

P.E.R.C. NO. 2004-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LEONIA BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-60

LEONIA ASSOCIATION OF
SCHOOL SERVICE PERSONNEL,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Leonia Board of Education for a restraint of binding arbitration of a grievance filed by the Leonia Association of School Service Personnel. The grievance asserts that the Board violated the parties' contract when it required a custodian to submit documentation verifying a bereavement leave. The Commission concludes that once the parties have agreed that personal leave may only be used for certain specified reasons at certain specified times, the employer has a managerial prerogative to require some verification of the proper use of such 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, Fogarty & Hara, attorneys
(Scott W. Carbone, on the brief)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, on the brief)

DECISION

On May 6, 2003, the Leonia Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Leonia Association of School Service Personnel. The grievance asserts that the Board violated the parties' contract when it required a custodian to submit documentation verifying a bereavement leave.

The parties have filed briefs and exhibits. The Association has submitted the certification of Frank Pagano, its president and the grievant. These facts appear.

The Association represents custodial and maintenance personnel, excluding supervisors. The parties' collective negotiations agreement is effective from July 1, 2001 through June 30, 2003. The grievance procedure ends in binding arbitration.

Article VI is entitled Temporary Leaves of Absence. Section 3 is entitled Deaths. It permits employees to take:

Up to four (4) days at any one time in the event of a death of an employee's spouse, child, son-in-law, daughter-in-law, parent, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law.

Sections 1 and 2 of Article VI govern personal leaves and legal leaves; the legal leave provision requires that an employee document that the employee's attendance is required in a legal proceeding.

Frank Pagano is a custodian. On January 13, 2003, he requested bereavement leave from January 14 through January 17 due to the death of his father-in-law. The leave was approved.

Subsequently, his supervisor, Michael Collis, requested documentation regarding the leave. On January 23, 2003, he wrote to Pagano and stated:

I have spoken with Mr. Rottino and he and I both feel the Leonia Board of Education is well within its rights to ask for some kind of documentation in regard to Leave of Absence for a Death in a Family.

This documentation can be the obituary from the local newspaper, or a copy of the Death Certificate.

Many of our staff families live outside the United States and the Board of Education has no way to verify these deaths other than to ask the individual for documentation. The Board of Education is not asking for documentation to be submitted with the Request for Absence Form and will give a reasonable amount of time to obtain documentation.

The bereavement clause in the LASSP Contract is a generous one given to LASSP by the Board of Education with an open heart in a time of need. However, it is with a sad heart to say, the Board of Education must protect any abuse of this clause by those who would take advantage of the generosity of the Board of Education.

On February 4, 2003, the Association filed a grievance. The grievance asserted that asking for any documentation violates the bereavement leave clause.

On February 11, 2003, Collis denied the grievance. He asserted that the Board had a contractual right to verify that the contractual conditions for taking a bereavement leave had been satisfied.

On March 20, 2003, the Board denied the grievance. It stated:

While the Board does not wish to cause additional hardship or inconvenience to employees who are already suffering from the loss of a family member, the Board agrees with the Superintendent and Collis that it is reasonable to expect employees to document their use of bereavement leave, particularly

where bereavement leave is contractually restricted to certain specific family members. In the Board's view, this case does not concern entitlement to bereavement leave, but rather the administration's ability to require some verification of the proper use of bereavement leave in light of the fact that the parties have contractually agreed that bereavement leave may only be used for certain specified family members.

The Board further believes that they are not required to negotiate over the general policy the administration has formulated to verify that a leave was, in fact, used for the contractually specified reasons. Consequently, the Board's managerial prerogative to require such a general policy renders the instant matter non-grievable and non-arbitrable.

On March 27, 2003, the Association demanded arbitration. This petition ensued.

The parties dispute whether a past practice existed of not requiring documents to be submitted to verify a bereavement leave. In 2002, there were apparently four instances of bereavement leave; in one instance verification was requested and the Association counseled the employee to comply since the leave was connected to a vacation.

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 do not consider whether the bereavement leave clause permits or prohibits the Board's request for verification. Nor do we decide what was the parties' past practice. We determine only whether the Board has a managerial prerogative to request verification of a bereavement leave.

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

[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]

No statute or regulation is asserted to be preemptive. We will thus focus on applying the balancing test to the facts and issues presented.

In Barnegat Tp. Bd. of Ed., P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984), we considered a negotiability dispute analogous to this one. There, a contract granted personal leave for certain purposes and the employer claimed a prerogative to verify that a requested leave would be used for a contractually-specified purpose. While the subject of personal leave was mandatorily negotiable in the abstract, we held that the employer could require verification. We stated:

Once the parties have actually restricted the personal reasons and times for a personal leave, we believe that the mere establishment of a verification policy is the prerogative of the employer, although the application of the policy is subject to contractual grievance procedures. In the instant case, the narrow abstract dispute is over whether the Board may generally require any verification from employees taking personal leave beyond their checking a box indicating the reasons for the leave. There are no allegations before us that any particular employee has been improperly denied personal leave benefits; that the verification requirement is being use inconsistently in a particular case to harass an individual employee; or that verification is being sought in an unreasonable manner which unduly interferes with the employee's welfare and privacy. [Id. at 271-272]

As in Barnegat, this case does not concern the initial negotiability of entitlement to personal leave, but rather the

employer's ability to require some verification of the proper use of contractual leave once the parties have contractually agreed that personal leave may only be used for certain specified reasons at certain specified times. Id. at 271. The parties have negotiated a contract specifying the reasons for a leave of absence and the employer seeks to verify that leaves are taken for a contractually specified reason. There does not appear to be a basis in law or in fact for distinguishing Barneqat. We will therefore restrain arbitration.

ORDER

The request of the Leonia Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners DiNardo, Katz, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

DATED: July 24, 2003
Trenton, New Jersey
ISSUED: July 25, 2003