

I.R. NO. 94-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHREWSBURY BOROUGH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-114

SHREWSBURY BOROUGH TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee restrains in part an arbitration brought by the Shrewsbury Borough Teachers' Association against the Shrewsbury Borough Board of Education. However, certain aspects of the arbitration were allowed to go forward. The Association sought to grieve disciplinary aspects of a memorandum issued to a unit member for excessive absenteeism. The memo also announced that a sick leave verification policy was being implemented as to this individual. The Association conceded the Board had the right to implement the sick leave verification policy and the arbitration was restrained as to the implementation of that policy. The arbitration was allowed to go forward on the disciplinary aspects of the memo.

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Appearances:

For the Petitioner
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Joel G. Scharff, of counsel)

For the Respondent
Marc Abramson, Field Representative

INTERLOCUTORY DECISION

On June 10, 1993, the Shrewsbury Borough Board of Education filed a Scope of Negotiations Petition seeking to restrain an arbitration brought by the Shrewsbury Teachers Association. The Board claims that the arbitration concerns a non-arbitrable subject. The Board also filed an Application for an Interim Restraint of the arbitration which is the subject of this decision. The parties waived a hearing on the application for an interim restraint and are relying on the papers which they have submitted.

The application seeks to restrain arbitration concerning a memorandum received by Kenn Pampel, a music teacher employed by the Board. That memo states in pertinent part:

Your attendance record over the years has been consistently poor.

It is felt that the frequency of your absences has had a negative effect on your teaching and the learning of your students. Their music education has been intermittent at best. Fifteen (15) days of band rehearsal and instruction have been lost this year. This does not count the professional days you were out of the district this year.

Further, it is felt by the committee that this pattern and practice of frequent absences must stop. The Board is now providing you with notice that you must furnish a doctor's notice for each day(s) of absence from this date forth.

In addition, the Board is advising you that should this rate of absence continue during the 1992-93 school year, they may well take action to withhold your next pay increment on the basis of the negative effect upon the education of the students of Shrewsbury Borough School.

The Board argues that it has a non-arbitrable right to impose a sick-leave verification policy and therefore has the right to require Pampel to furnish a doctors note after every absence. It further argues that the letter was not disciplinary in nature.

The Association concedes that the Board has the right to impose a sick-leave verification policy and therefore has the right to require Pampel to provide doctors notes after his absences. It maintains, however, that the letter is disciplinary in nature and the Association has the right to contest the notes assertion that the amount of sick leave taken by Pampel was excessive. The

Association relies on Piscataway Tp. B/E, P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). In that decision, the Commission upheld the right of an Association to contest a determination in a particular case that an employee was not actually sick. The Commission stated that a board cannot unilaterally determine that an employee abused sick leave without affording the employee an opportunity to contest that determination.

Here, contrary to the Board's assertion, there is negative language in the memo which is disciplinary in nature and the Association has the right to contest this discipline.

Accordingly, the arbitration is restrained to the extent the Association seeks to contest the imposition of a sick leave verification policy upon Kenn Pampel. However, the arbitration may go forward to the extent the Association seeks to challenge the memorandums implied assertion that Mr. Pampel abused sick leave.

This is an interim order only and this matter will go forward to a Commission decision.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: July 21, 1993
Trenton, New Jersey