

P.E.R.C. NO. 2016-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-058

HACKENSACK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the Hackensack Board of Education's request for a restraint of binding arbitration of a grievance filed by the Hackensack Education Association. The grievance challenges the Board's refusal to grant terminal leave payments for unused accumulated sick leave. Finding that compensation for unused leave is mandatorily negotiable and that the grievants began employment before the statute's effective date, the Commission holds that the issue is not preempted by N.J.S.A. 18A:30-3.6 and is therefore arbitrable.

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, Richard E. Salkin, attorney
(Richard E. Salkin of counsel)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum
& Friedman, attorneys (Genevieve M. Murphy-Bradacs, of
counsel)

DECISION

On March 6, 2015, the Hackensack Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of grievances filed by the Hackensack Education Association (Association). The grievances allege that the Board violated the parties' collective negotiations agreement (CNA) when it denied two teachers' terminal leave payments for unused accumulated sick leave.

The parties' filed briefs and exhibits.^{1/} These facts appear.

The Association represents a negotiations unit of non-supervisory certified teachers, paraprofessionals, certified school nurses, guidance counselors, child study team members, librarians, and full-time certified athletic trainers. The Board and the Association are parties to a CNA in effect from July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

Article 26 of the CNA, entitled "Terminal Leave," provides, in pertinent part:

- A. Terminal leave compensation, utilizing the following formula, shall be provided for teachers and Paraprofessionals that terminate their services in the district after completing a minimum of 10 years of continuous service in the district, exclusive of approved leaves of absence.. [sic]

	Teachers	Paras
2012-2013	\$61.51	\$45.71
2013-2014	\$62.13	\$46.17
2014-2015	\$62.75	\$46.63

^{1/} Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall...[r]ecite all pertinent facts supported by certification(s) based upon personal knowledge." Neither the Board nor the Association filed certifications in this matter.

The amounts above are for each day beyond twenty (20), of unused, accumulated sick leave.^{2/}

N.J.S.A. 18A:30-3.6, which became effective on May 21, 2010, provides:

Notwithstanding any law, rule or regulation to the contrary, a board of education, or an agency or instrumentality thereof, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the Board of Education, or the agency or instrumentality thereof, on or after the effective date of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.

It is undisputed that the grievants began employment with the school district in 2003 and resigned in June of 2014. At that time, both demanded terminal leave payments for unused accumulated sick leave pursuant to Article 26 of the CNA. After the Board denied the terminal leave requests, the Association filed grievances alleging that the Board violated Article 26 - and other provisions - of the CNA. The Board denied the

^{2/} The Commission takes administrative notice that the parties' CNA, in effect from July 1, 2003 through June 30, 2006, contains a Terminal Leave provision which is similar to Article 26 of the parties' recently expired CNA.

grievances at all levels. On August 18, 2014, the Association filed two Requests for Submission of a Panel of Arbitrators. This petition ensued.

The Board argues that the Superintendent of Schools at the time imprudently agreed to a "Sidebar Agreement," now memorialized within Article 26, that tied terminal sick leave payments to achieving 10 years of service rather than retirement - the policy set forth in N.J.S.A. 18A:30-3.6. As such, the Board argues that Article 26 blatantly violates public policy, is unenforceable, and therefore arbitration should be restrained.

The Association contends that the grievances at issue concern a mandatorily negotiable term and condition of employment - the payment of compensation for unused leave allowances - in accordance with Article 26 of the CNA. Further, the Association argues that arbitration is not preempted by any statute or regulation given that N.J.S.A. 18A:30-3.6 only applies to employees who began their service after May 21, 2010.

Our jurisdiction is narrow. The Commission is addressing the abstract issue of whether the subject matter in dispute is within the scope of collective negotiations. We do not consider the merits of the grievance or any contractual defenses that the employer may have. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[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.

Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively in order to foreclose otherwise required employer-employee negotiations on the subject matter. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982); see also Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978); see also Borough of Bernardsville, P.E.R.C. No. 2007-8, 32 NJPER 280 (¶116 2006). If

a particular item in dispute is controlled by a specific statute or regulation, the parties may not include any inconsistent term in their agreement. Id. However, “[t]he existence of a State or federal law regulating employee working conditions does not relieve a public employer of its statutory obligation to negotiate over terms and conditions of employment not specifically controlled by the pertinent law.” Borough of Longport, P.E.R.C. No. 2006-53, 32 NJPER 16 (¶8 2006).

The question before us is whether N.J.S.A. 18A:30-3.6 preempts the payment of terminal leave to grievants under the circumstances presented. We find that it does not.

We have consistently held that “[g]ranting employees compensation for unused leave allowances through either lump sum payments or at regular pay periods as terminal leave is mandatorily negotiable.” Tp. of Galloway, P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998) (citing Morris School Dist. Bd. of Ed., P.E.R.C. No. 97-142, 23 NJPER 437 (¶28200 1997), aff'd 310 N.J. Super. 332 (App. Div. 1998), recon. den. 5/26/98, certif. denied 156 N.J. 407 (1998)). The parties agree that both grievants began employment with the school district in 2003 and resigned in 2014. N.J.S.A. 18A:30-3.6 expressly, specifically and comprehensively states that it only applies to employees who commence service on or after the bill's effective date. The bill was signed on March 22, 2010 and became effective on May 21,

2010. Therefore, the statute does not preempt the payment of terminal leave to grievants who commenced employment with the school district before the bill's effective date.

Accordingly, the Board's request to restrain arbitration is denied.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: September 24, 2015

Trenton, New Jersey