

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BETHLEHEM TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-52

BETHLEHEM TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Bethlehem Township Board of Education for a restraint of binding arbitration of a grievance filed by the Bethlehem Township Education Association. The grievance contests the Board's denial of a teacher's request for professional leave days to attend the annual convention of the New Jersey School Boards Association. The Commission concludes that the number of personal leave days and the reasons for allowing personal leave are negotiable and that although a Board may have a managerial prerogative to deny leaves when necessary to assure adequate staffing, the Board did not cite staffing in denying the grievance.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2003-10

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Appearances:

For the Petitioner, James P. Granello, attorney, on the  
brief

For the Respondent, Klausner & Hunter, attorneys  
(Stephen B. Hunter, on the brief)

DECISION

On April 29, 2002, the Bethlehem Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bethlehem Township Education Association. The grievance contests the Board's denial of a teacher's request for professional leave days to attend the annual convention of the New Jersey School Boards Association.

The parties have filed briefs and exhibits. These facts appear.

The Association represents teachers, custodians, secretaries and cafeteria workers. The parties' collective

negotiations agreement is effective from July 1, 2001 through June 30, 2004. The grievance procedure ends in binding arbitration.

Article 15 is entitled Professional Growth and Development.

Section C provides:

Workshops, In-Service and Seminar Reimbursement

The Board of Education agrees to reimburse teaching staff members for expenses for workshops, seminars, conferences and in-service training sessions according to the following provisions:

1. Teachers must receive written approval from the Superintendent of Schools, prior to attendance at the event, to be eligible for reimbursement.
2. Eligible expenses include the cost of the event, up to \$10.00 for a meal and mileage.
3. Requests will be approved based upon the value of the activity to the Bethlehem Township Schools and the budgetary constraints of the district.

Section D provides that in September and January of each school year, the superintendent will inform the Association President of the amount of money budgeted by the Board in the professional growth account.

On October 3, 2001, K. Becky Brandt, a third grade teacher, requested leave to attend the convention of the New Jersey School Boards Association in Atlantic City on October 24, 25, and 26. Brandt is a member of the board of education in New Harmony Township. Her request form indicated that a substitute

teacher would be needed to cover those days. The superintendent denied the leave.

On January 3, 2002, the Association filed a grievance asserting that the denial of Brandt's request violated past practice. On January 20, the superintendent denied the grievance. He stated that based upon Article 15, Section C, past practice does not cover granting professional leave and that such decisions are based on the value of the activity to the district and the district's budgetary concerns. On January 29, the Association appealed to the Board.

On February 25, 2002, the Association submitted a statement to the Board. It asserted that this type of leave has been granted for many years as a long-standing courtesy and that the district's only cost is for a substitute. It also stated that if financial constraints were an issue this year, they should not be an issue in upcoming years and that past practice should be honored. The Board denied the grievance. On March 21, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that 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 is not to be determined by the

Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

Thus, we do not review the Board's assertion that the parties have agreed to exclude review of administrative decisions or Board policies from binding arbitration and that this dispute falls within that category. Nor do we determine whether an arbitrator should apply the arbitrary and capricious standard advanced by the Association to assess the merits of the grievance.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.  
[Id. at 404-405]

Negotiability determinations are made based on the specific facts and issues raised by the dispute presented to us. See Troy v. Rutgers, 168 N.J. 354, 383 (2001); City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998).

The Board argues that N.J.S.A. 18A:30-7 gives it the discretion to negotiate over paid professional leaves, but that the same statute mandates that it exercise that discretion on a case-by-case basis. It cites Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977). The Board also argues that even though personal leave is mandatorily negotiable, an employer has a managerial prerogative to deny such leave to ensure adequate staffing levels.

The Association argues that whether or not an employee is entitled to receive paid personal leave is mandatorily negotiable. It asserts that an arbitrator can determine whether the proffered reasons for the denial of any personal leave were arbitrary, capricious or unreasonable, especially where the personal leave has not been shown to affect minimum staffing levels.

Piscataway based its holding upon N.J.S.A. 18A:30-6, not 18A:30-7. Id. at 246. The former law provides that with respect to additional sick leave, a board is authorized to determine whether and for how long to grant such leave "in each individual case." The latter statute authorizes boards of education to grant "either by rule or by individual consideration," paid leave for absences other than sick leave.

Where a statute addresses a term and condition of employment, the Supreme Court has held that negotiations are not preempted unless the statute speaks in the imperative and

expressly, specifically and comprehensively sets that employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). As N.J.S.A. 18A:30-7 provides that paid leaves, other than sick leave can be granted "by rule or by individual consideration," it provides room for discretion and is not preemptive. See State v State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978).

The number of personal leave days and the reasons for allowing personal leave are negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway, 152 N.J. Super. at 243-244; South Orange-Maplewood Ed. Ass'n, v. South Orange Bd. of Ed., 146 N.J. Super. 457 (App. Div. 1977). Paid leaves to attend professional conferences are thus negotiable. See Leonia Bd. of Ed., P.E.R.C. No. 81-115, 7 NJPER 231 (¶12101 1981). Cf. Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513, 515 (¶20213 1989).

The Board asserts that it has a managerial prerogative to deny a teacher professional leave if necessary to assure adequate staffing levels. That may be so, but we note that the Board did not cite staffing in denying the grievance. Compare Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989). Nor does the grievance seek "automatic approval" of all personal leave requests.

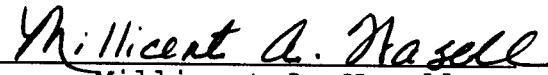
That a contract may appear to give a public employer considerable discretion over leave requests does not warrant

restraining arbitration of a leave denial since we cannot inject ourselves into deciding the merits of a grievance. In Willingboro Bd. of Ed., P.E.R.C. No. 80-46, 5 NJPER 475 (¶10240 1979), aff'd P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), aff'd NJPER Supp.2d 88 (¶70 App. Div. 1980), certif. den. 87 N.J. 320 (1981), the clause appeared to give the Board nearly complete control over the grant or denial of sabbatical leaves. The Appellate Division affirmed our ruling that the contract language did not bar arbitration of a grievance asserting that the Board did not adequately consider the reasons given by several teachers requesting leaves.

ORDER

The request of the Bethlehem Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato and Ricci voted in favor of this decisions. None opposed. Commissioner Sandman was not present.

DATED: July 25, 2002  
Trenton, New Jersey  
ISSUED: July 26, 2002