

P.E.R.C. NO. 81-115

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LEONIA BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-49

LEONIA EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines in a grievance arbitration context that the subject matter of paid leave time for professional conferences is mandatorily negotiable and arbitrable. The question of arbitrability under the contract is for the arbitrator. Accordingly, the Commission concluded that the instant matter may be submitted to binding arbitration.

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Appearances:

For the Petitioner, Charles J. Murphy, Superintendent

For the Respondent, Vincent J. Perna, UniServ
Representative, New Jersey Education Association

DECISION AND ORDER

On December 19, 1980, the Leonia Board of Education (the "Board"), filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute between the Board and the Leonia Education Association (the "Association") are within the scope of collective negotiations. In the instant dispute, the Association seeks to submit to binding arbitration an alleged violation of a past practice wherein the Board granted teachers paid leave to attend professional conferences. The Board argues that the matter is a management prerogative and neither negotiable nor arbitrable. Further, that the matter of paid leave to attend professional conferences is not covered in the collective negotiations agreement between the parties. The Association maintains that paid leave is a term and condition of employment

and therefore both negotiable and arbitrable. Further, that questions of arbitrability under the contract are most appropriately heard by the arbitrator, not the Commission.

We find that the subject matter of paid leave for professional conferences is negotiable and arbitrable.

In Burlington County College Faculty Ass'n v. Board of Trustees, Burlington County College, 64 N.J. 10 (1973), the New Jersey Supreme Court held that paid leaves of absence were a term and condition of employment. The Court found that:

The Board of Trustees may not abdicate its management and control responsibilities, but must negotiate on terms and conditions of employment. (cites omitted). Though as pointed out in Dunellen, the lines may often be indistinct, those drawn by the Burlington Board of Trustees seem to us to have fairly effectuated the legislative goals. It negotiated on the matters directly and intimately affecting the faculty's working terms and conditions, such as compensation, hours, workload, sick leave, personnel and sabbatical leave, physical accommodations, grievance procedures, etc.
At p. 14.

Numerous Commission and judicial decisions hold that provisions granting sabbatical leave, paid professional education leave, and paid leave for conventions are well established terms and conditions of employment, mandatorily negotiable and arbitrable.^{1/}

^{1/} Paid professional leave as mandatorily negotiable, see In re Belvidere Board of Education, P.E.R.C. No. 78-5, 3 NJPER 226 (1977) and In re Cliffside Park Board of Education, P.E.R.C. No. 77-2, 2 NJPER 252 (1976). For sabbatical leave as mandatorily negotiable, see, Willingboro Bd of Ed v. Willingboro Ed Ass'n, P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979), affm'd P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), affm'd App. Div. Docket No. A-1756-79 (12/8/80), pet. for cert. den. ___ N.J. ___ (1981). For paid leave for conventions as mandatorily negotiable, see, In re Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER ___ (¶ ___ 1981); In re Neptune Twp. Bd of Ed, P.E.R.C.No. 81-101 (¶ ___ 1981); and Boro of Glassboro v. PBA Local 178, 149 N.J. Super. 259 (App. Div. 1977).

The Commission does not address the merits of the grievance in a scope of negotiations petition; rather it determines if the matter may be the subject of collective negotiations. In In re Belvidere Board of Education, supra, we held:

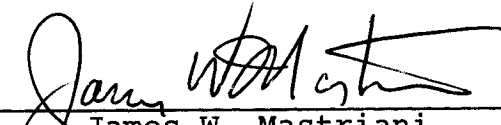
Whether a subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised will not be determined by the Commission in a scope proceeding. (Cites omitted). Those are questions appropriate for determination by an arbitrator and/or the Courts. (Cites omitted)
At p. 227.^{2/}

Therefore, in the instant matter the question of arbitrability under the contract clause is one for the arbitrator.^{3/}

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the instant grievance of the Leonia Education Association is negotiable and arbitrable and may be submitted to binding arbitration if otherwise arbitrable under the parties' contract.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Hartnett, Parcels & Suskin voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

April 16, 1981

ISSUED: April 20, 1981

^{2/} See also, South Orange-Maplewood Ed Ass'n v. Bd of Ed of South Orange, 146 N.J. Super. 457 (App. Div. 1977).

^{3/} The current collective agreement between the parties provides in Article VII for final binding arbitration of grievances which are defined as "an appeal set forth by an employee concerning an alleged interpretation, application or violation of this Agreement."