

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN REGIONAL TEACHERS ASSOCIATION,
Petitioner,

-and-

Docket No. SN-77-5

MATAWAN REGIONAL SCHOOL DISTRICT
BOARD OF EDUCATION,
Respondent.

SYNOPSIS

A teachers association instituted a scope of negotiations proceeding seeking a determination as to whether a particular clause in a collective negotiations agreement providing for the automatic grant of extended sick leave benefits was within the scope of collective negotiations. The Commission had previously ruled in In re Board of Education of the Township of Rockaway, P.E.R.C. No. 76-44 that such clauses could not have been legally negotiated in a contract governed by Chapter 303 of the Public Laws of 1968 due to its inconsistency with a specific section of the school laws, N.J.S.A. 18A:30-6. Since it is undisputed that the matter in dispute arose under a contract entered into well before the effective date of Chapter 123 of the Public Laws of 1974 this case must be decided in accordance with Chapter 303 and the Rockaway decision is controlling. The Commission also notes that its jurisdiction in scope proceedings is limited to actual matters in dispute. Therefore, the decision cannot answer questions of the possible effect, if any, that Chapter 123 might have on the result in the absence of an actual controversy.

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Appearances:

For the Petitioner, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Emil Oxfeld, of Counsel).

For the Respondent, DeMaio & Yacker, Esqs.
(Mr. Vincent C. DeMaio, of Counsel).

DECISION AND ORDER

On August 10, 1976 the Matawan Regional Teachers Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Association and the Matawan Regional School District Board of Education (the "Board") were within the scope of collective negotiations.^{1/}

1/ The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d): "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court.

See also, N.J.A.C. 19:13-1.1 et seq. for the Commission's Rules governing scope proceedings.

The statement of dispute in the Petition consisted of an affidavit of the President of the Association which set forth the following provision from a collective negotiations agreement of the parties:

"In case of an absence because of illness, in excess of those for which full pay is to be allowed, the teacher shall receive the difference between his day's pay and that paid to the substitute for a maximum period of five (5) days for each school year of service in the Matawan Regional School District limited further to a maximum of sixty (60) school days."

The affidavit states that the Board has taken the position that the quoted provision is illegal in that it violates a specific section of the Education Law.^{2/} In reliance on this position the Board had denied the benefits provided by the clause, and had defended the Association's attempts to arbitrate claims for the benefits on the basis that they are not arbitrable because the clause was not negotiable due to its illegality. The Board's position had been sustained by an arbitrator. The Association contends that this position is incorrect and that the matter is both negotiable and arbitrable.

2/ N.J.S.A. 18A:30-6 is entitled "Prolonged absence beyond sick leave period" and states: "When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary. (emphasis supplied)

This Commission has previously ruled upon the negotiability and arbitrability of a blanket rule for the granting of extended sick leave in a situation governed by Chapter 303 of the Public Laws of 1968. In that case, In re Board of Education of the Township of Rockaway,^{3/} the Commission found that a contract clause that required the automatic grant of extended sick leave benefits on the basis of a uniform formula was inconsistent with the specific mandate of N.J.S.A. 18A:30-6 that a board of education evaluate each application for such benefits on an individual case by case basis. (See the underlined portion of that statute in footnote 2, supra.) Since N.J.S.A. 34:13A-8.1 as it existed under Chapter 303, and as interpreted by the Supreme Court of New Jersey in the Dunellen trilogy of cases,^{4/} prohibited a result that would "annul or modify any statute"^{5/} the Commission held that such a clause was illegal and permanently restrained the arbitration relating to that provision of the agreement.

The clause in dispute in the within Petition would have the identical effect as the clause in In re Board of

^{3/} PERC No. 76-44, 2 NJPER 214 (1976).

^{4/} Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); The Board of Education of the City of Englewood v. Englewood Teachers Association, 64 N.J. 1 (1973); Burlington County College Faculty Association v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973).

^{5/} Chapter 123 of the Public Laws of 1974 amended that phrase of N.J.S.A. 34:13A-8.1 so that it now reads "nor shall any provision hereof annul or modify any pension statute or statutes of this State." The wording of the phrase is identical to the Chapter 303 language except for the insertion of the underlined work "pension".

Education of the Township of Rockaway. Therefore, if the law applicable to this situation is also Chapter 303, the quoted clause herein is illegal and outside the scope of collective negotiations as it is also in violation of the specific statutory mandate of N.J.S.A. 18A:30-6.^{6/}

The Appellate Division of the Superior Court has recently held that Chapter 303 is applicable to all contracts entered into prior to the effective date of Chapter 123 of the Public Laws of 1974.^{7/} If the clause and the dispute surrounding it arose pursuant to a contract entered into prior to January 20, 1975, this case will be governed by Chapter 303, and the Rockaway decision will be dispositive.

The affidavit submitted with the Petition which sets forth the statement of dispute does not indicate the dates of the contract in which the contested provision is found.^{8/} Nor does it give any indication that the arbitration decision which, as previously stated, supported the Board's position, was rendered pursuant to a contract governed by the amendments in Chapter 123. The Board, in response to the filing of the Petition,

^{6/} There is no question that sick leave is a term and condition of employment. A clause dealing with this subject matter would be within the scope of collective negotiations but for its possible illegality.

^{7/} Board of Education of Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (decided May 5, 1976 as yet unreported).

^{8/} The Petition does indicate that there is a current contract covering the period from July 1, 1975 to July 1, 1977, but neither the Petition nor the affidavit state that the contract clause in question is contained in that agreement.

submitted an affidavit from the Deputy Superintendent of Schools which set forth certain facts as to the origin of the dispute and its history. This affidavit was in support of a letter memorandum of law which argued that Chapter 303 and the Rock-away decision were the applicable law.

In the affidavit the Deputy Superintendent states that the clause in dispute was contained in the parties' July 1, 1973 to June 30, 1975 agreement; and that the controversy arose in September 1974 when he sought an opinion from the Board attorney with respect to the legality of the disputed clause. When the Board attorney rendered his opinion, a copy of which was forwarded to the Association President, that the clause was illegal and unenforceable, the Association instituted a grievance contesting the refusal to grant the extended sick leave days in accordance with the contract. This grievance was filed on November 6, 1974. The contract was thus entered into well before the effective date of Chapter 123, and all the relevant facts relating to the dispute occurred prior to that date.

In a letter reply to the Board's submission the Association concedes that the dispute arose as indicated in the affidavit from the Deputy Superintendent of Schools; however, it states that the problems continued at the termination of the 1973-1975 agreement. Even if this were true, it cannot be questioned that, with respect to the problems unresolved at the termination of the agreement, they arose pursuant to a collective negotiations agreement entered into prior to the effective date

of Chapter 123. Chapter 303 is, therefore, the applicable statute.

The Association also implies in its letter that the Commission should address the issue as a Chapter 123 case so as to avoid any continuing or future problem that might arise.^{9/} We do not believe that is possible under the circumstances of this case. The Association in no way contests the Board's assertion that the dispute arose under a Chapter 303 contract, nor does it state that the new agreement contains a similar clause or that a similar dispute has arisen under the new agreement. N.J.S.A. 34:13A-5.4(d) limits this Commission to determinations "as to whether a matter in dispute is within the scope of collective negotiations" (emphasis added). See footnote 1, supra. We cannot answer questions unrelated to actual controversies. Therefore, this decision does not comment on the possible effect, if any, that the amendments of Chapter 123 would have on the result reached.

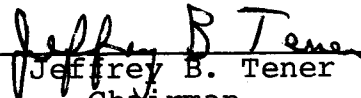
For the foregoing reasons, we find that the law applicable to the instant matter in dispute is Chapter 303 of the Public Laws of 1968, and that under that statute the contractual provision in question could not have been legally negotiated and is therefore outside the scope of collective negotiations.

^{9/} In the same letter the Association seems to imply that by applying Chapter 303 the Commission would not be addressing the merits of the issue. This is not true. We do address the merits and find that since the applicable law is Chapter 303, our decision in Rockaway is directly on point and therefore the clause is illegal and unenforceable.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, it is hereby determined that the contract provision in question is illegal and is therefore neither negotiable or arbitrable as part of a collective negotiations agreement entered into under Chapter 303 of the Public Laws of 1968.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Commissioners Hipp and Hurwitz did not participate in this decision. Chairman Tener, Commissioners Hartnett and Parcels voted for this decision.

Commissioner Forst voted against this decision.

DATED: Trenton, New Jersey
November 23, 1976
ISSUED: November 24, 1976