

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-83-91

EAST ORANGE EDUCATION ASSOCIA-
TION,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, denies the request of the East Orange Board of Education for a permanent restraint of binding arbitration of a grievance the East Orange Education Association had filed. The grievance alleged that the Board violated its collective negotiations agreement with the Association when it denied paid personal leave, available under the contract for a wide range of reasons, for the discharge of religious responsibilities. In this case, unlike Hunterdon Central High School Board of Education v. Hunterdon Central High School Education Association, 86 N.J. 43 (1981), affirming 174 N.J. Super. 468 (App. Div. 1980) and like In re Haddonfield Board of Education, P.E.R.C. No. 82-106, 8 NJPER 313 (¶13140 1982), personal leave was available to the employees whether religiously observant or not.

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Appearances:

For the Petitioner, Love and Randall, Esqs.
(Melvin Randall, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld,
Esqs. (Mark R. Blunda, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on March 22, 1983 by the East Orange Board of Education ("Board"). The Board seeks to restrain binding arbitration of a grievance which the East Orange Education Association ("Association") has filed. The grievance claims a denial of paid personal leave for religious observance and a violation of personal and academic freedom and seeks reimbursement for all lost salary plus interest for the affected teachers.

Both parties have submitted letter memoranda in support of their respective positions, the last of which was received on April 12, 1983. The record also contains a copy of the 1980 to 1983 collective bargaining agreement between the parties and a copy of the grievance in question.

The Board seeks a restraint of arbitration contending that allowing paid personal leave for religious observance would violate the decision of the Supreme Court in Hunterdon Central High School Board of Education v. Hunterdon Central High School Education Association, 86 N.J. 43 (1981), affirming 174 N.J. Super. 468 (App. Div. 1980). The Association argues that its contract with the Board concerning personal leave is lawful and not in conflict with the Supreme Court's decision.

The full Commission has delegated to me the authority to decide certain scope of negotiations petitions on its behalf. See N.J.S.A. 34:13A-6(f). Since the issue in question has already been addressed by the courts and the Commission in several decisions, I will issue this decision.

The relevant provision of the contract, Article VII B3, allows a total of five school days per year to be used for temporary absences in two different categories: (1) full pay is allowed for death in the immediate family or household, jury duty and public obligations, and military reserve training, and (2) full pay minus \$20 a day is allowed for five school days for "the discharge of important personal matters, family business, legal, religious responsibilities, quarantine, public obligations, college graduation, professional purposes that cannot be handled outside of regular work hours or for other personal emergencies." The latter provision also requires 24 hours notice for the use of personal leave, if possible, and bars taking personal leave during the first or last two weeks of the school year, or on a day immediately preceding or following a holiday or vacation period.

It is apparent that the personal leave provision in this contract is readily distinguishable from that present in Hunterdon Central. In Hunterdon Central, the contract provided for religious leave separate from personal leave; by its terms religious leave was available only to those employees who were religiously observant. Based upon this fact, the Commission, subsequently affirmed by the Appellate Division and the Supreme Court, found that such a provision amounted to an establishment of religion in violation of the First Amendment of the Constitution. In contrast, the instant clause lists religious responsibilities as one of six enumerated circumstances for which personal leave may be used. Thus, this clause is similar to the clause present in In re Haddonfield Board of Education, P.E.R.C. No. 82-106, 8 NJPER 313 (¶13140 1982), in which we held that allowing teachers to utilize paid personal leave equally available to all teachers for religious observance did not constitute an establishment of religion. In Hunterdon, both the Appellate Division and the Supreme Court specifically noted that paid personal leave available for a variety of purposes including religious observance was not unconstitutional.

In a footnote to the Appellate Division opinion in Hunterdon Central, Judge Siedman noted:

There is no issue here of the Board's duty reasonably to accommodate an employee's desire to observe the holy days of his religion by allowing a reasonable amount of unpaid leave without fear of penalty, ... or by permitting such absences to be charged against allowable paid leave days for reasons of personal necessity. 174 N.J. Super at 477, n.l.
(Emphasis added)

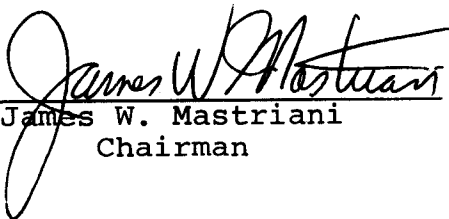
The Supreme Court affirmed the Appellate Division's decision in a single paragraph. However, Justice Handler wrote a concurring opinion to point out that public employers could reasonably accommodate employees' needs to engage in religious observances in ways which did not offend the establishment clause. He specifically cited Justice Siedman's footnote in the Appellate Division decision and indicated that it would be constitutionally possible for public employers to otherwise accommodate religious beliefs, and practices of employees within the framework of subjects constituting terms and conditions of employment. See 86 N.J. at 44 to 45.

The instant clause does not constitute an establishment of religion because, like Haddonfield and unlike Hunterdon, the personal leave is available to all employees whether religiously observant or not. Since the instant clause does not offend constitutional principles and undoubtedly relates to a term and condition of employment, the grievance is arbitrable.^{1/} Accordingly, acting under authority granted to the Chairman by the full Commission, I find that this matter is mandatorily negotiable and may proceed to arbitration.

^{1/} The parties have also called to our attention litigation in the United States District Court concerning this matter. However, that litigation apparently was terminated without prejudice by an order signed by U.S. District Judge Herbert W. Stern, a copy of which has been furnished to us. As indicated by the parties, since Judge Stern envisioned that this matter would proceed to arbitration when entering his order, the instant determination, which denies a restraint of arbitration, is consistent with the District Court's disposition of this matter.

ORDER

The Board's request for a permanent restraint of arbitration is denied.



James W. Mastriani
Chairman

DATED: Trenton, New Jersey
May 26, 1983