

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner,

Docket No. SN-77-28

-and-

THE BOARD OF EDUCATION OF THE
TOWNSHIP OF ROCKAWAY,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the Education Association, the Commission rules that a contractual provision that would provide for a blanket benefit of additional sick leave beyond what an employee had accumulated for all regular employees covered by the agreement who had at least one year of service was an illegal subject for collective negotiations.

This same provision was previously presented to the Commission in the context of its inclusion in the 1973-1975 agreement between these parties. In re Board of Education of the Township of Rockaway, P.E.R.C. No. 76-44, 2 NJPER 214 (1976) held that this provision was an illegal subject of collective negotiations due to N.J.S.A. 18A:30-6 which allows a board of education to grant additional sick leave beyond what has been accumulated on a case by case consideration of the merits of each request. The Commission decision in that earlier matter was limited to negotiations under the Act as originally enacted by Chapter 303 of the Laws of 1968. In the instant proceeding the parties sought a determination relating to the same clause in a later contract in light of Chapter 123, Laws of 1974 that amended the Act. The Commission interpreted the amendments to N.J.S.A. 34:13A-8.1 as not being a repealer of any non-pension statute, but rather as meaning that only statutes placing a specific limit on the authority of a public employer in regard to terms and conditions of employment may be a limitation on the duty created by the Act to negotiate on terms and conditions of employment. General statutory grants of authority may not be used to avoid that duty to negotiate. The Commission concluded that under the above rationale, previously adopted in recent Commission decisions, there was no question that N.J.S.A. 18A:30-6 represented a specific statutory limitation that had to be observed under Chapter 123 just as it was under Chapter 303. The Commission rejected the Association's argument that N.J.S.A. 18A:30-6 had been superceded by the more recent N.J.S.A. 18A:30-7 for situations such as the instant case.

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Appearances:

For the Petitioner, Goldberg, Simon & Selikoff, Esqs.
(Mr. Gerald Goldberg, of Counsel, Mr. Jeffrey S.
Linden and Mr. Louis P. Bucceri, On the Brief)

For the Respondent, Schenck, Price, Smith & King, Esqs.
(Mr. Alten W. Read, Of Counsel)

DECISION AND ORDER

On February 22, 1977 the Rockaway Township Education Association (the "Association") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether certain matters in dispute between the Association and the Board of Education of the Township of Rockaway (the "Board") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. 34:13A-1 et seq. All briefs were received by July 5, 1977.

At issue is Article IV of the July 1, 1975-June 30, 1976 collective negotiations agreement between the parties which the Board now resists including in the 1976-78 agreement. Said Article would provide a blanket benefit of additional sick leave beyond what an

employee had accumulated for all regular employees covered by the agreement who had at least one year of service. The employees would be entitled to five additional days for each year of service.

This same provision was previously presented to the Commission in the context of its inclusion in the 1973-75 agreement between these parties. In re Board of Education of the Township of Rockaway, P.E.R.C. No. 76-44, 2 NJPER 214 (1976) held that this provision was an illegal subject of collective negotiations due to N.J.S.A. 18A:30-6 which allows a board of education to grant additional sick leave beyond what has been accumulated on a case-by-case consideration of the merits of each request. However, our decision therein was limited to negotiations under the Act as originally enacted by Chapter 303 of the Laws of 1968. The parties now return to seek a determination on the same clause in a later contract in light of Chapter 123 of the Laws of 1974 amending the Act.

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." We have interpreted this amendment as not being a repealer of any non-pension statute, but rather meaning that only statutes placing a specific limit on the authority of a public employer in regard to terms and conditions of employment may be a limitation on the duty created by the Act to negotiate all terms and conditions of employment. General statutory grants of authority may not be used to avoid that duty to negotiate. In re Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977) Appeal pending, App. Div. Docket No. A-3809-76; In re State Supervisory Employees Association,

CSA/SEA, P.E.R.C. No. 77-67, 3 NJPER 138 (1977) Appeal pending, App. Div. Docket No. A-4019-76.

Under the rationale set forth in the two cases above, we believe there is no question that N.J.S.A. 18A:30-6 standing alone is a specific statutory limitation that must be observed under Chapter 123 just as it was under Chapter 303. It mandates that sick leave benefits beyond what an individual has accumulated be granted only after case-by-case review. Any blanket provision for extended leave clearly runs afoul of this requirement and is thereby illegal. The public employer simply is without authority or discretion in this area. The Superior Court, Appellate Division very recently reached the same conclusion when considering a clause similar in nature to the one herein. Board of Education of the Township of Piscataway v. Piscataway Maintenance & Custodial Association, Docket No. A-1449-76 (App. Div., August 12, 1977).

What the Association now argues is that N.J.S.A. 18A:30-6 has in effect been superceded by the more recent N.J.S.A. 18A:30-7 for situations such as the instant case. Section 30-7 grants boards of education the authority to:

"...fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year."

It is the Association's contention that Section 30-6 has vitality only where there is no contractual agreement or where contractual leave has been exhausted. While that may be correct, we still believe that Article IV is illegal.

N.J.S.A. 18A:30-7 does no more than make clear that a board of education has authority to negotiate sick leave benefits over and above the ten day minimum of N.J.S.A. 18A:30-2 and subject to the 15 day per year maximum on accumulation. Once an employee exhausts whatever time he has accumulated under a contractual agreement and/or a board policy, then N.J.S.A. 18A:30-6 controls the granting of additional benefits. Article IV specifically states that it is providing for an employee who is "ill or disabled for a period in excess of his or her total sick leave accumulation..." (emphasis added). That is precisely what N.J.S.A. 18A:30-6 is designed to govern, and the parties may not alter its case-by-case requirement through negotiations. ^{1/}

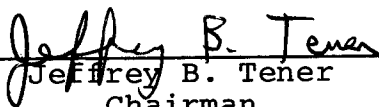
For the aforesaid reason we find the contractual provision at issue to relate to an illegal subject of collective negotiations.

^{1/} In Piscataway, supra, N.J.S.A. 18A:30-7 was raised by the Board as being supportive of its claim that the clause in issue was illegal. The Appellate Division noted the content of Section 30-7 but made no reference of it in its analysis. We must assume that the Court did not find N.J.S.A. 18A:30-6 to be in any way restricted by N.J.S.A. 18A:30-7.

ORDER

The parties herein are ordered to desist from any negotiations to include the provision at issue herein in any collective negotiations agreement.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision.
Commissioner Forst voted against this decision.
Commissioners Hipp and Hurwitz were disqualified.

DATED: Trenton, New Jersey
September 8, 1977
ISSUED: September 9, 1977