

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-21

NEWARK TEACHERS UNION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Newark Board of Education for a restraint of binding arbitration of a grievance which the Newark Teachers Union filed against it. The grievance involved the Board's decision to establish sick leave and funeral leave verification policies, including certification of the reason for absence. The Commission concludes that the Board had a managerial prerogative to establish the verification and certification policies and to withhold leave benefits from employees refusing to comply with those policies.

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Appearances:

For the Petitioner, Louis C. Rosen, General Counsel
(Karimu F. Hill-Harvey, of counsel)

For the Respondent, Tomar, Gelade, Kamensky, Klein & Lehmann
(Sidney H. Lehmann, of counsel)

DECISION AND ORDER

On November 23, 1983, the Newark 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 four grievances that the Newark Teachers Union ("Union") has filed against it. These grievances allege that the Board violated its collective negotiations agreement with the Union when, after adopting an Attendance Improvement Program ("AIP"), it denied sick and funeral leave benefits to employees who failed to submit certifications that their absences were for either personal illness or mourning and funeral attendance. ^{1/}

1/ The Board also sought a temporary restraint of arbitration pending this determination. On February 20, 1984, Commission designee Alan R. Howe issued a temporary restraint. In addition, the Union has filed an unfair practice charge against the Board alleging that the adoption of AIP constituted a unilateral alteration of terms and conditions of

(continued)

The parties have filed briefs and documents. The following facts appear.

The Union is the majority representative of certain employees of the Board including teachers. The parties have entered a collective negotiations agreement effective between July 1, 1982 and June 30, 1985. The agreement's grievance procedure ends in binding arbitration. Article X is entitled Leaves. Section 2 of Article X grants 15 days sick leave to teachers every school year while section 5 provides that no deduction from a regular employee's pay will be made for absences during the four consecutive calendar days following a death in the immediate family or household or for absences during the day of a funeral of a near relative other than a member of the immediate family.

On November 29, 1982, the Board adopted its "Attendance Improvement Program." The portions of the program which are relevant here require employees to submit certifications that their absences were for reasons permitted by the contract. With respect to sick leave, the AIP requires employees to submit the following:

I hereby certify that my absence on
_____ was due to personal
illness.

With respect to funeral leave, employees are required to submit the following:

1/ (continued)

employment. Commission designee Edmund G. Gerber denied the Union's request for interim relief as it pertained to the signing of the certification, but granted interim relief with respect to the AIP's reduction of non-cumulative sick time for certain employees. In re Newark Board of Education, I.R. No. 83-14, 9 NJPER 189 (¶14088 1983). ("Newark") On May 3, 1984, Hearing Examiner Alan R. Howe issued a report and recommended decision which came to essentially the same conclusions. H.E. No. 84-57, 10 NJPER _____ (¶ _____ 1984).

I hereby certify that _____ on the following dates _____ I was absent for the sole and express purpose of attending the funeral and mourning the death of _____ who was related to me as follows:

Employees who have refused to sign these forms have been denied sick and funeral leave for their absences which they contend were on account of illness or attendance at a funeral. The Union has filed four separate grievances on their behalf alleging that the Board violated the contract in denying sick and funeral leave benefits. The Board denied these grievances; the Union demanded binding arbitration; and the instant petition ensued.^{2/}

The Board contends that the grievances are non-arbitrable because they predominantly involve its asserted managerial prerogative to monitor and control possible sick leave and funeral leave abuse. It relies on In re Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982) ("Piscataway I"); In re Rahway Valley Sewerage Authority, P.E.R.C. No. 83-80, 9 NJPER 52 (¶14026 1982); and Newark. In addition, the Board argues that the matter involves its allegedly non-negotiable right to establish standards and criteria for employee performance and to discipline employees.

The Union contends that this dispute is arbitrable because it predominantly involves allegations of the Board's improper denial of sick and funeral benefits, items which have long been held negotiable. See, e.g., Burlington County Fac. Ass'n

^{2/} The Board requested oral argument. Given the transcript of oral argument before the Commission's designee and the parties' briefs, we deny this request.

v. Bd. of Trustees, 64 N.J. 10, 14 (1973); Bd. of Ed. of Piscataway Tp. v. Piscataway Maintenance and Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977) ("Piscataway"). Moreover, it contends that the grievances are arbitrable under our two Piscataway decisions, Piscataway I and In re Piscataway Township Board of Education, P.E.R.C. No. 83-111, 9 NJPER 152 (¶14072 1983) ("Piscataway II"), because they allegedly involve the application, rather than establishment, of a sick leave verification program. It further argues that the Board is prohibited from denying sick leave to the grievants since they are entitled to ten sick days per year by statute, N.J.S.A. 18A:30-2, and there is no evidence that these employees were not sick. Rather, the Union contends that the failure of employees to fill out the form is an insufficient reason to deny them their statutory right to take sick leave.

We first consider the arbitrability of the grievances insofar as they allege that the Board improperly refused to pay sick leave benefits to employees refusing to fill out forms certifying that they were sick. In Piscataway I, we held that a public employer has a managerial right to implement measures to control abuse of sick leave by employees. We further held that "in this endeavor, it may utilize reasonable means to verify employee illness or disability." Id. at p. 96. The application of a sick leave verification policy, however, may be submitted to contractual grievance procedures. We believe that the dictates of Piscataway I and its progeny govern this dispute and compel a restraint of binding arbitration.

Under Piscataway I, the Board had a managerial prerogative to adopt, as part of a sick leave verification program, the reasonable and unintrusive requirement that employees fill out a form certifying they were sick. The prerogative to adopt a sick leave verification form would be an empty one, however, if employees could not be expected or required to fill out the forms in order to receive sick leave pay. In short, the Board's ability to establish a certification requirement and the employees' obligation to comply with that requirement in order to obtain sick leave benefits are inseparable and fundamental aspects of the managerial prerogative which Piscataway I recognized. See also, Piscataway II; In re City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), appeal pending App. Div. Docket No. A-2397-83T3; In re Union County Regional High School Dist., P.E.R.C. No. 84-102, 10 NJPER 176 (¶15087 1984); In re City of East Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); In re Freehold Regional High School Bd. of Ed., P.E.R.C. No. 83-10, 8 NJPER 438 (¶13206 1982); In re Rahway Valley Sewerage Authority, P.E.R.C. No. 83-80, 9 NJPER 52 (¶14026 1982).

While this case, unlike Piscataway I and subsequent cases, does involve an actual denial of sick leave benefits, that fact alone does not transform this case from one predominantly involving the establishment of a sick leave verification program to one predominantly involving its application. Again, the Board's right to establish a certification requirement necessarily includes a right to receive compliance with that requirement. Once an employee has submitted the certification requested, however, that employee may grieve any subsequent denial of sick

leave benefits based on the Board's determination that he was not in fact sick. In short, a matter predominantly involves the application rather than the establishment of a sick leave verification policy when the employer has formulated the policy; the employees have complied with the policy; and the employer has then decided to withhold sick leave benefits from particular employees.^{3/}

We further believe that Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n., 81 N.J. 582 (1980) supports our holding. There the Court noted that in making a scope of negotiations determination, "[t]he nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives. A weighing or balancing must be made." Id. at 591. See also In re IFPTE, Local 195 v. State, 88 N.J. 393, 404-405 (1982) (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). An application of the balancing test in this particular setting establishes that the instant dispute is not arbitrable. On the one hand, the Board has an important interest in insuring that sick leave is not abused and certification is an apparently reasonable means

^{3/} We decide only the abstract issue of the negotiability of the Board's policy decision to require employees to sign a certification in order to receive sick leave. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) and In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). We therefore express no opinion on the wisdom of this decision or the appropriateness of denying sick leave to those employees failing to comply with this policy.

to use towards meeting that goal. On the other hand, the certification requirement apparently has only a slight and unintrusive impact on the teachers' work and welfare. Thus, the scales clearly tip towards finding that the Board's managerial prerogative to control possible sick leave abuse is the predominant interest implicated here. Accordingly, we must restrain binding arbitration.

We stress that our result is predicated on the limited and undisputed facts of this case. Sick leave has been denied for the sole reason that the employees have refused to submit the required certification that their absences were on account of illness. There are no allegations that the Board has harassed any individual employee; has arbitrarily applied the policy to a particular individual; has refused to grant sick leave benefits where the employee has submitted the required certification; has adopted an unduly offensive or intrusive means of verification; or has used a form which restricts the scope of leave benefits available under ^{4/} contract or statute.

Although the instant dispute primarily relates to the Board's denial of sick leave, the Union also claims an improper denial of funeral leave. The AIP requires employees who seek paid bereavement leave under the contract to certify that they have been absent "for the sole and express purpose of attending the funeral and mourning the death." It again appears that the Union is claiming that the Board cannot deny a contractual leave benefit

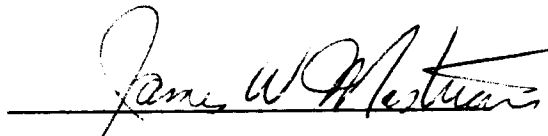
^{4/} For example, an employer may not issue a form suggesting that sick leave benefits are only available for certain types of diseases or for cases involving hospitalization when the contract confers a right to take sick leave for other illnesses.

to an employee because the employee failed to comply with the Board's requirement that the employee fill out a form certifying the reason for his absence.^{5/} The granting and scope of bereavement leave are indisputably mandatory subjects of negotiations. Once, however, the parties have agreed that funeral leave can only be used for specific purposes at specific times, the employer may not be required to negotiate over its policy to verify that a leave was in fact properly used. See Barneгат Township Board of Education, P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984). Accordingly, we hold that the instant grievance concerning funeral leave benefits may not be submitted to binding arbitration.^{6/}

ORDER

The request of the Newark Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: September 19, 1984
Trenton, New Jersey
ISSUED: September 20, 1984

- 5/ As we understand this issue, the Union does not contend that the form impermissibly narrows the grounds for leave and does not seek arbitration on that ground.
- 6/ We express no opinion on the negotiability of any of the remaining aspects of the AIP.