

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMSEY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-81-21

RAMSEY TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding filed by the Ramsey Board of Education, the Commission determines that a grievance filed by the Ramsey Teachers Association was not susceptible of submission to binding arbitration. The Association grieved a refusal of the Board to grant leave to teachers under an existing contract provision allowing 2 days of paid leave for observance of religious holidays. Construing In re Hunterdon Central H.S. Board of Education, P.E.R.C. No. 80-4, 5 NJPER 284 (¶10158 1979) aff'd 174 N.J. Super. 468 (App. Div. 1980), cert. granted, Supreme Court Docket No. 17,600, PERC holds that a leave provision, such as the one herein, which provides paid time off specifically for religious use, and which constitutes additional paid time off not available to persons who do not practice religion violates the establishment clause of the First Amendment of the United States Constitution by benefitting religious employees over non-religious ones. Therefore, PERC finds that the subject matter of the demand for arbitration herein is outside the scope of collective negotiations and is neither negotiable nor arbitrable.

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Appearances:

For the Petitioner, Winne, Banta, Rizzi & Harrington, Esqs.
(Joseph A. Rizzi and Robert M. Jacobs, of Counsel
James A. Russo, on the Brief)
For the Respondent, Schneider, Cohen & Solomon, Esqs.
(J. Sheldon Cohen, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Ramsey Board of Education (the "Board") on October 3, 1980, seeking a determination as to whether a certain matter in dispute between the Board and the Ramsey Teachers Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Board in its submission stated that the Association had grieved and that the two parties had submitted the grievance to non-binding arbitration wherein the arbitrator ruled in favor of the Association. When the Board refused to abide by the arbitrator's decision, the Association filed a Complaint in the

Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-62237-78. On the Board's motion, the subject matter of the aforesaid lawsuit was transferred to PERC for determination as to whether the dispute is within the scope of collective negotiations. The Petition for Scope of Negotiations herein is the result of the transfer of the Association's lawsuit.

The Board has submitted a brief concerning the issue in dispute. The Association has provided a letter in lieu of a brief and the Board has submitted a letter in lieu of a formal reply.

The instant dispute arose when the Board denied requests of certain employees for paid leaves of absence for observance of All Saints Day, a day of religious observance. Article VIII, Section B.3 of the parties' collective negotiations agreement, provides as follows:

Any teacher shall be allowed up to two (2) days off during the 1978-79, 1979-80 and 1980-81 school year without pay loss for observance of religious holidays, where said observance prevents the teacher from working on said days. The teacher requesting days off under the terms of this provision must submit written notification to the Superintendent at least one (1) week in advance, stating the religious holiday to be observed."

While the Board denied all such requests for leave on All Saints Day pursuant to Article VIII, Section B, 3, it did grant leave under the provisions of Article VIII, Section B.1.d, which provides that:

Any teacher shall be allowed one (1) personal or professional business day without pay loss for each school year. A selected day may be taken for any one of the following reasons:

...(d) Observance of a religious holiday other than those provided for in Section B.3 of this Article.

The Association filed a grievance, maintaining that the action of the Board in granting leave only under Section B.1 deprived teachers of leave allowed under Section B.3. The Association further maintained that the challenged leave policy was a mandatory subject of collective negotiation that had been agreed upon by the Association and the Board as part of a total wage and benefit package and should not be set aside.

The Board maintains that the subject matter of Section B.3 is an illegal subject of negotiations since it provides for leave for religious purposes only. The Board states that this leave cannot be used by nonbelievers, thus favoring religion over nonreligion, which is violative of the establishment of the First Amendment to the United States Constitution.

After careful consideration of the parties' submissions and the pertinent Commission and judicial decisions, the Commission concludes that the leave policy in dispute herein cannot be distinguished from the leave provision found to be illegal in In re Hunterdon Central H.S. Board of Education, P.E.R.C. No. 80-4, 5 NJPER 284 (¶10158 1979) aff'd 174 N.J. Super. 468 (App. Div. 1980), pet. for certif. granted Supreme Court Docket No. 17, 600, and subsequent Commission decisions relying on the reasoning of that case. See In re Fair Lawn Board of Education, P.E.R.C. No. 81-26, 6 NJPER 436 (¶11221 1980); In re Freehold Reg. H.S. Reg. Board of Education, P.E.R.C. No. 81-68, 6 NJPER ____ (¶ ____ 1980). As indicated in those decisions, a leave provision, as the instant one appears to be, which provides paid time off specifically for religious use, and for no other purpose, and which

constitutes additional paid time off not available to persons who do not practice religion violates the establishment clause of the First Amendment of the United States Constitution by benefiting religious employees over nonreligious ones.^{1/} See Committee for Public Education v. Nyquist, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed. 948 (1973) and cases cited in the Appellate Division decision in Hunterdon Central.

Obviously, in light of the above reasons, it bears stating that we are not persuaded by the Association's argument that the establishment clause is not violated because no particular religion is advanced by Section B.3; rather, any religious observation is permitted.

Accordingly, the Commission finds that the subject matter of the demand for arbitration herein is outside the scope of collective negotiations and is neither negotiable nor arbitrable.

^{1/} The Commission again repeats the admonition it has stated in the past decisions on this subject that the instant holding should not be construed as a prohibition against the use of paid leave time for religious purposes. As we stated in In re Fair Lawn, supra, at footnote 4:

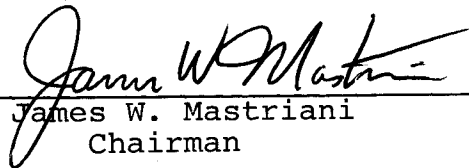
In order to make up for the loss of religious leave the parties would be free to negotiate some increase in personal leave days. If all employees had available an equivalent number of paid days off for reasons of personal necessity, such an arrangement would be one way to reasonably accommodate religion without violating the prohibition against the establishment of religion. An observant employee might use much of his/her leave to attend worship services, while a nonbeliever would utilize the time for nonreligious reasons.

As we stated in Hunterdon, this case must be distinguished from the negotiation of a sufficient number of personal leave days to accommodate the religious observances of unit members.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that Article VIII, Section B.3 is an illegal subject of negotiations.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcells voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981