

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-95-5  
SN-95-53

MIDDLETOWN TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Middletown Township Education Association against the Middletown Township Board of Education. The grievance seeks additional pay and personal days for employees who allegedly suffered losses after the Board eliminated a week of spring vacation days from the school calendar and required teachers and secretaries to work during those days. The Commission concludes that the Association's claims are governed by Edison Tp. Bd. of Ed. and Edison Tp. Ed. Ass'n, NJPER Supp.2d 66 (¶47 App. Div. 1979), certif. den. 82 N.J. 274 (1979), rev'g P.E.R.C. No. 79-1, 4 NJPER 302 (¶4152 1978). The Commission treats differently a claim raised in a second grievance. The Association claims that secretaries were required to work five days more than a contractual limit of 200 days. It seeks the remedy of five days pay. That type of claim involves compensation for work performed in excess of a negotiated work year and may be submitted to binding arbitration.

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. 96-30

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Respondent.

Appearances:

For the Petitioner, Kalac, Newman, Lavender & Campbell,  
attorneys (Peter P. Kalac, of counsel; Howard M. Newman, on  
the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
attorneys (Kenneth I. Nowak and Paul L. Kleinbaum, of  
counsel)

DECISION AND ORDER

On July 10, 1994, the Middletown Township Board of  
Education petitioned for a scope of negotiations determination  
(SN-95-5). The employer seeks a restraint of binding arbitration of  
a grievance filed by the Middletown Township Education Association.  
The grievance seeks additional pay and personal days for employees  
who allegedly suffered losses after the Board eliminated a week of  
spring vacation days from the school calendar and required teachers  
and secretaries to work during those days.

On December 1, 1994, the Board filed another petition  
seeking a restraint of binding arbitration of another grievance

filed by the Association (SN-95-53). That grievance seeks five days compensation for secretaries who allegedly were required to work five days beyond the contractual limit for ten month secretaries. The Board asked that the petitions be consolidated.

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

The Association represents the Board's non-confidential professional employees and secretaries. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of contractual disputes. Article X is entitled Personal Days of Absence. It provides in part:

10.1 Three days of absence for urgent personal need or urgent personal business shall be allowed with full pay. Except in cases of emergency, application to the Superintendent through the Principal for such personal leave shall be made at least two (2) days (48 hours) prior to the commencement of such leave.

10.2 No request for personal days shall be granted for the two days immediately preceding or two days immediately following a regularly scheduled school holiday except that a personal day of absence may be used for religious purposes on either of the two days immediately preceding or immediately following a regularly scheduled school holiday.

10.3 In cases of extenuating circumstances, personal leave meeting the provisions of 10.1 above, but subject to the restrictions of 10.2 shall be considered for approval.

10.4 If in the event of an emergency, such as flooding or severe weather conditions, an employee is prevented from arriving at school s/he shall, as soon as possible follow the prescribed procedure for reporting an absence. The decision as to whether an emergency day of

absence will be granted shall be at the sole discretion of the Superintendent or his/her designee. Such discretion shall not be exercised arbitrarily or capriciously. An approved absence shall not be charged to the employee as a personal day of absence.

10.5 Each employee's unused personal days shall be added to said employee's accumulated sick leave at the end of each school year.

10.6 Up to five (5) work days for personal business shall be considered for approval without pay one time in any school year.

10.7 Personal days with pay, and personal business days, without pay, may be combined and used consecutively to a maximum of five (5).

10.8 Secretaries shall not be required to report to work on days that schools are closed to students due to inclement weather and they shall be paid the amount they would have received had they worked on such days.

Article XII A is entitled Holidays-Secretarial Employees. It provides:

12.1a. All employees shall observe the working calendar (12 months/10 months) as approved by the Board. The Board shall prepare such calendar in consultation with the Association.

12.2a. All holidays shall be with pay and any holiday which falls within an approved vacation for the employee shall be compensated by an additional day for vacation or by an additional day's wages in accord with the request of the employee.

Article XVIII A is entitled Teacher Work Year. It provides:

18.1 a. Prior to March 1st the Association representatives shall meet with the Superintendent and make their recommendations concerning the school calendar. Final determination of the school calendar as well as amendment thereof for good reason shall rest with the Board after consultation with the

Association, subject to the right of the Association to seek clarification and make recommendations.

18.2a. The school calendar for the years covered by this Agreement shall be as set forth in Schedule B.

18.3a. The in-school work year for professional employees employed on a ten month basis (other than new personnel who may be required to attend an additional one for orientation) shall not exceed one hundred eighty-seven (187) days.

18.4a. Days lost due to emergency conditions which reduce the number of school days below one hundred eighty (180) days shall be added to the school calendar to the extent of meeting a minimum of one hundred eighty (180) days.

Article XVIII B is entitled Secretarial Work Year. It provides:

18.1b. Twelve (12) month employees shall work the calendar adopted by the Board except as limited by other provisions of this Agreement.

18.2b. Ten (10) month employees shall work a total of 200 days between August 15 and June 30. The days shall be established with the school calendar.

Under N.J.S.A. 18A:7D-35 and N.J.S.A. 18A:58-16, public schools facilities must be provided for at least 180 days a year in order for a school district to receive State aid. During the 1993-1994 winter, the Board closed schools for eight days because of snow and ice storms. To meet the 180 day mandate, the Board amended the school calendar to eliminate the spring recess between April 4 and 8.

On March 8, 1994, the District Administrator sent this memorandum to all staff:

As you are well aware, a decision has been made based on the 180 day requirement and weather conditions prevailing this year to eliminate five days of the Spring vacation and hold school on these days - April 4, 5, 6, 7 and 8.

The Board regrets the inconvenience this may cause a number of staff and considering issues of fundamental fairness, has determined that individuals who submit documentation indicating non-refundable deposits may utilize personal leave time available to them this year and may also utilize personal leave time that would be available to them next year. This documentation should be received no later than Friday, March 18th. Individuals having difficulty providing this documentation by March 18th, should contact this office in order that we may assist them in expediting this process.

Individuals who have non-refundable deposits/tickets and who would prefer to cancel their plans and seek refunds, should contact our office for a model letter signed by Mr. Merluzzi explaining the situation here in Middletown. A sample of this letter is on the reverse side of this memo. We sincerely hope that this will help in recapturing your deposits.

In the event that personal leave time is fully utilized and it is necessary to utilize time from next year, please be advised that individuals not continuing with the district beyond June 30 of this year, will have that time deducted from their final salary.

Additionally, if the available personal leave time for this year and next is insufficient to cover a total of five days absence, the additional days necessary will be deducted from salary.

The next day, the Association filed a grievance asserting that the memorandum violated numerous contract articles (including those quoted above), a longstanding past practice and previous arbitration awards. The grievance sought this relief: unit members

be made whole if they lost non-refundable deposits; 12-month secretaries who were allegedly entitled to a contractual day off on April 4 be given three days pay or three days personal leave; all other unit members be given five days pay or five days personal leave (which could be used during the previously scheduled spring recess); and employees be permitted to use additional personal leave needed for religious holiday observances during the week of April 4-8.

On March 29, 1994, the grievance was amended. The amendment alleged that these administration actions violated the agreement: a directive that staff with non-refundable deposits fill out personal leave request forms; correspondence sent to staff members who sought to use personal leave during April 4-8; and a notice to staff that any leave for personal illness during April 4-8 be substantiated by medical evidence.

On June 22, 1994, the Association filed a separate grievance contesting the requirement that ten-month secretaries work until June 29, 1994. The Association maintained that the requirement results in five additional days work beyond the contractual limit for 10-month secretaries in violation of Article 10.8 and other provisions of the contract, Board policy and State law. The grievance specifically sought five days pay for each affected secretary and/or any other appropriate relief.

The Board denied the grievances and the Association demanded arbitration. These petitions ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual arbitrability or merits of the grievances.

The Board asserts that the grievances challenge its non-negotiable right to establish the school calendar. It claims that the Appellate Division has recognized that right in a case involving school calendar changes because of snow closings. Edison Tp. Bd. of Ed. and Edison Tp. Ed. Ass'n, NJPER Supp.2d 66 (¶47 App. Div. 1979), certif. den. 82 N.J. 274 (1979), rev'g P.E.R.C. No. 79-1, 4 NJPER 302 (¶4152 1978). The Board argues that Edison is on all fours with the facts in this case and that no negotiations obligation results from a change in the school calendar.

The Association responds that the dispute is not over the Board's right to reschedule snow days. Rather it is over whether the Board violated the contract by directing teachers to use personal days for non-refundable plans, thereby reducing the number of personal days available for religious holidays, and over the



level and nature of proof and need required by the Board for use of the personal days. The Association contends that Edison has been undercut by subsequent decisions of our Supreme Court and Appellate Division. It cites Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980) and Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985).


We have reviewed the Association's claims and find no basis to distinguish Edison. The amended grievance also contests the Board's right to require medical evidence to substantiate absences for personal illness during the week of April 4, 1994. The Association cannot challenge the establishment of a sick leave verification policy through binding arbitration. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Accordingly, we restrain arbitration of the grievance in SN-95-5.

We treat differently the claim raised in SN-95-53. The Association claims that secretaries were required to work five days more than the contractual limit of 200 days. It seeks a remedy of five days pay. That type of claim involves compensation for work performed in excess of a negotiated work year and may be submitted to binding arbitration. Woodstown-Pilesgrove; Elizabeth.

ORDER

The request for a restraint of binding arbitration in SN-95-4 is granted. The request in SN-95-53 is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: October 31, 1995  
Trenton, New Jersey  
ISSUED: November 1, 1995