifies that it is the parties' longstanding past practice to apply the contractual tuition reimbursement verification policy to other kinds of reimbursement. With respect to optical reimbursements, the Board has historically only required that members submit receipts or paid invoices. It has been understood by the parties that secondary verification (above and beyond what is contractually required) is only used where the Board has a reasonable suspicion

^{4/} The record contains no specific information about these instances, including as to whether reimbursement was denied to those employees who, upon questioning, had not actually incurred the total cost themselves.

of abuse. To the Association's knowledge, there is no history of fraud or abuse of contractual or statutory reimbursement benefits. The Association would not condone such abuse if any instances were identified.

The District denied J.R.'s reimbursement application, the Board denied the Association's subsequent grievance, and the Association demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

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.]

Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically and comprehensively. *Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed.*, 91 N.J. 38, 44 (1982); *State v. State Supervisory Employees Ass'n*, 78 N.J. 54, 80-82 (1978). 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 argues that its reimbursement verification policy is a non-negotiable managerial prerogative stemming from its legal responsibility to assure the fiscal propriety of all monetary payments pursuant to N.J.S.A. 18A:19.2 (a statute that addresses the payment of "claims or demands" made against school districts). While admitting to a lack of cases directly on point, the Board argues its policy is analogous to a public

employer's non-negotiable prerogative to utilize reasonable means to verify employee sickness or disability. The Board contends that, like the requirement of specific documentation such as a doctor's note to verify sick leave use, the District's requirement of canceled checks or credit card receipts for reimbursement requests is reasonable. The Board denies that this would create an undue invasion of employees' privacy, and further argues that the Association's concerns are outweighed by the Board's "statutory mandate" to verify the validity of monetary claims. Finally, the Board contends that the Association is not foreclosed from grieving arbitrary denials of reimbursement in individual cases, giving the following hypothetical examples (without conceding the merits):

[I]f an employee did not pay by check or credit card but through an alternate form of payment that clearly showed the employee's own out-of-pocket expenditure, a denial of reimbursement may well be grievable. Similarly, if an employee's relative fronted the payment but the employee presented conclusive evidence that he already paid the relative back, a denial of reimbursement in that case might also be grievable. We suppose that a pattern of selective enforcement also might give rise to a grievable dispute.

The Association argues that the Board's "enhanced" verification techniques contradict clear, 50-year-old contract language and past practice. It stresses that negotiations over the policy are not preempted by statute, and reimbursements

intimately and directly affect employees' welfare. The Association further argues that N.J.S.A. 18A:6-8.5 governs tuition assistance and reimbursements in school districts (not N.J.S.A. 18A:19-2), and it does not require heightened fiscal scrutiny over reimbursements. The Association does not contest the Board's general right to establish reasonable verification policies. But it argues the issue is arbitrable based on its concerns over: an absence of safeguards to protect the security of members' personal financial information; and the chilling effect the policy will have on members' exercise of contractual benefits. The Association further argues that the contractual benefits at issue are de minimis, and that its grievance challenges the policy's application, much like the examples given by the Board that it concedes would be arbitrable.

We find that a resolution of this dispute turns upon the second and third prongs of the Local 195 negotiability test. That is, we must decide whether a negotiated agreement over the subject of verification of contractual reimbursements (in this case a tuition reimbursement verification policy that is applied generally to all contractual reimbursement requests) is fully or partially preempted by statute or regulation, or would significantly interfere with the determination of governmental policy. The latter requires us to balance the interests of the parties.

Like the Board, we have found no Commission cases directly addressing disputes over the negotiability of contractual reimbursement verification policies. However, our Supreme Court has held, "major educational policies which indirectly affect the working conditions of" school employees "remain exclusively with the Board and are not negotiable whereas items which are not predominantly educational policies and directly affect the [employees] financial and personal welfare . . . do not remain exclusively with the Board and are negotiable." Board of Education v. Englewood Teachers Ass'n, 64 N.J. 1, 7 (1973).

The Board has a legitimate interest in establishing reasonable reimbursement verification policies, which the Association does not dispute. That prerogative, in general, is supported by N.J.S.A. 18A:19-2,^{5/} which addresses "Requirements

^{5/} N.J.S.A. 18A:19-2 states:

Except as provided in subsection b. of N.J.S.18A:19-4 [re: payments for phone, cable and public utilities], a claim or demand against a school district shall not be paid by the secretary or treasurer of school moneys, as appropriate, unless the claim or demand is authorized by law and the rules of the board of education of the district, is fully itemized and verified, has been duly audited as required by law, has been presented to, and approved by, the board of education at a meeting thereof, or presented to, and approved by, a person designated by the board of education for that purpose, and the amount required to pay the claim or demand is available for that purpose.

for payment of claims; audit of; claims in general.” However, we do not find this statute preempts the issue of reimbursement verification procedures. It requires that all claims against a school district be “fully itemized and verified,” but does not expressly, specifically, and comprehensively set out specific verification procedures. Bethlehem Tp. Ed. Ass’n, supra. The Board also has a legitimate interest in preventing the abuse of collectively negotiated reimbursement benefits.

The Association has a valid interest in safeguarding the security of its members’ personal financial information. The Board’s unilateral policy change does not address this concern. We take administrative notice that the importance of protecting data privacy is also a present concern of the Legislature.^{6/}

In consideration of the foregoing we find that on balance, negotiation over procedures for the verification of contractual reimbursement requests would not significantly interfere with the Board’s managerial prerogative to determine major educational policy. The Board may present its arguments as to the reasonableness of its policy to an arbitrator.

^{6/} On January 16, 2024, Governor Murphy signed Senate Bill 332, the New Jersey Data Privacy Act, into law. Set to go into effect on January 15, 2025, the act among other things expands the definition of sensitive personal data to now include an individual’s financial information.

ORDER

The Matawan-Aberdeen Regional Board of Education's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Kushnir, and Papero voted in favor of this decision. None opposed. Commissioner Higgins was not present.

ISSUED: February 29, 2024

Trenton, New Jersey