

P.E.R.C. NO. 2004-61

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WALDWICK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-31

WALDWICK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a provision in the expired collective negotiations agreement between the Waldwick Board of Education and the Waldwick Education Association. The provision requires the Board to grant paid sick leave to employees who are absent for an extended period due to catastrophic illness. The Commission concludes that N.J.S.A. 18A:30-6 mandates that a school board make its extended sick leave determinations on a case-by-case basis rather than by a negotiated rule and therefore the present catastrophic illness provision is not mandatorily negotiable.

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, Schwartz, Simon, Edelstein, Celso & Kessler, LLP (Andrew B. Brown and Heidi M.G. Hanley, on the brief; Andrew B. Brown, on the reply brief)

For the Respondent, Oxfeld Cohen, P.C.  
(Sanford R. Oxfeld, on the brief)

DECISION

On December 24, 2003, the Waldwick Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that a provision in the expired collective negotiations agreement between the Board and the Waldwick Education Association is preempted by an education statute and may not be retained in a successor contract unless modified. The provision requires the Board to grant paid sick leave to employees who are absent for an extended period due to catastrophic illness.

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

The Association represents classroom teachers and certain other personnel. The parties' most recent agreement expired on June 30, 2003. They are in negotiations for a successor agreement.

Article VI is entitled Sick Leave. Section 5 provides:

Leave of Absence for Temporary Illness (A Catastrophe)

A catastrophe shall be deemed to exist when both of the following conditions are met:

- (a) When a continuous illness exceeds twenty (20) work days; and
- (b) When the accumulated sick leave has expired.
- (c) When both of these conditions exist simultaneously.

Teachers

The Board of Education shall pay to the sick teacher his contracted salary less the salary of the substitute, based on the daily substitute rate as established by the Board for that year, for a period of time not to exceed the total number of days of accumulated sick leave accredited to said employee at the beginning of the continuous illness. Or, the Board shall pay the ill teacher his contracted salary less the salary of the substitute based on the daily substitute rate as established by the Board for that period for a period of time equal to ten (10) days for each year of service in the Waldwick School system, if this aggregate number of days is greater than the accumulated sick leave as previously defined.

The Board has proposed that this language be modified. It would add the word "and" after 5(b) and it would delete 5(c) and replace it with this sentence: "When medical documentation is provided establishing that the medical condition is terminal." When the Association insisted on retaining the previous language, the Board filed this petition.

The parties agree that the catastrophic illness provision is mandatorily negotiable under Local 195, IFPTE v. State, 98 N.J. 393 (1982), unless it is preempted by N.J.S.A. 18A:30-6. That statute provides:

When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

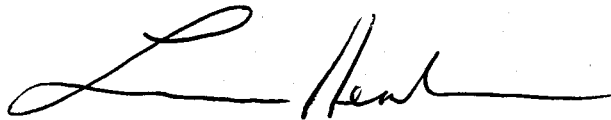
In Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977), the Court held that N.J.S.A. 18A:30-6 mandates that a school board make its extended sick leave determinations on a case-by-case basis rather than by a negotiated rule. We have consistently followed that holding. See, e.g., Red Bank Bd. of Ed., P.E.R.C. No. 96-2, 21 NJPER 270 (¶26174 1995); Lyndhurst Bd. of Ed., P.E.R.C. No. 91-16, 16 NJPER 481 (¶21208 1990), aff'd NJPER Supp.2d 252 (¶210

App. Div. 1991); Ramapo-Indian Hills Reg. School Dist., P.E.R.C. No. 90-104, 16 NJPER 313 (¶21129 1990). These cases are consistent with the preemption analysis in Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982), because N.J.S.A. 18A:30-6 eliminates any discretion a school board would otherwise have to adopt a negotiated rule granting extended sick leaves and compels a board to exercise its discretion in each individual case. We therefore hold that the present catastrophic illness provision is not mandatorily negotiable.

ORDER

The disputed portions of Article VI, Section 5 are not mandatorily negotiable.

BY ORDER OF THE COMMISSION



Lawrence Henderson  
Chairman

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

DATED: March 25, 2004  
Trenton, New Jersey  
ISSUED: March 26, 2004