

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFFSIDE PARK BOARD
OF EDUCATION,

Respondent,

- and -

Docket No. CO-76-169-62

CLIFFSIDE PARK EDUCATIONAL
SECRETARIES ASSOCIATION,

Charging Party.

SYNOPSIS

In an unfair practice proceeding the Commission grants a motion for summary judgment which relied upon a stipulation of facts. The Commission finds that personal leave, vacations, sick leave and holidays are all terms and conditions of employment and as such the board of education could not justify its refusal to negotiate on these items when they were proposed as part of collective negotiations for an agreement on the ground that provisions for these items had been unilaterally included by the board of education in its policy manual. The Commission orders the board to cease and desist from such conduct, and affirmatively orders the board, upon request, to negotiate in good faith with the representative of the employees concerning terms and conditions of employment.

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Appearances

For the Respondent, Winne & Banta, Esq.
(Mr. Joseph A. Rizzi, of Counsel)

For the Charging Party, Goldberg, Simon & Selikoff, Esqs.
(Mr. Gerald M. Goldberg, of Counsel)

DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") on December 23, 1975 by the Cliffside Park Educational Secretaries Association (the "Association") alleging that the Cliffside Park Board of Education (the "Board") had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Charge alleges that the Board and the Association commenced negotiations for a 1976-77 collective negotiations agreement on October 8, 1975, and that negotiations had continued subsequent to that date. The Charge went on to allege certain conduct on behalf of the Board which the Association contended constituted a refusal to negotiate in good faith and was therefore an unfair practice within

the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)^{1/}. The Charge was processed pursuant to the Commission's Rules, and it appearing to the Commission's Executive Director, acting as its named designee, that the allegations of the Charge, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on January 27, 1976.

Prior to the hearing the parties agreed to continue their efforts at resolving this matter through negotiations, and the matter was accordingly postponed. The parties thereafter met but were unable to resolve their impasse. Therefore by Order of June 4, 1976 the Executive Director rescheduled the Unfair Practice matter. At a conference held prior to the commencement of the hearing on July 9, 1976, the parties were able to enter into a Stipulation of Facts, attached hereto and made a part hereof, and identify the main issue of contention between them in this proceeding.

The operative portions of the Stipulation of Facts are paragraphs five and seven, which state:

"5. In addition to differences concerning a salary schedule for the secretaries in the unit, the central dispute between the Board and the Association concerns the Board's position that it may legally refuse to negotiate as part of collective negotiations items which are presently contained in its policy manual.

1/ N.J.S.A. 34:13A-5.4(a)(1) and (5) provide:

"Employers, their representatives or agents are prohibited from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

"(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

"Specifically, the questions of personal leave, vacations, sick leave, holidays and the like are presently provided for in the Board's policy manual. It is the position of the Board that because such items are provided in the policy manual, it is therefore under no obligation to negotiate such items.

"7. The sole issue before the Commission concerns the legality of the position of the Board memorialized in Stipulation #5. The stipulation of fact referred to in stipulation #6 memorializes the agreement of the parties with respect thereto."

It thus becomes apparent that while the initial Unfair Practice Charge alleged several different aspects of the Board's negotiations conduct as constituting the violation of the Act, including a refusal to discuss a grievance procedure as part of the negotiations,^{2/} the gravamen of the Complaint now relates to the Board's refusal to negotiate concerning matters provided in its policy manual.

In reliance on the Stipulation of Facts the Association filed a Motion for Summary Judgment with the Commission on July 12, 1976, returnable at the Commission meeting on July 19, 1976. This Motion, filed pursuant to N.J.A.C. 19:14-4.1, was supported by an affidavit of the Association's negotiator which also indicates that the only issue remaining before the Commission in this proceeding is the Board's position that matters set forth in its policy manual become non-negotiable by their mere inclusion in that document. The affidavit avers, as alleged in the Charge, that the Association's negotiations proposal on items such as personal leave, vacations, sick leave, holidays and the like was to adopt the status quo on these

^{2/} This aspect of the Charge has been resolved through subsequent negotiations. See paragraph 6 of the attached Stipulation of Facts.

items as set forth in the Board's policy manual incorporating them into a written collective negotiations agreement. The Board, the affidavit states, refused to negotiate on these items or to reduce them to writing in any document other than its policy manual.^{3/}

The sole issue to be resolved in this Summary Judgment Motion, and the only issue remaining to be resolved in this case, is thus whether the Board is correct in its position that provision for personal leave, vacations, sick leave, holidays and the like in its policy manual satisfies the obligation, if any, to negotiate such items. The Board is not correct. N.J.S.A. 34:13A-5.3 prescribes the duty to negotiate. It states in pertinent part:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

and goes on to state that:

"When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative."

In short, therefore, public employers, including the Board herein, are required to negotiate with the majority representatives of their employees on terms and conditions of employment and when these negotiations result in accord they are required to reduce

^{3/} The Board has indicated that it will rely on the documents previously submitted during the processing of the case to date, the statement of the dispute and the facts as set forth in the Stipulation of Facts, as its position in Opposition to the Motion for Summary Judgment.

that agreement to writing and execute that writing. That obligation is not satisfied by the imposition of terms and conditions by the employer, even if these terms are better than those proposed by the majority representative of the employees. The unilateral implementation of such items by the employer is the antithesis of the very meaning of collective negotiations.

It does not matter if, as averred in the affidavit accompanying the Motion, that the employees are prepared to accept the status quo on these items as previously established by the Board in its policy manual. If these items are terms and conditions of employment they must be negotiated with the Association, if proposed as part of the collective negotiations, and the Board must be prepared to sign a written document embodying any agreement reached on these terms and conditions.

The four items set forth in paragraph five of the Stipulation herein are terms and conditions of employment and therefore the requirements established by N.J.S.A. 34:13A-5.3 as discussed above do apply to these matters.

In Burlington County College Faculty Association v. Board of Trustees, 64 N.J. 10, at 14 (1973) the New Jersey Supreme Court included sick leave and personal leave, as well as sabbatical leave, as "matters directly and intimately affecting the faculty's working terms and conditions." This Commission has followed this statement by the Supreme Court and has consistently held sick leave to be a term and condition of employment. In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975); In re Board of Education of the Township of Rockaway, P.E.R.C. No. 76-44, 2 NJPER ____ (1976).

Similarly the Commission has held that vacation policy is a term and condition of employment. In re Board of Education, Englewood Public Schools (Englewood Administrators Association), P.E.R.C. No. 76-18, 2 NJPER 53 (1976). This decision adopted the findings of fact and conclusions of law of the Hearing Examiner's Recommended Report and Decision in the matter, one of which specifically found vacations and vacation recess to be a term and condition of employment. And while no decision of this Commission has yet held that a holiday policy is a required subject of negotiations it has long been held to be a term and condition of employment by the Courts and agencies of other jurisdictions in both the public and private sectors, and we adopt such a holding at this time.

Our finding that personal leave, vacations, sick leave and holidays are all terms and conditions of employment and therefore required subjects of negotiations mandates that we must also find that the Board's refusal to negotiate upon these items when they were proposed by the Association, is a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5). The unilateral inclusion by the Board of provision for such items in its policy manual, even if those provisions are the same as or greater than the proposals for such items made by the Association, is not an acceptable justification for its conduct.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(c) the Public Employment Relations Commission hereby orders that the Cliffside Park Board of Education shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by the New Jersey Employer-Employee Relations Act.

(b) Refusing to negotiate collectively in good faith with the Cliffside Park Educational Secretaries Association as the majority representative of the employees in the appropriate unit, concerning terms and conditions of employment, including but not limited to, personal leave, vacations, sick leave and holidays.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Upon request, negotiate collectively in good faith with the Cliffside Park Educational Secretaries Association concerning the terms and conditions of employment of the employees represented by that Association including but not limited to personal leave, vacations, sick leave and holidays.

BY ORDER OF THE COMMISSION

By Jeffrey B. Tener
Jeffrey B. Tener
Chairman

Chairman Tener and Commissioners Forst, Hartnett and Parcels voted for the Decision.
Commissioner Hipp did not participate in this matter.
Commissioner Hurwitz was not present.

DATED: Trenton, New Jersey
July 19, 1976

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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of	:	
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Respondent,	:	
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-and-	:	Docket No. CO-76-169-62
	:	
CLIFFSIDE PARK EDUCATIONAL SECRETARIES	:	
ASSOCIATION,	:	
	:	
Charging Party.	:	

STIPULATION OF FACTS

The above-entitled parties hereby agree and stipulate all the essential facts to be as follows:

1. The Cliffside Park Educational Secretaries Association (the "Association") is the recognized exclusive majority representative of secretaries employed by the Cliffside Park Board of Education (the "Board").
2. The Association entered into a negotiated agreement with the Board that was effective as of July 1, 1975 and expired on June 30, 1976.
3. Negotiations between the parties with regard to a successor agreement commenced on October 8, 1975 and subsequent negotiating sessions were held on October 17 and 28, November 11 and 25, 1975.
4. The parties met once with a mediator appointed by the Commission, James Crawford, on Wednesday, April 9, 1976.
5. In addition to differences concerning a salary schedule for the secretaries in the unit, the central dispute between the Board and the Association concerns the Board's position that it may legally refuse to negotiate as part of collective negotiations items which are presently contained in its policy manual.

Specifically, the questions of personal leave, vacations, sick leave, holidays and the like are presently provided for in the Board's policy manual. It is the position of the Board that because such items are provided in the policy manual, it is therefore under no obligation to negotiate such items.

6. It is furthermore agreed that so long as the Board offers to the Association in negotiations a grievance procedure to be patterned after whatever grievance procedure is finally agreed upon in the negotiations pending between the Board and the Cliffside Park Education Association for 1976-1977 which offer the Association has indicated that it is willing to accept, the Board and the Association need not further negotiate a grievance procedure.

The parties agree that in the event that the Board does not make such an offer, a grievance procedure is expressly required to be negotiated pursuant to Chapter 123, Laws of 1974.

7. The sole issue before the Commission concerns the legality of the position of the Board memorialized in Stipulation #5. The stipulation of fact referred to in stipulation #6 memorializes the agreement of the parties with respect thereto.

FOR THE CLIFFSIDE PARK BOARD OF EDUCATION

/S/ Joseph A. Rizzi, Board Attorney

FOR THE CLIFFSIDE PARK EDUCATIONAL
SECRETARIES ASSOCIATION

/S/ Gerald M. Goldberg, Attorney for
Cliffside Park Educational Secretaries
Association

DATED: July 9, 1976