

PRINCE GEORGE'S COUNTY
EDUCATORS' ASSOCIATION,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-29

OPINION

In this scope of bargaining appeal, the Prince George's County Educators' Association ("PGCEA")¹ challenges the local board's decision affirming the non-negotiability of a reimbursement agreement between certain PGCEA members and the school system. Both parties to the appeal have filed briefs and presented oral argument to the State Board in support of their positions.

BACKGROUND

The Prince George's County school system operates a "Reading Recovery" intervention program for low achieving first grade students. The program is a voluntary optional program in the county's elementary schools. Teachers who participate in the Reading Recovery program require specialized training which consists of 90 hours of specialized class work over a one year period, 24 hours of "assessment" training, and individualized coaching six to eight times per year minimum, with each session running two to four hours. The training is provided in classes offered in Prince George's County through Western Maryland College. Teachers who complete the required training receive six graduate credits. Approximately 50 teachers participated in the Reading Recovery training program in the 1998-99 school year at a training cost of roughly \$960 per teacher. *See* Affidavit of Doreen Myers, PGCPSS Reading Recovery Site Coordinator.

The school system pays the full cost of training, but it requires teachers who wish to participate in the program to enter into the following tuition reimbursement agreement:

IN CONSIDERATION of the BOARD OF EDUCATION OF
PRINCE GEORGE'S COUNTY paying the cost of tuition on my
behalf, thereby enabling me to enroll in the Reading Recovery

¹The PGCEA is the exclusive bargaining representative for all of the certificated professional employees of the Board of Education of Prince George's County, except for certain administrative and supervisory personnel.

training class at Western Maryland College, I hereby agree as follows:

1. To participate, as a student, in the year long Reading Recovery course at Western Maryland College.
2. To satisfactorily complete the Program.
3. To remain a Reading Recovery Teacher in Prince George's County for three years beyond the training year.

I FURTHER AGREE that in the event I fail to satisfactorily complete the Program and/or to remain a Reading Recovery Teacher in Prince George's County Public Schools for three years beyond the training year, I do hereby promise and agree to pay to the order of BOARD OF EDUCATION OF PRINCE GEORGE'S COUNTY, the amount of tuition which the Board of Education of Prince George's County shall have paid as the cost of participating in the aforementioned course.

By letter dated October 10, 1997, the Executive Director of the PGCEA advised the chief negotiator for the school system that the PGCEA considered the terms and conditions of the reimbursement agreement a mandatory subject of bargaining; that the reimbursement agreement "can be made by the Board only after negotiations with the employee organization;" that the "requisite negotiations were never sought with PGCEA;" and that the "unilateral action by the Board was unlawful." The chief negotiator, in turn, notified the PGCEA that the agreement in question "is not considered to be a mandatory subject of collective bargaining."

The PGCEA appealed to the local superintendent, who determined that the reimbursement agreement is not a mandatory subject of collective bargaining. Thereafter, the PGCEA appealed to the local board. After hearing oral arguments on the matter, the local board affirmed the decision of the superintendent.

ANALYSIS

It is well established that "a local board is either required to agree to negotiate a particular subject, or it is not permitted to agree to negotiate that subject." *Montgomery County Educ. Assoc., Inc. v. Board of Education of Montgomery County*, 311 Md. 303, 313 (1987). The mandatory subjects of bargaining are those areas which relate to "salaries, wages, hours, and other working conditions." See Md. Code Ann., Educ. § 6-408(b).

In *Montgomery County Educ. Assoc., Inc.* cited above, the Maryland Court of Appeals affirmed the two-part test developed by the State Board for determining whether a particular

topic is a mandatory or prohibited subject of collective bargaining. Under this two step analysis, the first inquiry is whether there is a statute that precludes negotiation on the topic by delegating that authority to the local board or its agents. If there is no relevant statute, the second step is to balance the employees' interests in the topic against the interests of the school system as a whole in the topic. If the employees' interests outweigh the interests of the school community, the topic is a negotiable subject of bargaining. If the school system's interests predominate, the topic is a non-negotiable matter of educational policy within the local board of education's control.

With respect to the reimbursement agreement at issue, the parties agree that there is no statute that precludes negotiation on the topic. Moving to the second step -- the balancing test, Appellants contend that their interests outweigh the interests of the school system based on the fact that the terms of the reimbursement agreement are working conditions. Appellants compare certain terms of the reimbursement agreement to the Compensatory Emoluments Program in Article VIII of the negotiated agreement as well as to the tuition reimbursement provisions in Article VI of that agreement. They argue further that the reimbursement provision, in the event of breach by the employees, has a direct financial impact on the employees which implicates their "salaries" and "wages."

In contrast, the local board claims that the balancing test weighs in its favor because the primary purpose of the agreement is to benefit the entire school system by providing competent and qualified teachers for the Reading Recovery program, and by protecting the school system's investment in the training of those teachers. The local board does not require teachers to participate in the program, and those teachers who bind themselves to the agreement at issue do so voluntarily. From the school system's perspective, the agreement does not primarily concern working conditions. Rather, the agreement merely prevents teachers from becoming unjustly enriched by having the Prince George's County school system pay for their training and graduate credits without any commitment in return. Additionally, the school system maintains that the reimbursement provision is entirely unrelated to salaries and wages, except perhaps to the extent that teachers may have to use funds earned to pay their training expense, as they would any other personal expense, in the event of their breach of the agreement.

At oral argument, counsel for the PGCEA clarified that the nature and amount of training required for the reading recovery program are non-negotiable matters of educational policy solely within the discretion of the local board. However, from the PGCEA's perspective, the amount of the reimbursement and the penalty to be applied to a trained teacher who leaves the system are mandatory subjects of bargaining. Applying the balancing test to the terms of the reimbursement agreement relating to the amount of the reimbursement and when it must be paid, we concur and find that the interests of the employees in these matters outweigh the interests of the school system as a whole in these matters.

CONCLUSION

For these reasons, we find that the terms of the reimbursement agreement relating to the amount of reimbursement and when it must be paid are mandatory subjects of bargaining.

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maultsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

May 26, 1999