

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BARNEGAT TOWNSHIP BOARD OF  
EDUCATION,

Petitioner,

-and-

Docket No. SN-84-37

BARNEGAT FEDERATION OF  
TEACHERS, LOCAL 3751, AFT/  
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which the Barnegat Federation of Teachers, Local 3751, AFT/AFL-CIO filed against the Barnegat Township Board of Education. The grievance alleged that the Board violated its collective negotiations agreement with the Federation when it required employees to submit some verification of the reasons they took personal leave. The parties' contract stated that paid personal leave could only be taken for certain specific reasons at certain specific times. The Commission, while recognizing the general negotiability of personal leave and the arbitrability of a denial of paid personal leave, holds that when a contract so specifically limits the reasons and times for personal leave, a public employer has a managerial prerogative to require some verification.

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Appearances:

For the Petitioner, Sinn, Gunning, Fitzsimmons,  
Cantoli, West & Pardes, P.C.  
(Steven A. Pardes, of Counsel)

For the Respondent, Sauer, Boyle, Dwyer, Canellis, P.C.  
(Christopher M. Howard, of Counsel)

DECISION AND ORDER

On January 9, 1984, the Barnegat Township 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 grievance that the Barnegat Federation of Teachers, Local 3751, AFT/AFL-CIO ("Federation") has filed against it. The grievance alleges that the Board violated its collective negotiations agreement with the Federation when it required employees taking personal leave days to verify that they took the personal leave days for reasons permitted by the contract.

The parties have filed briefs and documents. In addition, they have participated in oral argument before the Commission and a conference call. The following facts appear.

The Federation is the majority representative of the Board's classroom teachers, special area teachers, Title I and special education teachers, nurses, psychologists, LDTC employees, and guidance counselors. The Board and the Federation have entered a collective negotiations agreement effective between September 1, 1983 and August 31, 1985. That agreement contains a grievance procedure which culminates in binding arbitration.

Article XI of the parties' agreement is entitled Temporary Leaves of Absence and provides for nonaccumulative leaves of absence with full pay each school year under certain circumstances. Section A of Article XI specifically provides for the taking of personal leave under the following conditions:

1. All teachers shall be allowed up to three (3) days, without loss of pay, for personal business during the school year. These days may not be accumulated.
2. Personal business is defined as:
  - a. Household emergencies
  - b. Legal business
  - c. Commencement exercise of the teacher
  - d. Religious observance
  - e. Other extremely unusual commitment or emergency
3. Personal leave shall not be used for matters which can be scheduled outside of school hours, nor to extend holidays or vacations.
4. Notification of personal leave shall be filed with the Superintendent or his designee at least two (2) school days in advance of the contemplated absence. Upon return from personal leave, the teacher shall indicate the category for the leave, in accordance with A.2. and 3. above, on a form provided by the administration.
5. In an emergency, the Superintendent, or his designee, upon being informed by the teacher of the nature of the emergency may waive all restrictions and authorize an emergency personal day, if satisfied that any of the restrictions above impose an undue hardship.

At the commencement of the 1983-84 school year, and following the execution of the collective negotiations agreement, the Board's administrative staff issued a form which it required employees taking personal leave to complete. A copy of this form is attached. At least two days before taking a personal leave, the employee must fill out the top half of the form indicating when the leave will be taken and whether a substitute will be necessary. After taking the leave, the employee must fill out the bottom half of the form certifying the reason for the leave. The employee then signs the form and submits it to an assistant superintendent in charge of supervising the proper use of personal leave. He in turn requires each employee to submit verification of the reason certified for the leave. If the employee's verification is satisfactory, the assistant superintendent checks off the box marked "Verification submitted: Yes" on the form and payment for the personal leave day is approved. If the employee's verification is not satisfactory, then the assistant superintendent denies the payment for the personal leave day.

On October 27, 1983, the Federation orally grieved the Board's verification submission requirement to the principal of the Barnegat Boulevard School; he denied the grievance. The Federation then filed a written grievance claiming, in part, that the Board, through the verification submission requirement, had arrogated to itself the right to define personal leave and

to determine whether or not the reasons stated are of a personal nature. The principal, the superintendent, and the Board, in turn, all denied the grievance. The Board asserted that it had an inherent managerial prerogative to require verification of the reasons for taking personal leave pursuant to Article VI of the contract<sup>1/</sup> and general law.

On December 16, 1983, the Federation demanded binding arbitration. The instant petition ensued.<sup>2/</sup>

The Board contends that it has both a contractual and managerial prerogative to require verification of the reason an employee takes a personal leave of absence. For the former proposition, it cites In re Wharton Bd. of Ed., P.E.R.C. No. 83-24, 8 NJPER 549 (¶13252 1982) ("Wharton"), where the Commission held, under the circumstances of that case, that the employer had a contractual right to promulgate a new form concerning personal leave information. For the latter proposition, it cites

1/ Article VI provides:

- A. The Board on its own behalf and on behalf of the electors of the district, hereby retains and reserves unto itself, without limitations, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws and the Constitution of the State of New Jersey, and of the United States.
- B. Nothing contained herein shall be considered to deny or restrict the Board of its rights, responsibilities, and authority under the New Jersey School Laws or any other national, state, county, district, or local laws or regulations as they pertain to education.

2/ The Board requested an interim restraint against arbitration pending this lawsuit, but we need not technically rule on that request since arbitration is not scheduled until April 23, 1984.

In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 82-63, 8 NJPER 95 (¶13039 1982) ("Piscataway") where the Commission held, under the circumstances of that case, that the employer had an inherent non-negotiable managerial prerogative to establish a policy for verification of sick leave.

The Federation contends that verification of personal leave is different from verification of sick leave since the latter is governed by N.J.S.A. 18A:30-1 et seq. and may only be used for actual sickness while the former is not governed by any specific statutes and may be given for any reason the parties agree upon through negotiations. The Federation also asserts that the Commission should view the negotiability dispute in the context of the parties' allegedly strained relationship during the negotiations leading to this agreement and particularly asserts that the new verification policy was an impermissible reprisal for a work stoppage.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Thus, in Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

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.

The limitations on our jurisdiction are particularly significant in this case. The Board alleges that it has a contractual prerogative to require verification of the reasons for personal leave and relies upon an unfair practice case, Wharton, in which we found such a contractual right. See also In re Township of Jackson, P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982). The Board may or may not have such a contractual right. That question, however, is not for us to determine in a scope of negotiations proceeding and we intimate no opinion on it.<sup>3/</sup> Instead, we address only the abstract and narrow issue of whether the Board has a non-arbitrable prerogative to require some verification that a personal leave was taken for contractually specified reasons.<sup>4/</sup>

In IFPTE Local 195 v. State, 88 N.J. 393 (1982), the Supreme Court set forth the tests for determining whether a subject is mandatorily negotiable. The Court stated:

<sup>3/</sup> Similarly, we will not consider the Federation's claim that an allegedly strained negotiations relationship and a retaliatory motive led to the verification requirement. In essence, that claim is asking us to find that the Board committed an unfair practice instead of to focus on the abstract nature of the instant negotiability dispute.

<sup>4/</sup> In concrete terms, the Federation is disputing only that portion of the form entitled "Verification Submitted" and the apparent practice of requiring all employees to submit some verification beyond checking off a box on the form indicating the reason for a leave. The Board, for its part, is not disputing that a denial of personal leave or an issue concerning the adequacy of the verification submitted would be arbitrable.

...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 pp. 404-405.

Applying these tests in the instant case, we believe that the abstract dispute involves a narrow non-arbitrable aspect of the generally negotiable subject of personal leave, namely the establishment of a verification policy when personal leave is contractually restricted to certain specific reasons and times.

First, it has been well-established for over a decade that whether or not an employee is entitled to receive paid personal leave is a fundamental term and condition of employment which intimately and directly affects the work and welfare of public employees. The New Jersey Supreme Court so held in Burlington County College Faculty Ass'n v. Bd. of Trustees, Burlington County College, 64 N.J. 10, 14 (1973) and this Commission and the New Jersey courts have consistently followed that lead. Bd. of Ed. of Piscataway Twp. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243-244 (App. Div. 1977); South Orange-Maplewood Ed. Ass'n v. Bd. of Ed. of South



Orange, 146 N.J. Super. 457 (App. Div. 1977); In re Cherry Hill Bd. of Ed., P.E.R.C. No. 83-13, 8 NJPER 444 (¶13204 1982), aff'd App. Div. Docket No. A-2682T2, 10 NJPER 93 (¶15048 1983); In re Haddonfield Bd. of Ed., P.E.R.C. No. 82-106, 8 NJPER 313 (¶13140 1982); In re Borough of South River, P.E.R.C. No. 82-59, 8 NJPER 36 (¶13016 1981); In re Willingboro Bd. of Ed., P.E.R.C. No. 80-75, 5 NJPER 553 (¶10287 1979), aff'd App. Div. Docket No. A-1756-79 (12/8/80), cert. denied, N.J. (1981). Pursuant to these cases, there can be no doubt that the number of personal leave days and the reasons for personal leave are fully negotiable.

Second, it is clear that the subject of whether or not an employee is entitled to paid personal leave is not fully or partially preempted by statute or regulation. Unlike an employee's entitlement to sick leave, which derives in part from specific statutes and regulations, N.J.S.A. 18A:30 et seq., there is no specific legislative or regulatory limitation on the negotiability of personal leave and entitlement to personal leave is purely a creature of contract. Sick leave must be used for sickness, see Hackensack Bd. of Ed. and Hackensack Ed. Ass'n, App. Div. Docket No. A-4996-80T1 (3/9/82), but personal leave may be used for any purpose that the parties agree upon through negotiations.

Third, we believe that a negotiated agreement concerning entitlement to paid personal leave would generally not significantly interfere with the determination of any educational policy. Again, as the New Jersey Supreme Court, the Appellate Division, and this Commission have consistently recognized, entitlement to

personal leave is a fundamental and mandatorily negotiable term and condition of employment. The employer and the employee representative may agree to a grant of paid personal leave without requiring any reason from employees and may even specifically agree that employees should be able to keep their reasons for such leave confidential. Such an agreement would be analogous to the grant of vacation days and would not significantly intrude upon any matter of governmental policy.

Nevertheless, this case does not concern the initial negotiability of entitlement to personal leave, but rather the employer's ability to require some verification of the proper use of personal leave once the parties have contractually agreed that personal leave may only be used for certain specified reasons at certain specified times. That distinction makes a difference here and justifies a narrow exception to the general negotiability of personal leave. We therefore hold that an employer may not be required to negotiate over the general policy it may formulate to verify that a leave was in fact used for one of the contractually specified reasons at a contractually specified time.

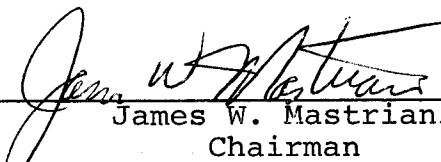
Once the parties have actually restricted the personal reasons and times for a personal leave, we believe that the mere establishment of a verification policy is the prerogative of the employer, although the application of the policy is subject to contractual grievance procedures. In the instant case, the narrow abstract dispute is over whether the Board may generally

require any verification from employees taking personal leave beyond their checking a box indicating the reason for the leave.<sup>5/</sup> There are no allegations before us that any particular employee has been improperly denied personal leave benefits; that the verification requirement is being used inconsistently in a particular case to harass an individual employee; or that verification is being sought in an unreasonable manner which unduly interferes with the employee's welfare and privacy. Accordingly, because this dispute concerns the establishment rather than application of a policy to verify the leave for contractually specified purposes, we hold that the instant grievance is not mandatorily negotiable and may not be submitted to binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Wentzler voted in favor of this decision. None opposed. Commissioners Graves, Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
April 18, 1984  
ISSUED: April 19, 1984

<sup>5/</sup> There is no dispute that the adequacy of the verification submitted in a particular case would be an arbitrable issue. Thus, the focus here is whether the Board can be required to forego all requests for verification from employees.

# Barnega Township School District

## PERSONAL BUSINESS LEAVE APPLICATION

Name: \_\_\_\_\_ Date of Filing: \_\_\_\_\_

School: \_\_\_\_\_ Date of Absence: \_\_\_\_\_

Please complete the top half of this form and submit it to your Principal or Supervisor at least two (2) days in advance of the contemplated absence. Upon return from the leave, please complete the bottom half of the form, indicating the category of leave taken.

Please note the following:

1. Personal business leave shall not be used for matters which can be scheduled outside of school hours, nor to extend holidays or vacations.
2. Personal business leave can only be used for those matters specified below. Verification that personal leave has been used appropriately will be required upon your return from the leave.
3. In an emergency, the Superintendent, or his designee, upon being informed by the teacher of the nature of the emergency, may waive all restrictions and authorize an emergency personal day, if satisfied that any of the restrictions above impose an undue hardship.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

A substitute is required: \_\_\_\_\_ YES \_\_\_\_\_ NO

I certify that my absence and use of personal leave were for the following reason:

- a. Household emergencies \_\_\_\_\_
- b. Legal business \_\_\_\_\_
- c. Commencement exercise of the teacher \_\_\_\_\_
- d. Religious observance \_\_\_\_\_
- e. Other extremely unusual commitment or emergency \_\_\_\_\_

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Verification submitted: \_\_\_\_\_ YES \_\_\_\_\_ NO

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_