P.E.R.C. NO. 82-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PISCATAWAY TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-82-27

PISCATAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The New Jersey Public Employment Relations Commission declines to restrain arbitration of a grievance which the Piscataway Township Education Association filed against the Piscataway Township Board of Education. The grievance alleged that the Board improperly refused to pay a teacher her salary for the pay period June 16-30, 1981, minus the days she was absent without sick leave. The teacher, who gave birth on May 9, 1981, informed the Board she was available to return to work on June 22, 1981, the final day of school. The Commission holds that a board has a managerial prerogative to determine what assignments a teacher returning from a leave will perform, but that the duration of a leave of absence is a mandatorily negotiable term and condition of employment.

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Appearances:
For the Petitioner, Rubin, Lerner & Rubin, Esqs.
(David B. Rubin, of Counsel)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen E. Klausner, of Counsel)

DECISION AND ORDER

On December 3, 1981, the Piscataway Township Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain arbitration of a grievance which the Piscataway Township Education Association ("Association") has filed. The grievance alleges that the Board improperly refused to pay a teacher her salary for the pay period June 16-30, 1981, minus the days she was absent without sick leave.

The following facts are not in dispute. On or about February 10, 1981, Mrs. Margaret Fischer, a high school teacher, informed the Board that she was expecting a child on approximately May 3, 1981. In accordance with her doctor's instructions, she asked for a leave of absence including a six week post-partum

recovery period. She also informed the Board that following her recovery she would return to work for the remainder of the school year.

Mrs. Fischer ceased work on April 27, 1981, and gave birth on May 9. Her accumulated sick leave was exhausted by May 27, and the remainder of her leave time was without pay. On June 3, her physician wrote the Board that his patient could return to work on June 22. This was the final day of the school year. On June 19, Mrs. Fischer received a letter from the Board's Director of Staff Personnel rejecting her request to return to work the final day because it would be educationally disruptive to have Mrs. Fischer, rather than her replacement, perform final day tasks. Mrs. Fischer reported to work on June 22, and apparently performed services, or at least was available to perform services, for that last school day.

On June 30, the Association and Mrs. Fischer submitted a grievance requesting the Board to pay one-half of Mrs. Fischer's salary for June, 1981, minus days absent without sick leave. The grievance also requested the Board to afford uninterrupted insurance coverage. The parties have since resolved the insurance dispute.

On July 16, the Superintendent denied Mrs. Fischer's request for part of her June, 1981 salary. He reasoned that the contract permitted the Board to determine when a teacher on a leave could return to work,[1/] that the Board had a managerial

1/ The Superintendent cited Article X of the contract, pertaining to child care leave. That section provides that the Board shall grant a child care leave to extend to the end of the teacher's contract or school year, whichever is applicable. Further,
(continued)

prerogative to determine the date on which teachers return from absences, and that payment would be an unlawful gift of public money.

On November 9, the Association filed its demand for arbitration. The demand alleges that Mrs. Fischer returned to work on June 22, but did not receive her salary for the pay period of June 16-30, 1981 minus days absent without sick leave. The Board responded with the instant petition.

In its brief, the Board asserts that the instant grievance is non-arbitrable because in its educational policy judgment continuity of student instruction would have been disrupted by not allowing the substitute teacher who had conducted classes for nearly all of the final marking period and administered examinations to complete the tasks on the last day of the school year. The Board cites Kathy Dyson v. Board of Education of the Borough of Montvale, Bergen County, 1980 S.L.D. ___ (O.A.L. Docket No. Edu. 4357-79, July 21, 1980).

In its brief, the Association responds that the Board waived its right to assert that the continuity of education would suffer because it did not raise this argument until four months after Mrs. Fischer requested her leave. The Association cites Mainland Teachers Ass'n v. Mainland Reg. H.S. Dist., Chancery

1/ (continued)
such leaves must take into consideration the reasonableness of dovetailing staff changes with the school calendar. The Superintendent concluded: "Although this section of the agreement does not directly deal with absence for medical disability beyond accumulated sick leave, the concept of deference to the needs of the instructional program is clearly stated." As noted infra, we cannot consider whether the grievant's claimed contractual right exists or whether the Superintendent's interpretation is correct.

Division, Atlantic County, Docket No. C-3707-80E (1981). Additionally, the Association argues that the unresolved portion of the grievance relates solely to the sick leave and salary guide provisions of the contract and that such provisions directly and intimately affect the work and welfare of public employees and do not significantly interfere with the exercise of managerial prerogatives pertaining to the determination of governmental policy.

At the outset of our analysis, we emphasize that we do not consider questions of contractual interpretation. Ridgefield Park Ed Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Instead, our inquiry is limited to the question of whether the grievance falls within the scope of negotiations. Thus, even if a grievant's interpretation of the contract seems strained, that argument should be addressed to the forum agreed to for contract interpretation, arbitration.

In Woodstown-Pilesgrove Reg. Bd. of Ed. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980), the Supreme Court established a balancing test for determining the arbitrability of a teacher's grievance: does the dominant issue involve an educational goal or the work and welfare of the teachers? We find that the dominant issue in this case concerns an interpretation of the contract's salary, child care and sick leave provisions, all terms and conditions of employment, not the Board's right to make teaching assignments.

Generally, we will not restrain arbitration over a dispute involving contractually-permitted leaves of absence since such leaves are mandatorily negotiable. See, e.g., Burlington County College Faculty Ass'n v. Board of Trustees, Burlington County College, 64 N.J. 10, 14 (1973); Piscataway Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); In re South River Board of Education, P.E.R.C. No. 81-108, 7 NJPER 156 (¶12064 1981); Willingboro Bd. of Ed. v. Willingboro Ed Ass'n, P.E.R.C. No. 80-46, 5 NJPER 475 (¶10287 1979), aff'd App. Div. Docket No. A-1756-79 (12/8/80), pet. for certif. den., 87 N.J. 320 (1981); In re Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), appeal pending App. Div. Docket No. A-3379-80T2. In In re New Milford Bd. of Ed., P.E.R.C. No. 81-36, 6 NJPER 451, 454 (¶11231 1980), we considered the negotiability of the following clause:

> All benefits to which a teacher was entitled at the time his [extended] leave commenced, including unused accumulated sick leave, shall be restored to him upon his return and he shall be assigned to the same position which he held at the time said leave commenced, if available, or if not, to a substantially equivalent position.

We held the underlined portion mandatorily negotiable since it involved the level of benefits inuring to an employee upon return from a leave of absence. We held the remaining portion non-negotiable under Ridgefield Park, supra, since it would inhibit the employer's prerogative to make assignments.

New Milford establishes that the Board is correct in its assertion that it cannot be forced to allow the regular teacher to displace her substitute on the last day of school. However, the grievance does not request a declaration that teachers have the right to return to the same job assignments they had when their leaves of absence commenced. Instead, the Association is requesting a salary payment allegedly owed under contractual provisions on salary and leaves of absence. If we assume that the Association's interpretation is correct, the Board, in effect, has contractually agreed that when a leave of absence expires and a teacher is ready and able to return to work, the teacher is entitled to return to work regardless of how the Board decides to use those services.2/ The Board is not compelled to use the services in any particular way, only to pay for having the option of using the services as it sees fit. Thus, the Board, for example, could allow the substitute to complete tasks started in the grievant's absence and reassign the grievant to other tasks. So construed, there is no conflict with any legitimate managerial prerogatives since the Board retains absolute authority to determine what teacher performs what tasks.

On the other side of the balance, allowing negotiation over leaves of absence - in particular, their length and beginning and termination dates - directly affects an employee's financial and personal welfare by permitting him to know how long a leave will last and when his work and paycheck

2/ There is no question that the teacher's position still existed. No reduction in force has occurred.

will resume.[3/] Removing the subject from negotiations grants an employer unrestricted discretion to dictate to the employee when he or she can resume work, and thus earn money. While this may give the employer the ability to save money by not permitting the employee to qualify for benefits for only a few days work, it does not affect the employer's educational policy judgments. Accordingly, we believe that the dominant issue presented is one of compensation and application of maternity leave policies; both are arbitrable subjects, and we decline to restrain arbitration.[4/]

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that arbitration over the Association's grievance is not restrained.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
March 9, 1982
ISSUED: March , 1982

3/ Additionally, as the resolved portion of this grievance illustrates, it can also affect other significant terms and conditions of employment, such as eligibility for health insurance coverage.

4/ Dyson is not inconsistent with this analysis. That case did not require consideration of the interrelationship between our Act and the education law; it only considered whether requiring teachers to extend maternity leaves to the beginning or end of a semester was reasonable under the education law. We certainly do not suggest that the Board's position herein was unreasonable. In fact, in negotiating Article X of the parties' contract, see n. 1, cited by the Superintendent in denying this grievance, the parties may have incorporated the Dyson position, but that is for the arbitrator to decide. Finally, in light of our analysis, we need not address the Association's waiver argument.