

P.E.R.C. NO. 94-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SHREWSBURY BOROUGH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-114

SHREWSBURY BOROUGH TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission considers the negotiability and arbitrability of a grievance filed by the Shrewsbury Borough Teachers' Association against the Shrewsbury Board of Education. That grievance asserts that a reprimand concerning an employee's use of sick leave was issued without just cause. The Commission finds, on balance, that the letter is disciplinary in nature and is not merely informational. However, it restrains arbitration to the extent the grievance seeks to contest the Board's directive that the teacher be required to produce a doctor's note for each future absence.

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Appearances:

For the Petitioner, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Joel G. Scharff, of counsel)

For the Respondent, Marc Abramson, NJEA Field Representative

DECISION AND ORDER

On June 10, 1993, the Shrewsbury Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Shrewsbury Borough Teachers' Association. That grievance asserts that a reprimand concerning an employee's use of sick leave was issued without just cause.

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

The Association represents the Board's teachers. The parties entered into a collective negotiations agreement effective from July 1, 1989 through June 30, 1992. Article III(H) states: "Discipline and reprimands will be for just cause...." The contract's grievance procedure ends in binding arbitration.

On May 20, 1992, the Board's superintendent sent a letter to a music teacher. The letter states, in pertinent part:

Your attendance record over the years has been consistently poor.

It is felt that the frequency of your absences has had a negative effect on your teaching and the learning of your students. Their music education has been intermittent at best. Fifteen (15) days of band rehearsal and instruction have been lost this year. This does not count the professional days you were out of the district this year.

Further, it is felt by the committee that this pattern and practice of frequent absences must stop. The Board is now providing you with notice that you must furnish a doctor's notice for each day(s) of absence from this date forth.

In addition, the Board is advising you that should this rate of absence continue during the 1992-93 school year, they may well take action to withhold your next pay increment on the basis of the negative effect upon the education of the students of Shrewsbury Borough School.

The Board asserts that the Superintendent's letter was informational and not disciplinary and that the grievance is an attempt to prevent the Board from requiring the teacher to produce a doctor's note to verify his use of sick leave. The Association disclaims any attempt to challenge the Board's right to demand sick leave verification. It asserts that the letter is a reprimand which has been issued without just cause.

The Board denied the Association's grievance. The Association then demanded binding arbitration and this petition ensued.

On July 21, 1993, a Commission designee issued a decision on the Board's related application for a restraint of arbitration pending a final Commission decision. I.R. No. 94-2, 19 NJPER 429 (¶24194 1993). He restrained arbitration only to the extent the Association sought to contest the imposition of a sick leave verification policy on the teacher.

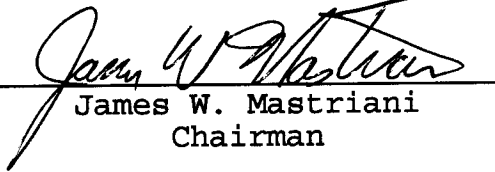
We agree with our designee's analysis. We find, on balance, that the letter is disciplinary in nature and is not merely informational. Contrast Town of Kearny, P.E.R.C. No. 92-40, 17 NJPER 481 (¶22233 1991). It characterizes the teacher's absenteeism as excessive and his attendance record as consistently poor, and it contains a threat to withhold his increments.

However, we will restrain arbitration to the extent the challenged letter also contains a directive that the teacher must provide a doctor's note for each absence. The Board has a managerial prerogative to impose that requirement on any employee, irrespective of the employee's past use of sick leave. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982).

ORDER

The Board's request for a restraint of binding arbitration is granted to the extent the grievance seeks to contest the Board's directive that the teacher be required to produce a doctor's note for each absence. The request is otherwise denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: January 24, 1994
Trenton, New Jersey
ISSUED: January 25, 1994