

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-78-39

EAST ORANGE EDUCATION ASSOCIATION,
M. LANELL TURNER AND JOHN CZARNECKI,

Respondents.

SYNOPSIS

In a Scope of Negotiations proceeding initiated by the Board the Commission rules that a contractual provision that would provide for automatic extended sick leave benefits, over and above the current and accumulated sick leave of employees in the unit was an illegal subject of collective negotiations. The Commission reiterates that both it and the courts have deemed that blanket extended sick leave provisions deny a board the individual case by case discretion provided in N.J.S.A. 18A:30-6 and therefore are illegal as in direct contravention of the statute. The Commission, therefore, permanently restrains the arbitration of the relevant grievance concerning this contractual provision.

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Appearances:

For the Petitioner, Love and Randall, Esqs.
(Melvin Randall, of Counsel)

For the Respondents, Rothbard, Harris & Oxfeld, Esqs.
(Sanford R. Oxfeld, of Counsel)

DECISION

On May 8, 1978 the East Orange Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the Board and East Orange Education Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Public Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act") and seeking to enjoin the arbitration of a grievance that was filed relative to the matter in dispute.

On that date the Board also filed a request for a temporary restraint of arbitration. Stephen B. Hunter, Special Assistant

to the Chairman, issued an Order to Show Cause made returnable on May 31, 1978 and subsequently adjourned until June 15, 1978. On May 30, 1978 the Association filed a letter setting forth its position. A hearing was held before the Special Assistant on June 15, 1978 and an Order Granting Temporary Restraint of Arbitration issued.

This Order enjoined the arbitration of the matters in dispute during the pendency of the instant Scope of Negotiations proceedings or until further order of the Commission.

At issue is Article VII B Subsection 2(d) of the parties' collective negotiations agreement which reads as follows:

"(d) Absences on sick leave for periods of time not covered by the provisions of subsections a, b, and c above shall be allowed subject to the deduction of the salary paid to the substitute teacher filling the position for an aggregate period to be determined at the rate of one month's time (20 days) for each year of service by the teacher on sick leave, but not to exceed ten (10) months time in the current ten (10) year period."

This provision provides for sick leave benefits beyond the contractual allotment of twelve school days per year and the accumulated unused days of previous years (the reference to subsections a, b, and c).

The Board's position is that the contract provision provides for a blanket policy for extended sick leave and is ultra vires and illegal pursuant to N.J.S.A. 18A:30-6.^{1/} The Association

^{1/} N.J.S.A. 18A:30-6 Prolonged absence beyond sick leave period. "When absence, under the circumstances described in Section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary."

does not dispute the Board's position that this is an extended sick leave provision but nevertheless argues that it should be allowed to proceed to arbitration in an effort to convince an arbitrator that application of the contract provision to certain members, which it claims had already been granted sick leave on an extended basis in accordance with the terms of the agreement, should be upheld.^{2/}

This Commission and the courts have both determined that blanket extended sick leave provisions deny a board the individual case by case discretion provided in N.J.S.A. 18A:30-6 and therefore are illegal as in direct contravention of that statute. See In re Rockaway Township Board of Education, P.E.R.C. No. 78-12, 3 NJPER 325 (1977), In re Teaneck Board of Education, P.E.R.C. No. 78-18, 3 NJPER 329 (1977), and Board of Education of the Township of Piscataway v. Piscataway Maintenance & Custodial Association, 152 N.J. Super. 235 (App. Div. 1977).

The crux of the issue of relating to the contract clause at hand, as in the above-cited cases, is that a provision is made for making sick leave, over-and-above the current and accumulated sick leave, automatic. Indeed, as noted above, the Association does not dispute that such a clause is violative of the provisions of N.J.S.A. 18A:30-6, and has not argued that the clause should be

^{2/} In essence the Board has apparently reneged on its agreement to pay extended sick leave benefits to certain individuals on the ground that the clause under which it had granted such benefits is illegal.

declared legal. Therefore consistent with these prior decisions, we find the instant contractual provision to be an illegal subject for collective negotiations.

The argument offered by the Association is, regardless of the legality or illegality of the contractual provision, that the Association should be allowed to proceed to arbitration as to the application of the clause to certain individuals who claim to have been granted leaves pursuant to the contract which were retroactively denied. While we can appreciate the equities of the Association's position and why they would want to seek to have the Board's reversal of the grant of the benefit reviewed, we do not find this to be an appropriate argument in a scope of negotiations proceeding.

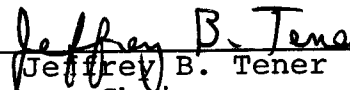
As an illegal subject for negotiations, we must find the instant contract clause also to be illegal and unenforceable. As such a grievance which seeks to have an arbitrator apply that clause to the Board's conduct would be inconsistent with this Act. With the passage of Chapter 123, P.L. 1974 the Legislature has transferred to this Commission certain of the functions in this area previously held by the Courts, including applications for restraints of arbitration where the grievance is alleged to be outside the scope of collective negotiations. See Board of Education of Plainfield v. Plainfield Education Assn., 144 N.J. Super. 521 (App. Div. 1976); Board of Education of Englewood v. Englewood Teachers Assn., 135 N.J. Super 120 (App. Div. 1975). Therefore, the Commission must permanently restrain the arbitration of this

grievance as the clause in question is in violation of N.J.S.A. 18A:30-6 and thus an illegal subject of negotiations.

ORDER

The East Orange Education Association is hereby permanently enjoined and restrained from proceeding to arbitration with respect to the matter raised in the instant Scope of Negotiations Petition, namely, the grievance filed by the Association on behalf of M. Lanell Turner and John Czarnecki, concerning the interpretation of Article VII B, Subsection 2(d) of the collective negotiations agreement executed by the East Orange Board of Education and the East Orange Education Association.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Schwartz abstained.

DATED: Trenton, New Jersey
August 1, 1978
ISSUED: August 2, 1978