

P.E.R.C. NO. 2008-18

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

QUINTON TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-081

QUINTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Quinton Township Board of Education for a restraint of binding arbitration of a grievance filed by the Quinton Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by pro-rating sick days for part-time employees. The Commission concludes that statutes and case law do not prohibit an agreement over the amount of sick leave to be granted part-time employees and whether the parties have negotiated such an agreement is a contractual merits question for the arbitrator.

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, Parker McCay, attorneys  
(James F. Schwerin, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Carol H. Alling and Keith Waldman, on the brief)

DECISION

On June 22, 2007, the Quinton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Quinton Education Association. The grievance alleges that the Board violated the parties' agreement by pro-rating sick days for part-time employees. We deny the request for a restraint.

The parties have filed briefs and exhibits. The Board has submitted the certification of its superintendent. These facts appear.

The Association represents all teachers, the nurse and the guidance counselor. The parties' collective negotiations

agreement is effective from July 1, 2004 through June 30, 2007. The grievance procedure ends in binding arbitration.

Article XVI grants all teachers ten sick leave days each school year. Some teachers work part-time every day, while other part-time teachers work on some days, but not others. In the past, part-time teachers have received a pro-rated number of sick days.

On May 2, 2007, the Association filed a grievance stating that it had learned that part-time teachers were receiving five rather than ten sick days each year and alleging a violation of Article XVI.A, N.J.S.A. 18A:30-2 and any other applicable statute, clause or policy. The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Paid sick leaves are generally negotiable unless a statute or regulation preempts negotiations. See, e.g., Burlington Cty. College Faculty Ass'n v. Burlington Cty. College, 64 N.J. 10, 14 (1973). Negotiations will be preempted only if a statute or regulation expressly, specifically and comprehensively sets a term and condition of employment and eliminates the employer's discretion to vary it. Parties may negotiate contractual benefits greater than a statutory minimum. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); Morris School Dist. Bd. of Ed. and The Ed. Ass'n of Morris, 310 N.J. Super. 332, 341-342 (App. Div. 1998), certif. den. 156 N.J. 407

(1998); Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), app. disp. 93 N.J. 263 (1983).

The Board argues that N.J.S.A. 18A:30-2 does not provide part-time teachers with the same amount of statutory sick leave as full-time teachers. The Board is correct because Schwartz v. Dover Public Schools, 180 N.J. Super. 222 (App. Div. 1981), states that this statute does not cover part-time employees. But neither the statute nor Schwartz prohibits an agreement over the amount of sick leave to be granted to part-time employees. Whether these parties have negotiated such an agreement is a contractual merits question that an arbitrator can determine. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).<sup>1/</sup>

#### ORDER

The request of the Quinton Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: September 27, 2007

Trenton, New Jersey

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<sup>1/</sup> To the extent the grievance asserts a violation of N.J.S.A. 18A:30-2, the arbitrator has jurisdiction to interpret the statute consistent with court decisions. West Windsor Tp. v. PERC, 78 N.J. 98, 116 (1978).