

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN LAKES BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-47

FRANKLIN LAKES EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Franklin Lakes Education Association against the Franklin Lakes Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement when it denied paid personal leave to three teachers observing a religious holiday and did not provide information about the granting of personal leave. The Commission notes that its scope of negotiations jurisdiction is narrow and precludes it from interpreting or applying a contractual provision to determine the contractual merits of a grievance. Given the facial validity of the contract's personal leave clause and the Commission's limited jurisdiction, the Commission will not speculate about how the clause might or might not be interpreted and applied and declines to restrain arbitration. If, however, the arbitrator sustains the grievance and if the Board believes that the award violates the Establishment Clause of the First Amendment to the United States Constitution, it may seek relief from the award.

P.E.R.C. NO. 95-24

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN LAKES BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-47

FRANKLIN LAKES EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Fogarty & Hara, attorneys  
(Gary P. Hall, of counsel)

For the Respondent, Alfred F. Maurice, attorney

DECISION AND ORDER

On November 5, 1994, the Franklin Lakes Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Franklin Lakes Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it denied paid personal leave to three teachers observing a religious holiday and did not provide information about the granting of personal leave.

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

The Association represents the Board's teachers. The parties entered into a collective negotiations agreement effective

from July 1, 1991 to June 30, 1994. Its grievance procedure ends in binding arbitration. Article 15 provides:

C. PERSONAL ABSENCE

Teachers shall be granted up to three (3) non-cumulative days with pay for the discharge or [sic] important personal matters; family business, legal or household matters, or other personal emergencies that cannot be handled during non-school hours.

Among the reasons which can be considered for a day of personal absence with pay are:

1. Moving day
2. Court appearance
3. Appearance at Internal Revenue Bureau
4. Entering offspring in college
5. Attending offspring's graduation
6. Attending the wedding of a member of the immediate family.
7. Marriage
8. Attendance at a ceremony (including a graduation ceremony) at which a member of the immediate family (husband, wife or child) will be the recipient of some distinctive award or honorary degree or will be sworn into high public office.
9. Official Association business to be conducted by the Association President
10. Closing on property
11. Other reasons to be specified.

Personal days must be approved by and through the principal and Superintendent. Application shall be made at least seven (7) days before taking such personal leave (except in the case of extreme emergencies). Personal days in excess of three (3) may be approved at the sole discretion of the Superintendent under extraordinary circumstances and upon reasonable notice.

Teaching staff member Susan Charnet asked for paid personal leave on April 6 and 7, 1993 to observe Passover. The

superintendent denied this request for paid leave since Charnet had already used three personal days that school year. He added, however, that Charnet could have the requested leave on condition that her salary be deducted for both days. The next day the superintendent sent Charnet a memorandum stating that if she accepted the condition, she would only lose \$90.00 per day, the cost of a senior substitute teacher, instead of her full salary.

On April 13, 1993, the Association filed a grievance on behalf of Charnet and two other teachers. The grievance alleged that the Board had violated the contract by deducting the substitute's salary from the personal leave granted the teachers observing Passover. The grievance also sought information as to how often the Board had granted teachers more than three personal days in a year since September 1990.

The superintendent denied the grievance. He stated that the school calendar was available in September 1992 and the teachers should have saved some personal leave for the Passover holiday and that he did not wish to create a practice of granting excess personal leave with full pay. He also denied the request for information.

The Board also denied the grievance. It further decided that the superintendent should have required that any excess leave taken for religious observances be unpaid and requested that the three teachers return any salary payments they had received for

those two days. The Board did not address the grievance's request for information.

The Association demanded binding arbitration. This petition ensued.

The Board asserts that the grievances are not arbitrable because the Establishment Clause of the First Amendment to the United States Constitution prohibits government employers from granting paid leave for religious purposes only or from excessively entangling itself in religious matters. Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981). The Association responds that the contract provision neither advances nor inhibits religious observance since additional personal leave can be neutrally granted for many reasons including non-religious ones.

In Hunterdon, some employees sought to receive extra paid days off for religious observances without charging those days off to personal days or vacation leave generally available to all employees --in effect, they claimed that the contract and the parties' past practice entitled religious employees to more paid days off than non-religious employees could ever receive. The Court held that such a contractual agreement violated the Establishment Clause. Hunterdon thus mandates that government (the public employer) not promote religion by providing a benefit which only religious employees can enjoy. But Hunterdon does not require that

all leave used for a religious purpose be unpaid; paid personal days generally available to all employees may be used by some employees for religious purposes. See 174 N.J. Super. at 477, n.1; see also East Orange Bd. of Ed., P.E.R.C. No. 83-145, 9 NJPER 385 (¶14173 1983); Cherry Hill Bd. of Ed., P.E.R.C. No. 83-13, 8 NJPER 444 (¶13209 1982), aff'd App. Div. Dkt. No. A-26-82T2 (12/23/83); Haddonfield Bd. of Ed., P.E.R.C. No. 82-106, 8 NJPER 313 (¶13140 1982). Indeed, prohibiting only religious reasons as a basis for granting personal leave might violate the Free Exercise Clause of the First Amendment. A tension thus exists between the constitutional principles embedded in the Establishment and Free Exercise Clauses, a tension that makes it unwise to decide the constitutionality of religious leave questions in the hypothetical abstract.

The first question is whether Article 15 is constitutional on its face. Nothing in that article requires that personal leave be granted for religious purposes only. Regular personal leave can presumably be taken for religious observances under the category "other reasons to be specified." Such regular personal leave must be approved by the principal and superintendent. In addition, employees may seek extra leave if the superintendent in his sole discretion agrees that extraordinary circumstances are present. This provision can be invoked by all employees irrespective of whether they are religiously observant or not. Article 15 is neutral and therefore constitutional on its face.

The next question is whether Article 15 could be constitutionally applied in a neutral fashion to permit paid leave in this instance. It may well be that the answer will turn out to be no, but we are unable and unwilling at this juncture to say that the answer must be no. Our scope-of-negotiations jurisdiction is narrow and precludes us from interpreting or applying a contractual provision to determine the contractual merits of a grievance. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). Answering the question of whether Article 15 could be constitutionally applied in this instance would require us to review all the arguments and facts pertaining to the interpretation of the contract and the merits of the grievance, tasks that the parties have committed to the arbitrator. Given the facial validity of Article 15 and our limited jurisdiction, we will not speculate about how the clause might or might not be interpreted and applied and we will decline to restrain arbitration. If, however, the arbitrator sustains the grievance and if the Board believes that the award violates the First Amendment, it may seek relief from the award.

The Board has not contested the negotiability of the Association's request for information concerning prior grants of excess leave. Thus, there is no basis for restraining arbitration on that issue.

ORDER

The request of the Franklin Lakes Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Ricci, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration.

DATED: September 29, 1994  
Trenton, New Jersey  
ISSUED: September 30, 1994