

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERNARDS TOWNSHIP BOARD OF
EDUCATION,

Petitioner,

-and-

BERNARDS TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

Docket No. SN-80-54

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, orders that the Bernards Township Education Association refrain from seeking negotiations with regard to the extended sick leave provision of Article XII E. The Chairman concluded that the blanket extended sick leave provision of Article XII E is in direct contravention of N.J.S.A. 18A:30-6, which requires that boards exercise discretion on an individual case by case basis, and is an illegal subject of collective negotiations.

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Appearances:

For the Petitioner, Vincent C. De Maio, Esq.

DECISION AND ORDER

On November 19, 1979, the Bernards Township Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether a certain matter in dispute between the Board and the Bernards Township Education Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The issue placed before the Commission for determination in this instant proceeding is the negotiability of the following contract provision contained in the contract between the parties covering the 1978-79 school year:

Any teacher whose personal illness extends beyond the period compensated under Paragraph B [accumulative sick days] shall be granted a leave of absence with pay equal to his/her full pay less the actual cost of providing a replacement for such time as is necessary for recovery from such

illness or until termination of the contract year, whichever comes first....[Article XIIE] (emphasis supplied)

During the course of negotiations for the 1979-80 contract the Board sought the deletion of the above-cited language on the ground that it was an illegal subject for collective negotiations. The parties agreed to submit the issue of the negotiability of this provision to the Commission for its determination. The Board filed a letter memorandum on November 19, 1979 in support of its position in this matter. The Association chose not to file a brief in this matter.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission.

The New Jersey Supreme Court has affirmed the Commission's interpretation of the amendment of N.J.S.A. 34:13A-8.1 ^{1/} to mean that provisions of collective negotiations agreements may not contravene specific statutes relating to terms and conditions of employment. N.J.S.A. 18A:30-6, which requires that boards exercise discretion

I/ N.J.S.A. 34:13A-8.1 originally stated "nor shall any provision hereof annul or modify any statute or statutes of this State." This was amended by Chapter 123 to read "nor shall any provision hereof annul or modify any pension statute or statutes of this State." See, State of New Jersey v. State Supervisory Employees Association, 78 N.J. 54 (1978) and In re State of New Jersey, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), P.E.R.C. No. 77-57, 3 NJPER 118 (1977).

on an individual case by case basis, has consistently been found by both the Commission and the courts to be a specific statutory limitation which restricts the authority of boards of education to grant extended sick leave.^{2/} Accordingly, the blanket extended sick leave provision of Article XII E in the instant matter, being in direct contravention of this statutory requirement of individual consideration, is illegal and unenforceable.^{3/}

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the Bernards Township Education Association refrain from seeking negotiations with regard to the extended sick leave provision cited above which has been found to be an illegal subject of collective negotiations.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
December 13, 1979

^{2/} In re Board of Education of the Township of Rockaway, P.E.R.C. No. 76-44, 2 NJPER 214 (1976); In re Board of Education of the Township of Rockaway, 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); In re East Orange Board of Education, P.E.R.C. No. 79-4, 4 NJPER 309 (14155 1978); In re Borough of Verona Bd of Ed, P.E.R.C. No. 79-29, 5 NJPER 22 (110014 1978); Board of Education of the Township of Piscataway v. Piscataway Maintenance and Custodial Assn., 152 N.J. Super. 235 (App. Div. 1977), Teaneck Board of Education and Teaneck Teachers' Assn, Docket No. A-948-77 (App. Div. Sept. 21, 1978).

^{3/} See cases cited in footnote 2.