

P.E.R.C. NO. 96-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LONG BRANCH BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-95-105

LONG BRANCH SCHOOL
EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission temporarily restrains arbitration of a portion of a grievance filed by a teacher represented by the Long Branch School Employees Association against the Long Branch Board of Education. The grievance seeks to have six sick leave days restored and a memorandum removed from the teacher's personnel file. The Board seeks only to restrain arbitration over that portion of the grievance concerning removal of the memorandum from the teacher's personnel file. The Commission temporarily restrains arbitration over that aspect of the grievance until after the arbitration resolves the validity of the sick leave claim. Should resolution of the sick leave claim not resolve the dispute over the memorandum, the Association may revive its claim and the Board may renew its petition.

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Appearances:

For the Petitioner, McOmber & McOmber, attorneys
(J. Peter Sokol, of counsel)

For the Respondent, Chamlin, Rosen, Cavanagh & Uliano,
attorneys (Thomas W. Cavanagh, Jr., of counsel)

DECISION AND ORDER

On June 5, 1995, the City of Long Branch Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the Long Branch School Employees Association. The grievance seeks to have six sick leave days restored and a letter removed from the teacher's personnel file.

The Board filed a brief and exhibits. The Association did not file a brief. These facts appear.

The Association represents the Board's certificated personnel, including teachers. The parties entered into a

collective negotiations agreement effective from July 1, 1992 through June 30, 1995. The grievance procedure ends in binding arbitration of contractual disputes.

Susan McConnell-Celi teaches at the Long Branch Middle School. On February 2, 1995, the House Administrator (an assistant principal) wrote a memorandum reminding her that she had been absent nine days since September 7, 1994 and requiring her to take every effort "to rectify this problem." A copy of this memorandum was placed in her personnel file.

On March 14, 1995, McConnell-Celi filed a grievance with her principal. She asserted that because her classrooms were unheated during December 1994 and January and February 1995, her legs had become increasingly inflamed and she had to take six sick leave days and receive medical treatment, including an emergency room visit. She submitted a doctor's note stating that she had "orthopedic conditions that can be triggered by prolonged cold environment." She requested that the six sick leave days be restored to her and the February 2, 1995 memorandum be removed from her personnel file.

On March 15, 1995, the principal denied the grievance. He asserted that he had not known about the heating problem until the end of January. He further stated that teachers had been instructed to inform him about heating problems and that teachers are allowed, if the administration approves, to move a class to another room until a heating problem is repaired.

The Association appealed and the assistant superintendent conducted a hearing. He denied the grievance. He asserted that even if the lack of heating had caused McConnell-Celi's orthopedic problems, the administration could not be held responsible because she had not promptly informed the assistant principal or principal. He also stated that the February 2, 1995 memorandum was one of many sent to district employees who had been absent a certain number of days.

McConnell-Celi appealed to the Board and submitted a rebuttal to the assistant superintendent's assertions. She asserted that she had told the assistant principal of the heating problem; other teachers had also complained; and no relief had been provided. She also asserted that the written notice of absenteeism was inappropriate since it did not note the difficult circumstances necessitating her absences.

The Board opted not to hear the grievance and affirmed the superintendent's decision. The Association demanded binding arbitration. This petition ensued.

The Board does not seek to restrain arbitration of the first aspect of the grievance -- that McConnell-Celi should have six days of sick leave restored to her. It seeks to restrain arbitration of only the second aspect of her grievance -- that the February 2 memorandum should be removed from her personnel file.

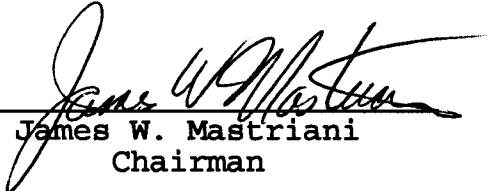
The Association will be arbitrating the merits of McConnell-Celi's claim that six days of sick leave should be

restored. Since the February 2 memorandum was predicated, in part, on McConnell-Celi's having taken nine sick leave days, we will temporarily restrain arbitration over the memorandum until after the arbitration resolves the validity of the sick leave claim. Should resolution of the sick leave claim not resolve the dispute over the memorandum, the Association may revive its claim and the Board may renew its petition.

ORDER

Arbitration over the February 2, 1995 memorandum is temporarily restrained pending resolution of the claim that Susan McConnell-Celi should have six sick leave days restored.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, and Wenzler voted in favor of this decision. Commissioner Ricci voted against this decision. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: March 28, 1996
Trenton, New Jersey
ISSUED: March 29, 1996