

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE  
CHATHAMS SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2005-092

ASSOCIATION OF CHATHAM  
TEACHERS AND SECRETARIES,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Board of Education of the Chathams School District for a restraint of binding arbitration of a grievance filed by the Association of Chatham Teachers and Secretaries. The grievance alleges that the Board violated the parties' collective negotiations agreement by not granting the full amount of paid child-bearing leaves requested by two teachers. The Commission concludes that the school laws governing paid sick leave eliminate the Board's discretion to grant the full amount of paid sick leave days requested. The Commission grants a restraint over the claims for paid unverified sick leave beyond the 30-day presumptive period of disability after childbirth.

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 (Nicholas Celso III, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Sanford R. Oxfeld, of counsel; Sasha A. Wolf, on the  
brief)

DECISION

On June 27, 2005, the Board of Education of the Chathams School District petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Association of Chatham Teachers and Secretaries. The grievance alleges that the Board violated the parties' collective negotiations agreement by not granting the full amount of paid child-bearing leaves requested by two teachers.

The parties have filed briefs and exhibits.<sup>1/</sup> The Board has filed the certification of its Superintendent, James O'Neill. These facts appear.

The Association represents teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2005. The grievance procedure ends in binding arbitration.

Article III, Section D of the parties' agreement governs leaves of absence. Employees receive a specified number of paid sick leave days each year and can accumulate unused days for use in later years. The agreement defines sick leave "to mean the absence from school duty of any employee because of personal disability due to illness or injury. . . ."

The agreement distinguishes between child-bearing leaves and child-rearing leaves. Section III, D.8 governs child-bearing leave. It provides, in part:

- (b) Employees may utilize the sick leave provision for absences during the Child-Bearing Leaves up to a maximum of eight (8) weeks; i.e. employees can use up to a maximum of forty (40) days (eight weeks) from accumulated sick leave during the Child-Bearing Leave.

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<sup>1/</sup> We decline the Association's request to consolidate this case with a related unfair practice charge (Docket No. CO-2006-10). We thus do not consider the certification filed in that matter by Rebecca Murphy, a third teacher who requested a child-bearing leave. The Association has not sought to arbitrate a grievance concerning Murphy's request for leave.

Whenever the sick leave provision is utilized for Child-Bearing Leaves, it is a paid leave of absence, and corresponding health benefits are paid by the Board.

\* \* \*

- (d) The employee must present medical certification if the period of disability associated with childbirth is longer than an eight (8) week period.

Section III, D.9 governs child-rearing leave. It provides for unpaid leave without health benefits. Such leaves may be requested under the New Jersey Family Leave Act ("FLA"), N.J.S.A. 34:11B-1 et seq., which requires the Board to provide paid health benefits for up to three months.

Cynthia Feeney is a music teacher. On February 17, 2005, she informed the Superintendent she was pregnant. Her due date was August 8. She requested a child-bearing leave from September 1 until October 31, using 40 of her accumulated paid sick leave days. She also asked that her paid leave be followed by an unpaid FLA leave of absence until December 23. Her request stated her understanding that she would receive paid health benefits during both the child-bearing and FLA leaves. She planned to resume teaching on January 2, 2006.

Cathy Killian is a second grade teacher. On February 23, 2005, she informed the Superintendent that she was pregnant. Her due date was August 5. She requested a child-bearing leave from September 1 until October 5, using 25 of her accumulated paid

sick leave days. She also asked that her paid leave be followed by an unpaid child-rearing leave for the rest of the 2005-2006 school year. She did not request health benefits because she was covered by her husband's policy.

The Superintendent advised each teacher that granting the full amount of paid sick leave days requested would violate school law limiting the use of paid sick leave days to an employee's personal illness, injury or disability. On March 14, 2005, the Association filed a grievance asserting that the refusal to grant the full child-bearing leaves requested violated Article III, Section D.8 and the parties' past practice. The grievance asserted:

This language has always been interpreted and applied to allow the use of sick days in any configuration before and/or after the birth of a child. The Board is now requiring that, absent an extended disability, the use of sick days is limited to one month before the birth and one month following the birth.

On March 30, 2005, the Board responded to the leave requests. It granted Feeney a child-bearing leave with pay from September 1 through September 8, followed by an FLA leave, without pay but with benefits from September 9 through December 2, and then continuing without pay or benefits through December 23. It granted Killian a child-bearing leave from September 1 through September 2, followed by a child-rearing leave without

pay or benefits from September 6, 2005 through June 23, 2006.

The superintendent's memorandum to each teacher stated:

The use of sick days is statutorily defined. Under state law, sick days may be used only for personal injury, illness or disability. Disability does include time associated with pregnancy. The State Board of Education had determined that the use of sick days for pregnancy related disability would apply for 30 calendar days before and 30 calendar days following the date of delivery. Teachers are entitled to up to 40 days of paid time for this disability if there are a sufficient number of days that have accrued in your sick bank. It is also true that your disability may extend beyond the 30 calendar days, but this would fall outside the statute and would require additional documentation by your physician that you continue to be disabled. Furthermore, it is the Board's understanding that granting the leave you requested would be contrary to the law.

There is no provision that allows the birth of a child in the summer to transfer the disability days to the beginning of the school year. Therefore, the days that we have granted in September parallel the 30 calendar days following the anticipated birth of your child. We fully understand that if the birth were delayed that additional paid days covering the beginning of the school year would be both legal and appropriate.

Finally, we believe that the Board has granted everything that they are legally entitled to grant and have provided you with the full extent of paid and unpaid leave time permitted by law.

On March 30, 2005, the Association reactivated its grievance asking that teachers continue to be allowed to use their 40 sick leave days "in any combination surrounding the birth of a child."

On April 8, the superintendent denied the grievance. His memorandum stated:

It is the Board's position that neither the negotiated language in the Collective Bargaining Agreement nor practices which are contrary to the application of these 30 days prior to and after the birth of the child are within the Board's legal ability to grant. To be specific, it is the Board and Administration's position that teachers may not determine to utilize sick days as they wish for example, two weeks before and six weeks after the anticipated date of delivery. It is further understood that teachers who give birth during the summer when school is not in session are only entitled to apply sick days for the portion of those 30 calendar days before or after the birth of the child that would fall within the school year.

The Association then demanded arbitration and this petition ensued.

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 the merits of the grievance or any contractual defenses the employer may have.

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

[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]

The parties agree that paid and unpaid leaves of absence are mandatorily negotiable unless a statute or regulation preempts negotiations over the leave requested. Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodians Ass'n, 152 N.J. Super. 235 (App. Div. 1977). A statute or regulation will not be preemptive unless it fixes a term and condition of employment, thereby eliminating the parties' discretion to vary it through negotiations. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). The question is whether the school laws



governing paid sick leave eliminate the Board's discretion to grant the full amount of paid sick leave days requested. The answer is yes.

The school laws governing paid sick leave are codified at N.J.S.A. 18A:30-1 through 30-7. N.J.S.A. 18A:30-1 defines sick leave "to mean the absence from his or her post of duty, of any person because of personal disability due to illness or injury" or because he or she has a contagious disease requiring exclusion or quarantine. N.J.S.A. 18A:30-2 grants school board employees a minimum of 10 paid sick leave days each year, but a collective negotiations agreement may provide for a greater number of paid annual sick leave days. State Supervisory at 81. N.J.S.A. 18A:30-3 and 30-7 entitle employees to accumulate sick leave days unused in one year for use in another year, but an employee's total accumulation may not be increased by more than 15 days in any one year. Paid sick leave days may not be used for any purpose not specifically authorized by the definition in N.J.S.A. 18A:30-1. Hackensack Bd. of Ed. v. Hackensack Ed. Ass'n, 184 N.J. Super. 311 (App. Div. 1982), certif. den. 91 N.J. 217 (1982); Newark State-Operated School Dist. and CASA, 28 NJPER 154 (¶33054 App. Div. 2001), rev'g in pertinent part P.E.R.C. No. 2000-51, 26 NJPER 66 (¶31024 1999).

N.J.S.A. 18A:30-1 permits the use of paid sick leave for a pregnancy-related disability. Hynes v. Bloomfield Bd. of Ed.,

190 N.J. Super. 36 (App. Div. 1983), so held. Hynes also upheld a determination by the State Board of Education that an employee may be considered presumptively disabled both 30 calendar days before the date of delivery and 30 calendar days after the date of delivery. The Court added that a board has a right under N.J.S.A. 18A:30-4 to require medical certification of a specific disability if a teacher applies for paid sick leave beyond 30 days after delivery. See also Piscataway Bd. of Ed. P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982) (boards have a managerial prerogative to verify that sick leave is being used for proper purposes).

The Association asks us to reject the presumptive periods of paid disability approved in Hynes and to allow the parties to negotiate for a longer period of presumed disability during which employees could use paid sick leave days. But we cannot overrule Hynes. Nor can we disregard the Board's statutory right and managerial prerogative to require medical proof of actual disability as a condition to using paid sick leave days.

In this case, the Board followed the path mandated by the education laws, Hackensack, and Hynes. The teachers' use of paid sick leave days is limited to periods of disability, either presumptive under Hynes or proven by medical certification required by the Board. Teachers who give birth during summer vacation may not use the pre-delivery paid sick leave they

otherwise could have received under Hynes to extend their post-delivery paid sick leave beyond 30 calendar days without having to comply with a request for proof of disability.

ORDER

The request of the Board of Education of the Chathams School District for a restraint of binding arbitration is granted over the claims for paid unverified sick leave beyond the 30-day presumptive period of disability after childbirth.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', is written over a horizontal line.

Lawrence Henderson  
Chairman

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

DATED: September 29, 2005  
Trenton, New Jersey  
ISSUED: September 29, 2005