

P.E.R.C. NO. 2018-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VERONA BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2017-045

VERONA EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain contract provisions regarding sick leave compensation and nearly identical proposals for newly-represented titles. The Commission holds that pursuant to N.J.S.A. 18A:30-3.6, the provisions are mandatorily negotiable only to the extent applied to school employees who commenced service in the district before May 21, 2010.

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, Kenney, Gross, Kovats & Parton,
attorneys (Michael J. Gross, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Samuel Wenocur, on the brief)

DECISION

On May 19, 2017, the Verona Board of Education (Board) petitioned for a scope of negotiations determination. The Board asserts that certain aspects of a sick leave compensation provision within an existing collective negotiations agreement (CNA) with the Verona Education Association (Association), as well as an identical proposal for newly-represented titles, are not mandatorily negotiable.

The Board filed a brief and exhibits. The Association filed an opposition brief.^{1/} These facts appear.

^{1/} Neither party filed a certification. 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
(continued...)

The Association represents teachers, nurses, guidance counselors, librarians, special services personnel, substance awareness coordinators, athletic trainers, administrative assistants, full-time custodians, and maintenance personnel employed by the Board. Excluded from the unit are high-level administrative personnel, including but not limited to superintendents, assistant superintendents, and business administrators. The Board and the Association are parties to a CNA in effect from July 1, 2015 through June 30, 2018. Based upon a recently resolved representation petition, the Association also represents paraprofessionals and technology personnel employed by the Board. The parties have negotiated the initial CNA applicable to the latter category of employees and are currently engaged in negotiations for the initial agreement covering paraprofessionals.

The CNA is organized into parts covering different groups of employees. This dispute involves a provision entitled "Sick Leave Compensation" that appears in nearly identical language in each part of the CNA as well as a proposed agreement for paraprofessionals.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) states:

1/ (...continued)
certification(s) based upon personal knowledge."

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

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.

The disputed Sick Leave Compensation provision provides in relevant part:

1. Employees with ten (10) or more years of service in the district who retire from the district and who apply [and] receive pension benefit payments upon retirement from the district or are terminated as a result of a reduction-in-force shall be eligible for compensation for unused accumulated sick days with the following stipulations:

a. Except in cases of termination as a result of reduction-in-force, this provision shall not apply to employees vesting under the provisions of the retirement plan or postponing receipt of retirement benefits beyond separation from the district.

b. Compensation rate for eligible days is to be seventy-five dollars (75.00) per day.

c. The Verona Board of Education shall pay to the estate of the employee any sick leave reimbursement if the employee dies before they retire.

The Board argues that the underlined language is preempted by N.J.S.A. 18A:30-3.5, which precludes boards of education from paying supplemental compensation for unused accrued sick leave except upon an employee's retirement under a State-administered or locally-administered retirement system.

The Association argues that N.J.S.A. 18A:30-3.5 is inapplicable to its members because it only applies to high-level board of education officers and employees. The Association also argues that the underlined contractual language is wholly consistent with N.J.S.A. 18A:30-3.6, which caps compensation for

accumulated sick leave at \$15,000 and applies to all school employees hired on or after May 21, 2010.^{2/} Given that the parties' CNA expires in 2018 and expressly states that sick leave compensation only applies to employees with at least ten or more years of experience, the Association maintains that only members hired before May 21, 2010 could potentially qualify.

The Commission has held that vacation and sick leave, including compensation for unused leave allowances, are generally mandatorily negotiable. See, e.g., Howell Tp. Bd. of Ed., P.E.R.C. No. 2015-58, 41 NJPER 421 (¶131 2015); Hackensack Bd. of Ed., P.E.R.C. No. 2016-18, 42 NJPER 187 (¶49 2015). However, "an otherwise negotiable topic cannot be the subject of a negotiated

^{2/} N.J.S.A. 18A:30-3.6 provides:

Notwithstanding any law, rule or regulation to the contrary, a board of education . . . 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 This provision shall apply only to officers and employees who commence service with the board . . . on or after the effective date [May 21, 2010] 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.

agreement if it is preempted by legislation.” *Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass’n*, 91 N.J. 38, 44 (1982).

In *New Jersey Ass’n of School Adm’rs v. Schundler*, 211 N.J. 535 (2012), the Court held that N.J.S.A. 18A:30-3.5 covers high-level school employees, including superintendents, assistant superintendents, and business administrators; that N.J.S.A. 18A:30-3.6 expanded the sick leave cap imposed by N.J.S.A. 18A:30-3.5 to all employees who begin working for a school board on or after May 21, 2010; and that the Legislature intended payment for unused sick leave to be made only at the time of retirement. See also, *Howell Tp. Bd. of Ed.*, supra.

Thus, while N.J.S.A. 18A:30-3.5 does not apply to the employees at issue here, N.J.S.A. 18A:30-3.6 does, but only those who began working for the Board on or after May 21, 2010. Given that the subject provision limits eligibility for sick leave compensation to only school employees with ten or more years of service (i.e., only members who were hired before May 21, 2010 can qualify), we find that the underlined contractual language is not preempted by N.J.S.A. 18A:30-3.6. Notably, the Association has conceded that the underlined contractual language is preempted by N.J.S.A. 18A:30-3.6 for all school employees hired on or after May 21, 2010.

ORDER

The underlined portions of the "Sick Leave Compensation" provision in the parties' collective negotiations agreement (i.e., Part A - Article 17, Part B - Article 10, Part C - Article 13, proposed Part D - Article 8, and Part E - Article 13) are mandatorily negotiable only to the extent applied to school employees who commenced service in the district before May 21, 2010.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Bonanni and Voos were not present.

ISSUED: September 28, 2017

Trenton, New Jersey