

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHICHESTER EDUCATION ASSOCIATION, :
PSEA/NEA :
 :
 v. : Case No. PERA-C-00-289-E
 :
CHICHESTER SCHOOL DISTRICT :

FINAL ORDER

Chichester School District (Employer) filed timely Exceptions with the Pennsylvania Labor Relations Board (Board) from the September 12, 2001 Proposed Decision and Order (PDO) in which the Hearing Examiner concluded that Employer violated Section 1201(a)(1) and (5) of the Public Employee Relations Act by implementing a tuition reimbursement policy without first bargaining with the Chichester Education Association (Association). The Employer's Exceptions were filed on October 2, 2001, and after being granted an extension of time, it timely filed its brief on October 23, 2001. The Association filed a responsive brief with the Board on November 13, 2001. After a thorough review of the Exceptions and all matters of record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

6. Denise Smith, a business education teacher, grieved her claim under the collective bargaining agreement to tuition reimbursement for courses taken to attain a master's degree in guidance counseling. On April 17, 2000, an arbitrator found that although the contract provided only for tuition reimbursement for graduate level courses related to the teacher's current educational responsibilities, there was a "past practice" of reimbursing tuition for courses outside the contract's terms in exceptional circumstances where the Employer was preparing an employe for vacancies. The arbitrator also found that tuition reimbursements had previously been granted to bargaining unit members requesting reimbursements for courses taken that were not within the employe's subject area of teaching. The arbitrator having found a past practice of providing tuition reimbursements for courses unrelated to current educational responsibilities directed that tuition reimbursements be granted to other bargaining unit employes until the Employer implemented a policy delineating the guidelines for determining tuition reimbursements for courses taken outside the teacher's educational responsibilities. (R. Exhibit A-2).

7. In addition to the matters set forth in Finding of Fact 4 of the PDO, the guidelines for tuition reimbursement under the April 27, 2000 policy require, *inter alia*, 1) approval of any class by the superintendent at least three weeks before the class begins; 2) a completed application for tuition reimbursement; 3) a showing that the courses enhance or improve the teacher's instructional skills and abilities directly related to their educational responsibilities and assignments; and 4) that the courses will meet the current or future

goals of the Employer. The guidelines also provide for tuition reimbursement in exceptional circumstances. (R. Exhibit A-3).

DISCUSSION

The Association's refusal to bargain charge stems from an April 17, 2000 grievance arbitration award awarding Denise Smith, a business education teacher, tuition reimbursement for courses taken to attain a master's degree in guidance counseling that was unrelated to her current educational responsibilities. The arbitrator recognized that the contract only provided for tuition reimbursement for graduate level courses related to the teacher's current educational responsibilities,¹ but noted that there was a "past practice" of reimbursing tuition for courses outside the contract's terms in exceptional cases where the Employer wanted to prepare an employe for vacancies. The arbitrator also found that Employer has, over the years, reimbursed employes for tuition in instances where the employe requested reimbursement for courses taken that were not within their area of teaching. The arbitrator directed that tuition reimbursements be granted to employes until the Employer implemented a policy delineating the acceptable criteria for determining tuition reimbursements where the courses taken were outside the teacher's educational responsibilities.

Thereafter, on April 27, 2000, the Employer unilaterally adopted a policy regarding tuition reimbursement. The guidelines for tuition reimbursement under the policy require, *inter alia*, 1) approval of any class by the superintendent at least three weeks before the class begins; 2) a completed application for tuition reimbursement; 3) a showing that the courses enhance or improve the teacher's instructional skills and abilities directly related to their educational responsibilities and assignments; and 4) that the courses will meet the current or future goals of the Employer. The guidelines also provide for tuition reimbursement in exceptional circumstances stating that:

¹ The relevant contract provision provides:

The School District shall provide one-hundred percent (100%) reimbursement for tuition for the courses taken by bargaining unit members. Such courses shall be on a graduate level and related to the bargaining unit member's educational responsibilities in the Chichester School District or shall be part of a degree program related to the bargaining unit member's educational responsibilities in the Chichester School District. An application for credit reimbursement shall be submitted to the Superintendent for approval no later than two (2) weeks after course enrollment. Reimbursement for courses shall be within six (6) weeks from the date all required documentation has been received by the District. The District shall notify the bargaining unit member upon receipt of an official transcript showing successful completion of the course or courses and a receipted bill showing payment by the bargaining unit member for the tuition for which reimbursement is sought.

(Finding of Fact No. 3).

For exceptional circumstances beyond the educational responsibility and assignment of the employee, the administration will consider but is not limited to the following:

- ?? In the judgment of the administration, the individual is suitable for the potential assignment.
- ?? The course or program sought is of rigorous content or meets the required skill and knowledge of the exceptional circumstance.
- ?? The course content covers the necessary parameters for the exceptional circumstance.
- ?? The course or program is required for certification needed to accomplish the exceptional circumstance.
- ?? The employee has made and will keep a commitment to remain in the District.
- ?? The course or program meets the goals of the District.

(R. Exhibit A-3). In addition to these guidelines, the policy also reserves to the Employer the authority to assign teachers to courses or programs. Furthermore, the policy requires that the course must be for graduate level credit and that the employee "must receive a grade B or better in a subject or course that supports the individual's educational responsibility and assignment."

The Association alleges that the unilateral adoption of this policy violated the Employer's bargaining obligations under Section 1201(a)(1) and (5) of PERA. Specifically, the Association alleged that in the past there was no requirement that the courses taken were within the teacher's classroom assignment, and that the Employer did not bargain over the restriction to "assignments" in the new policy. Further, it contends that the policy unlawfully provides that the Employer reserves the right to assign teachers to courses or programs. It also contends that the policy altered the past practice of granting tuition reimbursement in exceptional circumstances by requiring the teacher's commitment to remain in the school district. The Association essentially argues that the Employer could not use the arbitration award as a cover to unilaterally change the past practice without prior bargaining. Moreover, the Association asserts that the arbitration award did not authorize the changes occasioned by the April 27, 2000 policy, and that the Employer had misinterpreted the award.

The Employer argued before the Hearing Examiner that it has an interest in limiting the employee's tuition reimbursements to graduate level courses that are consistent with the employee's classroom teaching assignment. In addition, in exceptional cases, the Employer claims that it has an interest in providing tuition reimbursements to particular employees for courses taken outside of their educational responsibilities to prepare them to fill vacancies. The Employer also

contended that the April 27, 2000 policy was written pursuant to the arbitrator's direction for guidelines for approving tuition reimbursement in exceptional circumstances, and that tuition reimbursement in these exceptional circumstances is a matter of management prerogative.

The Hearing Examiner found that the April 27, 2000 tuition reimbursement policy unilaterally implemented by the Employer differed from the collective bargaining agreement, and held that because tuition reimbursements were "wages" under Section 304(14) of PERA, they were subject to mandatory bargaining. Accordingly, the Hearing Examiner concluded that the Employer violated Section 1201(a)(1) and (5) of PERA when it unilaterally implemented the April 27, 2000 tuition reimbursement policy.

In its Exceptions to the PDO, the Employer argues that the Hearing Examiner erred in finding that it implemented a policy contrary to the collective bargaining agreement since the policy was created in response to an arbitration award that determined that tuition reimbursements in exceptional circumstances were not covered under the contract. The Employer also asserts that the Hearing Examiner failed to recognize the Employer's managerial prerogative to grant tuition reimbursement in exceptional circumstances. Finally, the Employer argues that the Hearing Examiner erred in relitigating the issue of a past practice regarding the definition of "educational responsibilities" and "assignments," and erred in holding the Employer to a past practice not found by the arbitrator.

As for the question raised regarding the past practice, the Hearing Examiner did not address the interpretation of "educational responsibilities" or the past practice as found by the arbitrator, but instead appropriately centered on whether any of the items addressed in the April 27, 2000 tuition reimbursement policy altered mandatory subjects of bargaining. See Pennsylvania State Troopers Association v. Pennsylvania Labor Relations Board, 761 A.2d 645 (Pa. Cmwlth. 2000). Accordingly, relying on Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978), the Hearing Examiner concluded that because tuition reimbursements were economic fringe benefits, they were subject to mandatory bargaining as "wages" under PERA. The Hearing Examiner identified unilateral changes to those benefits occasioned by the April 27, 2000 policy. (PDO, Finding of Fact 4).

In Cumberland Valley School District, 394 A.2d at 951, the Pennsylvania Supreme Court explicitly held that

Fringe benefits such as health and life insurance and tuition reimbursements which the Employer unilaterally terminated are "wages" within the meaning of Section 301(14) of the PERA. Section 301(14) defines wages as "hourly rates of pay, salaries, or other forms of compensation for services rendered." ... 43 P.S. §1101.301(14).

Because tuition reimbursements are "other forms of compensation" recognized by Section 301(14) of PERA as "wages", tuition reimbursement policies, whether within the contract terms or not, are mandatory

subjects of bargaining and may not be unilaterally altered without first fulfilling the party's bargaining obligations under PERA. Cumberland Valley School District, supra. Thus, tuition reimbursement policies, even for exceptional circumstances under a past practice not covered by the collective bargaining agreement, are mandatory subjects of bargaining that cannot be unilaterally altered or amended. By imposing criteria which were not previously a consideration for tuition reimbursement in exceptional circumstances, such as requiring that the employe make a commitment to remain in the district, the Employer has unilaterally implemented a policy modifying a mandatory subject of bargaining, and therefore violated its bargaining obligations under PERA.

The Employer's argument that it was following the dictates of the arbitration award, places it in the anomalous position of claiming that the arbitration award authorized it to engage in the very conduct that the arbitrator rejected in sustaining the grievance.² In addition, the award specifically required the Employer to abide by state law in creating the tuition reimbursement guidelines - one of those state laws is the Employer's bargaining obligation under PERA. Even if the Board were to agree with the Employer's argument that the award authorized it to continue to "groom" employes for administrative positions and reject employes' requests for tuition reimbursement for courses outside their current educational responsibilities, the April 27, 2000 guidelines unilaterally alter the tuition reimbursement policy in ways clearly outside the contested portion of the arbitration award and inconsistent with the collective bargaining agreement.

Even for courses that fall within the educational responsibilities covered under the tuition reimbursement provision of the current collective bargaining agreement, the April 27, 2000 tuition reimbursement policy alters the application process for reimbursement, changes the date when the application is to be submitted, and requires that the employe must now obtain a grade B or better for the course. Where the employer's position is inconsistent with the express terms of a collective bargaining agreement, there has been a repudiation of the contract and a violation of the bargaining obligations under PERA. AFSCME, District Council 90 v. Dauphin County, 32 PPER ¶132007 (Final Order, 2000). Because tuition reimbursement for courses that are indisputably within the educational responsibilities of the employe have already been addressed in the collective bargaining agreement, it is an unfair labor practice for the Employer to have unilaterally

² The Employer's position that the arbitration award somehow allowed it to unilaterally implement a policy affecting exceptional circumstances for tuition reimbursement is inconsistent with the grievance arbitration award. The role of the arbitrator is limited to determining whether there has been a violation of the contract or past practice as presented in the grievance. Having awarded Ms. Smith tuition reimbursement per the grievance, the arbitrator had determined that under the parties' contract and practices the Employer could not have denied tuition reimbursement for a course the teacher wanted to take outside of their educational responsibilities. Therefore, it was not reasonable for the Employer to assert that the arbitration award allowed it to unilaterally create guidelines to limit those same tuition reimbursements that the arbitrator explicitly awarded through Ms. Smith's grievance.

changed those terms and conditions by adding additional requirements. Cumberland Valley School District, supra.

After a thorough review of the Exceptions and all matters of record, the Exceptions will be dismissed and the PDO affirmed.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the Exceptions filed to the Proposed Decision and Order of September 12, 2001 are hereby dismissed, and the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to conference call meeting of the Pennsylvania Labor Relations Board, John Markle Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this sixteenth day of January, 2002. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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AFFIDAVIT OF COMPLIANCE

The Chichester School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of PERA; that it has rescinded the tuition reimbursement policy as unilaterally implemented on April 27, 2000, and that it has posted a copy of the final order and proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Association at its principal place of business.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid.

Signature of Notary Public