

P.E.R.C. NO. 97-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPEWELL VALLEY REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-137

HOPEWELL VALLEY
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hopewell Valley Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Hopewell Valley Education Association. The grievance asserts that the Board violated past practice by discontinuing payment of health insurance premiums for employees on unpaid non-medical leaves of absence. The Commission finds that the grievance does not challenge the Board's decision to grant or deny any unpaid leaves, but rather contends that the payment of health insurance premiums for employees who have been granted unpaid leaves involves a mandatory subject of negotiations. The Commission finds that N.J.S.A. 18A:16-16, 18A:30-6 and 18A:30-7 do not prohibit negotiations over the issue of health benefits for employees on unpaid leave.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Martinez & Jennings, attorneys
(Robert P. Martinez, of counsel)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On June 11, 1996, the Hopewell Valley Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Hopewell Valley Education Association. The grievance asserts that the Board violated past practice by discontinuing payment of health insurance premiums for employees on unpaid non-medical leaves of absence.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's certified personnel. The parties' collective negotiations agreement is effective from July 1, 1995 through June 30, 1998 and contains a grievance procedure ending in binding arbitration.

During the spring of 1996, the Board unilaterally changed its leave policies. Specifically, it stopped paying for 95% of the health insurance premiums for an employee on an unpaid non-medical leave.

On April 24, 1996, the Association filed a grievance. It asserts that discontinuing premium payments violated past practice. The Board denied the grievance, asserting that health insurance coverage for employees on unpaid personal leave is an illegal subject of negotiations under N.J.S.A. 18A:16-16, N.J.S.A. 18A:30-6 and N.J.S.A. 18A:30-7. The Association demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

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.

Thus, we cannot consider the merits of the grievance or any contractual defenses the employer may have.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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 404-405]

The employer's sole argument is that the subject of the grievance is preempted. According to the Board, N.J.S.A. 18A:16-16, 18A:30-6 and 18A:30-7 delegate decisions involving unpaid leave to the Board. It cites Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodian Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Verona Bd. of Ed., P.E.R.C. No.79-29, 5 NJPER 22 (¶10014 1978), aff'd NJPER Supp.2d 76 (¶59 App. Div. 1980); Teaneck Bd. of Ed., P.E.R.C. No. 78-18, 3 NJPER 329 (1977), aff'd NJPER Supp.2d 57 (¶36 App. Div. 1978); and Rockaway Tp. Bd. of Ed., P.E.R.C. No. 78-12, 3 NJPER 325 (1977).

The Association's grievance does not challenge the Board's decision to grant or deny any unpaid leaves. Rather, it contends that the payment of health insurance premiums for employees who have been granted unpaid leaves involves a mandatory

subject of negotiations. It cites West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd NJPER Supp.2d 291 (¶232 App. Div. 1993).

We hold that the Association's claim is legally arbitrable under West Orange Bd. of Ed. There, we stated:

The issue before us is narrow. Could the Board legally have agreed to continue health insurance benefits for employees on unpaid leaves of absence? We believe the answer is yes. The Board has cited statutes [including N.J.S.A. 18A:30-6 and 18A:30-7¹/] regulating the use of paid sick leave. It has not cited any statutes prohibiting an agreement to provide health insurance during unpaid leaves of absence. We therefore will not restrain binding arbitration.


The Appellate Division agreed with this reasoning. This case presents the same issue and requires the same result. Further, N.J.S.A. 18A:16-16 does not prohibit negotiations over the issue of health benefits for employees on unpaid leave. In fact, that statute provides that a Board may provide for continued coverage during a leave of absence. The cases that the Board relies upon are not controlling because they involve the subject of sick leave, not payment of health benefits during unpaid leaves of absence.

¹/ N.J.S.A. 18A:30-6 authorizes a school board to exercise its non-negotiable discretion in each individual case to continue paid sick leave. N.J.S.A. 18A:30-7 authorizes a school board to grant paid leaves of absence for reasons besides illness and limits the number of accumulative sick leave days to 15 a year.

ORDER

The request of the Hopewell Valley Regional Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997