

P.E.R.C. NO. 86-137

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FREEHOLD REGIONAL HIGH
SCHOOL DISTRICT,

Respondent,

-and-

Docket No. CO-86-190

FREEHOLD REGIONAL HIGH
SCHOOL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms the Director of Unfair Practices' refusal to issue a Complaint based on an unfair practice charge filed by the Freehold Regional High School Education Association against the Board of Education of the Freehold Regional High School District. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it issued its policy "Remedial Plan for Staff Attendance." The Commission holds that the charge challenges the establishment of a sick leave verification plan which is not a mandatory subject of negotiations. Therefore, the Board did not violate the Act by unilaterally establishing the plan.

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Appearances:

For the Respondent, Kenney & McManus, Esqs.
(Malachi J. Kenney, of Counsel)

For the Charging Party, Selikoff & Cohen, P.A.
(Joel S. Selikoff, of Counsel)

DECISION AND ORDER

On January 22, 1986, the Freehold Regional High School Education Association ("Association") filed an unfair practice charge against the Board of Education of the Freehold Regional High School District ("Board"). The charge alleges the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} when it issued

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and

its policy "Remedial Plan for Staff attendance." The Association alleges this plan unilaterally alters leaves of absence and disciplinary review procedures.^{2/}

The Board then filed its statement of position. It contends a Complaint should not issue because the remedial plan was a "permissible exercise of inherent management rights." Specifically, the Board contends the policy "is a means to monitor and control the use and potential abuse of both sick days and personal days in order to reasonably insure staff attendance" and therefore is a non-negotiable sick leave verification policy. It relies on, among other cases, Piscataway Twp. Bd. of Ed., P.E.R.C. No. 82-6, 8 NJPER 95 (¶13039 1982) and Union County Regional High School District No. 1, P.E.R.C. No. 84-102, 10 NJPER 176 (¶15087 1984).

On April 11, 1986, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 86-11, 12 NJPER ____ (¶____ 1986). He concluded that the policy constituted a non-negotiable sick leave verification policy, relying on Piscataway and Newark Bd.

1/ Footnote Continued From Previous Page

conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ On January 21, 1986, the Association filed a Petition of Appeal with the Commissioner of Education. It contends the remedial plan violates N.J.S.A. 18A:30-1,2,3 and 7 and is arbitrary and capricious.

of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984) and distinguished this case from City of Burlington, 1985 S.L.D. ____ (1985), relied on by the Association because the policy takes into consideration surrounding circumstances before imposing discipline.

On April 21, 1986, the Association filed its appeal of the Director's refusal to issue a Complaint. It again contends the Board's policy amounts to a disciplinary review policy which may not be instituted unilaterally and that it unilaterally changes the parties' agreement concerning leaves of absence. It concludes "the Board policy is not a sick leave or absence verification policy like those in Piscataway and Newark. Rather, [the] [p]olicy is an unreasonable attempt, through the automatic imposition of disciplinary hearings and conferences and ultimately increment withholdings, to reduce the amount of absences whether or not taken for legitimate, verifiable reasons."

The Board's policy memorandum provides, in its entirety:

WHEREAS the Freehold Regional High School District Board of Education has been provided figures to indicate that District staff absenteeism, as defined by A.C. 6:8-6.3, 11-111, is 3.85%, and

WHEREAS such absenteeism by District staff is acceptable for purposes of monitoring approval, but

WHEREAS such percentage requires the board to adopt a remedial plan (above 3.5% but less than 5%):

NOW THEREFORE BE IT RESOLVED that the Freehold Regional High School District Board of Education approves the following remedial plan for District staff absenteeism:

1. Each District staff member shall have indicated on the appropriate section of

his/her final evaluation the total days absent.

2. Each District staff member exceeding the State limitation on categorical absences shall be informed by the administration and/or his/her direct supervisor that his/her absentee record does not conform to State standards.
3. Individual district staff members who do not meet the State requirement in the second year shall be required to present a doctor's note for each occasional illness and a written explanation for any other absence during the next ensuing year.
4. If the individual staff member's absence persists after the above action, the Board of Education will consider withholding of increment and/or other action when considering the final evaluation of the individual.

We agree with the Director that a Complaint should not issue. The charge challenges the establishment of a sick leave verification plan. Such a plan is not a mandatory subject of negotiations and the Board did not violate the Act by unilaterally establishing the plan. Newark; Piscataway. We specifically note, however, that there are no questions raised in the charge involving the application of the plan to particular employees. As we said in Newark, the application of such a plan to discipline an employee may be contested in an appropriate forum. Id. at 548. However, we reject the Association's argument that the plan automatically imposes discipline. We rejected a similar argument in Newark. Those comments are applicable here:

This provision, as written, does not impose discipline. By its very terms, it only provides

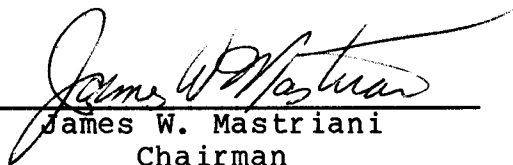
that after an employee reaches a certain number of absences, the Board may consider whether to institute disciplinary proceedings in the event it determines that sick leave is being abused. Further, there is no indication in the record that any employees have, in fact, been disciplined as a result of this provision. Rather, it is quite clear from the record that an employee who uses eight days of sick leave is not automatically disciplined. Given this posture of the case, we do not find the mere establishment of this aspect of the AIP to constitute an unfair practice. See Rahway Valley Sewerage Authority, P.E.R.C. No. 83-80, 9 NJPER 523 (¶14026 1983). Id. at 547 (footnote omitted).

Finally, we agree with the Director that Burlington is distinguishable because there the plan provided for automatic discipline. In any event, Burlington involves the validity of a different plan under education law. We, however, are not called upon to decide the validity of the plan under education law and do not pass on the wisdom or appropriateness of the plan. We hold only that the Board's unilateral establishment of "Remedial Plan for Staff Attendance" is not an unfair practice because it does not pertain to a mandatory subject of negotiations.

ORDER

The Director of Unfair Practices' refusal to issue a Complaint is affirmed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Reid abstained. Commissioner Horan was not present.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986