

I.R. NO. 87-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE ESSEX
COUNTY VOCATIONAL SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-87-35

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL NO. 68A & B,

Respondent.

SYNOPSIS

A Commission Designee restrains arbitration where a contract provision between the Board of Education of the Essex County Vocational School District and the International Union of Operating Engineers, Local No. 68A & B provided that in the event of a prolonged illness, additional days off shall be granted for each year of employment and "In no case shall less than 25 days be available." The parties conceded that this was an extended sick leave provision. This provision is preempted by N.J.S.A. 18A:30-6 to the extent that the contract provision limits the discretion of the Board of Education to grant less than 25 days extended sick leave. Accordingly, the dispute arising from this provision is not arbitrable.

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Appearances:

For the Petitioner,
Schwartz, Pisano, Simon & Edelstein, Esqs.
(Irving C. Evers, of counsel)

For the Respondent,
Zazzali, Zazzali & Kroll
(Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION

The Board of Education of the Essex County Vocational School District ("Board") filed a Scope of Negotiations Petition with the Public Employment Relations Commission ("Commission") on December 17, 1986 stating that arbitration is scheduled between itself and the International Union of Operating Engineers ("IUOE"). The Board's petition seeks a restraint of the arbitration. The application was accompanied by an Order to Show Cause. A telephonic Show Cause hearing was conducted on January 8, 1987. Both parties had an opportunity to present affidavits, present briefs and waived their rights to argue orally.

Article XII of the collective negotiations agreement in effect between the petitioner and the IUOE provides that:

In the event of a prolonged illness, as evidenced by a doctor's certificate, satisfactory to the Board's Medical Examiner, if needed, an additional five (5) days shall be granted for each year of employment. In no case shall less than twenty-five (25) days be available.

Paragraph F provides that:

The Board retains its power to grant additional sick leave at its discretion.

It is claimed that this provision is an illegal extended sick leave clause and therefore, the Commission must restrain arbitration which arises out of its interpretation.

N.J.S.A. 18A:30-6 provides that:

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 sick 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.


It is undisputed that the contract provision in question is an extended sick leave provision in accordance with 18A:30-6. As stated by the Commission in Sayreville Bd. of Ed., P.E.R.C. No. 83-97, 9 NJPER 96 (¶14052 1983) that:

It is well established that N.J.S.A. 18A:30-6 limits the authority of a board of education to grant extended sick leaves on a uniform or blanket basis. Piscataway Twp. Bd. of Ed. v. Piscataway Maintenance Custodial Assoc., 152 N.J. Super. 235 (App. Div. 1977); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No.

81-58, 6 NJPER 548, 550 (¶11278 1980); Hoboken Bd. of Ed., P.E.R.C. No. 82-7, 7 NJPER 443, 444 (¶12197 1981). These cases have all held that blanket clauses providing extended sick leave as a matter of right are precluded by N.J.S.A. 18A:30-6. That statute requires the Board to determine the length of such leave, if any, on an individual basis.

Although Article XII does not automatically entitle employees to a maximum number of days sick leave, it does contain a blanket 25 day period of available sick days. That is, someone who is out on extended sick leave for a 25 day period would have that number of days available. It would seem that such a provision unlawfully interferes with the Board's right to grant less than 25 days of sick leave when an employee is out for that period of time. The Statute provides that sick leave shall be granted for "such length of time as may be determined by the Board of Education in each individual case." By its terms, this provision does limit the discretion of the Board of Education. Accordingly, the arbitration in this matter is restrained.

This is an interim order only and this matter will be referred to the Commission for a final disposition.



Edmund G. Gerber
Commission Designee

DATED: January 13, 1987
Trenton, New Jersey