

P.E.R.C. NO. 83-112

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
SCHOOL DISTRICT BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-83-32

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance the Matawan Regional Teachers Association filed against the Matawan-Aberdeen Regional School District Board of Education. The grievance alleged that the Board violated its contract with the Association by arbitrarily denying some teachers extended sick leave benefits under N.J.S.A. 18A:30-6 which it granted to other teachers. The Commission holds that binding arbitration would be inconsistent with N.J.S.A. 18A:30-6's command that the Board resolve each request for extended sick leave on a case-by-case basis.

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Appearances:

For the Petitioner, Vincent C. DeMaio, Esq.

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Mark J. Blunda, of Counsel)

DECISION AND ORDER

On October 25, 1982, the Matawan-Aberdeen Regional School District Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a consolidated grievance the Matawan Regional Teachers Association ("Association") filed. The grievance alleges that the Board violated its contract with the Association by arbitrarily denying some teachers extended sick leave benefits under N.J.S.A. 18A:30-6 ^{1/} which it granted to other

1/ N.J.S.A. 18A:30-6 provides:

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.

teachers.^{2/} In so doing, the Association argues, the Board violated several contractual provisions including those dealing generally with inequitable application of contractual provisions, maintenance of benefits, general statements of Board policy, and approved reasons for leaves of absence.

Both parties have filed briefs and accompanying exhibits. These documents establish the following facts.

The Board and the Association are parties to a collective negotiations agreement covering the period July 1, 1980 through June 30, 1983. The contract's negotiated grievance procedure ends in binding arbitration.

During the term of the contract, six teachers, who had exhausted their accumulated sick leave, requested extended sick leave with pay pursuant to N.J.S.A. 18A:30-6. The Board granted paid leave to one employee and denied it to the other employees.

Through the Association, the individual employees who were denied paid extended sick leave filed grievances. The Association asserted that the Board had not acted in accordance with N.J.S.A. 18A:30-6 and had treated its employees dissimilarly and inequitably. The Board denied these grievances. The Association then demanded arbitration. The instant petition ensued.^{3/}

^{2/} Initially five employees, through their local president, grieved the Board's denial of their individual requests for extended sick leave pursuant to N.J.S.A. 18A:30-6. The individual grievances were thereafter consolidated to be submitted to arbitration.

^{3/} The Association has also initiated a proceeding under N.J.S.A. 18A:30-6 before the Commissioner of Education.

The Board argues that its discretion under N.J.S.A. 18A:30-6 to grant or deny paid extended sick leave must be exercised on a case-by-case basis and that contractual clauses requiring the payment of extended sick leave are therefore invalid. It cites Bd. of Ed. of Piscataway v. Piscataway Maintenance and Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977). By extension, the Board argues that an arbitrator cannot construe a contract, regardless of whether it has an explicit extended sick leave provision, to require the Board to grant paid extended sick leave.

The Association argues that the contractual provisions it claims the Board has violated -- for example, the maintenance of benefits and leave of absence clauses -- are mandatorily negotiable and that therefore arbitration must be allowed under these clauses. It distinguishes cases invalidating contractual clauses requiring extended sick leave because there is no such explicit clause in this case.

Numerous cases have interpreted N.J.S.A. 18A:30-6 as obligating local boards to decide each request for paid extended sick leave on a case-by-case basis and have voided clauses which would in any way compromise or usurp the exercise of this discretion. See, e.g., Bd. of Ed. of Piscataway v. Piscataway Maintenance & Custodial Ass'n, *supra*; In re Bd. of Ed. of Borough of Sayreville, P.E.R.C. No. 83-97, 9 NJPER __ (¶ _____ 1983); In re Matawan Reg. School District, P.E.R.C. No. 77-23, 2 NJPER 214 (1976); In re Township of Rockaway Bd. of Ed., P.E.R.C. No. 76-44,

2 NJPER 214 (1976). The absence of a specific contractual clause concerning extended sick leave and the Association's reliance on other contractual clauses which are mandatorily negotiable do not distinguish this case. In analyzing scope of negotiations disputes, we have repeatedly held that we cannot be bound by the labels placed on the dispute by contesting parties. Since the parties will attempt to frame the dispute in terms most favorable to the result that they desire, it is often necessary to review the contract, the grievance, the demand for arbitration, and the factual context of the dispute, to ascertain the dominant or real issue. In re Elizabeth Bd. of Ed., P.E.R.C. No. 80-10, 5 NJPER 303 (¶10164 1979); In re West Paterson Bd. of Ed., P.E.R.C. No. 80-17, 5 NJPER 419 (¶10220 1979). Here, regardless of the negotiability of the contractual clauses the Association invokes, the source of the controversy is the Board's exercise of its discretion under N.J.S.A. 18A:30-6 and the remedy the Association seeks is to restrict the Board's discretion by requiring it to pay the grievants extended sick leave.^{4/} In sum, the Association wishes the arbitrator to interpret the contract to include, in effect, an extended sick leave provision requiring the Board to treat employees similarly, even though the parties could not and did not negotiate such a clause directly. N.J.S.A. 18A:30-6 prohibits this substitution of an arbitrator's comparison of the


^{4/} Indeed, the grievance itself complains that "[t]he Board of Education has granted extended sick leave in accordance with 18A:30-6 to employees in the district and refused the same benefit to several other employees who are the grievants in this case."

handling of extended sick leave claims in previous cases for the Board's exercise of its discretion to grant or deny such claims on a case-by-case basis. Accordingly, we must restrain arbitration of the consolidated grievance.^{5/}

ORDER

The request of the Board of Education of the Matawan-Aberdeen Regional School District for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Hartnett voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
February 16, 1983
ISSUED: February 17, 1983

^{5/} We express no opinion on the merits of either the grievance or the proceedings before the Commissioner of Education.