

P.E.R.C. NO. 2020-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE MAPLEWOOD BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-046

SOUTH ORANGE MAPLEWOOD
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the South Orange-Maplewood Board of Education's request for a restraint of binding arbitration of a grievance filed by the South Orange-Maplewood Education Association asserting that the Board violated a provision of the parties' collective negotiations agreement (CNA) when it denied the grievant's request for supplemental paid sick leave. The Commission finds that the denial of the grievant's extended sick leave request was an exercise of the Board's discretion under N.J.S.A. 18A:30-6, which requires that such determinations must be based on a school board's discretion and consideration of individual circumstances, not on an application of a negotiated rule. The Commission finds that the remedy sought by the Association would substitute the Board's discretion for the arbitrator's judgment as to whether extended sick leave should have been granted to the grievant, which is prohibited by N.J.S.A. 18A:30-6.

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, Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, LLC, attorneys (Patrick F. Carrigg, of counsel; Casey P. Acker, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Richard A. Friedman, of counsel; Craig A. Long, on the brief)

DECISION

On February 7, 2019, the South Orange Maplewood Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the South Orange Maplewood Education Association (Association) and a determination that Article VI, B(1-2) of the parties' collective negotiations agreement (CNA) is not mandatorily negotiable. The grievance asserts that the Board violated Article VI, B(1-2) when it denied the grievant's request for supplemental sick leave.

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

The parties' CNA has a term of July 1, 2015 to June 30, 2017. The parties entered into a Memorandum of Agreement covering July 1, 2017 through June 30, 2018. The grievance procedure ends in binding arbitration.

Article VI, B(1-2) of the parties' CNA provides in relevant part:

B. TEN (10) AND ELEVEN (11) MONTH EMPLOYEES

1. After the exhaustion of all accumulated sick leave and upon approval of the Superintendent, an employee may be paid for twenty (20) days' absence in any school year. These days shall not be unreasonably denied. Doctors' notes may be requested for absences over five (5) consecutive days. Employees shall be prepared to provide said notes.

2. Dependent upon length of service, an additional allowance may be approved by the Superintendent in any fiscal school year to provide the total allowance shown below:

For those employed...	Allowance
Less than 2 yrs.	2 mos. or 40 days
2 yrs. but less than 5 yrs.	3 mos. or 60 days

^{1/} The Board filed a "Statement of Facts" in support of its brief and certified to by its attorney. The Association did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge. Certifications by attorneys are usually limited to authentication of exhibits rather than substantive facts pertinent to the case.

5 yrs. but less than 10 yrs	4 mos. or 80 days
10 yrs. or more	5 mos. or 100 days

The grievant was granted paid sick leave from February 14, 2018 through the end of the 2017-2018 school year. Thereafter, she sought additional paid sick leave through July 1, 2019. On October 30, 2018, the Board denied the grievant's request for additional paid sick leave, and granted an unpaid leave instead. On January 28, 2019, the Association filed for grievance arbitration, alleging that the grievant was denied use of additional sick time under the Article VI of the parties CNA. This petition ensued.

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. *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.

The Board argues that the denial of the grievant's extended sick leave is preempted by N.J.S.A. 18A:30-6, and as such, is not mandatorily negotiable. The Board also asserts that Article VI B (1) and (2) is not mandatorily negotiable because it is preempted by N.J.S.A. 18A:30-6.

N.J.S.A. 18A:30-6 provides:

When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the board of education may pay any such person each day's salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as may be determined by the board of education in each individual case. A day's salary is defined as 1/200 of the annual salary.

The Association responds that the grievance is legally arbitrable because whether grievant's extended sick leave was unreasonably denied presents an issue of reasonableness under the CNA's language.

Sick leave benefits are mandatorily negotiable unless a statute or regulation preempts negotiations. Piscataway Tp. Bd. of Ed. v. Piscataway Maint. & Cust. Ass'n, 152 N.J. Super. 235 (App. Div. 1977). To be preemptive, a statute or regulation must

set an employment condition expressly, specifically and comprehensively. *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).

The Appellate Division has determined that N.J.S.A. 18A:30-6 "plainly leaves the matter of [payment of salary for prolonged absence pursuant to N.J.S.A. 18A:30-6] to the discretion of the local board of education, which may pay any such person each day's salary, less the pay or estimated cost of a substitute, for such length of time as may be determined by the board of education in each individual case." *Piscataway*, 152 N.J. Super. at 246 (emphasis in original). Thus, extended sick leave determinations must be based on a school board's discretion and consideration of individual circumstances, not on an application of a negotiated rule. *Ibid.* The denial of grievant's extended sick leave request is an exercise of the Board's discretion under N.J.S.A. 18A:30-6. The remedy the Association seeks is to substitute the Board's discretion with the arbitrator's judgment as to whether extended sick leave should have been granted to the grievant, which is prohibited by N.J.S.A. 18A:30-6. *Piscataway, Lyndhurst Bd. of Ed.*, P.E.R.C. No 91-16, 16 NJPER 481 (¶21208 1990), aff'd, NJPER Supp.2d 252 (¶210 App. Div. 1991); *Matawan-Aberdeen Reg. School Dist. Bd. of Ed.*, P.E.R.C. No. 83-112, 9 NJPER 155 (¶14073 1983).

The Association's reliance on Hudson Cty., I.R. No. 2013-4, 39 NJPER 349 (¶118 2012) is inapplicable. Hudson Cty. is an interim relief decision on an unfair practice charge that does not involve supplemental sick leave in the education setting.

We decline to address the Board's request to remove Article VI, B(1-2) from the CNA at this time. The focus of this dispute, as identified by the grievance and the record as a whole, is whether the grievance is legally arbitrable. The Board may file a scope petition with a brief fully analyzing the contract language when the parties enter into successor collective negotiations. N.J.A.C. 19:13-2.2(a)4(i).

ORDER

The request of the South Orange Maplewood Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Papero voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: September 26, 2019

Trenton, New Jersey