

P.E.R.C. NO. 2006-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FORT LEE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-022

FORT LEE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Fort Lee Education Association during negotiations for successor collective negotiations agreements with the Fort Lee Board of Education. The Association seeks to retain sick leave clauses in successor agreements. N.J.S.A. 18A:30-6 mandates that when absence exceeds the annual and accumulated sick leave allotment, a school board may grant extended sick leave, but it must do so on a case-by-case basis rather than by a negotiated rule. The Commission holds that that rule governs this case and therefore the extended sick leave provisions are not mandatory 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, Scarinci & Hollenbeck, LLC,
attorneys (Mark S. Tabenkin, on the brief)

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

DECISION

On August 18, 2005, the Fort Lee Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that successor contract proposals of the Fort Lee Education Association are not mandatorily negotiable. The Association seeks to retain extended sick leave clauses in successor agreements covering three groups of employees.

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

The Association represents non-supervisory certificated personnel, non-certificated instructional aides, custodial and maintenance personnel, secretarial, clerk-typist and bookkeeper employees. These groups are covered under three agreements that

expired on June 30, 2005. The parties are negotiating for successor agreements. Article VI, Section 2 of the expired agreements provides, in part:

Extended Sick Leave. All employees shall be entitled to additional sick leave allowance after the exhaustion of the sick leave accumulated as set forth in paragraph 1 above.

Extended sick leave shall be paid at the rate of 50% of the regular salary of the employee, regardless of whether a substitute is hired.

Extended sick leave shall be subject to conditions as approved by the Medical Director.

Extended sick leave shall be allowed at the rate of one (1) day for each two (2) sick leave days accumulated as of the date of commencement of the leave up to a maximum benefit of sixty-five (65) days extended sick leave.

The Association seeks to have the clauses retained in the successor contracts. The Board filed this petition claiming that the clauses are preempted by the statute governing extended sick leave. The Association argues that the clauses can be lawfully construed to permit an increase in the number of annual sick days allotted in a given year.

Under Local 195, IFPTE v. State, 88 N.J. 393 (1982), a statute or regulation can set a term and condition of employment and preempt an otherwise mandatorily negotiable subject. To be preemptive, a statute or regulation must speak in the imperative and expressly, specifically and comprehensively set an employment

condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

N.J.S.A. 18A:30-6 mandates that when absence exceeds the annual and accumulated sick leave allotment, a school board may grant extended sick leave. But it must do so on a case-by-case basis rather than by a negotiated rule. That rule of law has been followed for almost 30 years. See Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Waldwick Bd. of Ed., P.E.R.C. No. 2004-61, 30 NJPER 104 (¶41 2004), aff'd 31 NJPER 46 (¶31 App. Div. 2005). It governs this case and does not permit a negotiated agreement to increase the number of annual sick leave days after an employee's annual days are exhausted. We therefore hold that Article VI, Section 2 is not mandatorily negotiable.

ORDER

Article VI, Section 2 is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: November 22, 2005

Trenton, New Jersey