

P.E.R.C. NO. 2020-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HARRISON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2019-072

HARRISON TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses the Harrison Board of Education's petition for a scope of negotiations determination, as it is not related to the negotiability of a contract provision during negotiations for a successor collective negotiations agreement (CNA) or a demand for arbitration, and no "special circumstances" are present. The petition relates to a lawsuit filed against the Board in the New Jersey Superior Court, Chancery Division, by individual employees who alleged the Board violated their vested contractual rights (under the CNA between the Board and the Harrison Township Education Association) when the Board changed the threshold requirements to qualify for payment for accumulated sick leave upon retirement. The Commission finds the Board failed to prove "special circumstances" under applicable precedent. The Commission further finds that the dispute in the Chancery Division action (to which the Association is not a party) involves issues of individual contract rights and equitable principles that are outside the Commission's narrow scope jurisdiction.

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, Law Office of Karen A. Murray,
attorneys (Karen A. Murray, of counsel and on the
brief)

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

DECISION

On June 7, 2019, the Harrison Board of Education (Board) filed a scope of negotiations petition. The Board and the Harrison Township Education Association (Association) are parties to a collective negotiations agreement (CNA) with a term of July 1, 2018 to June 30, 2021.

A previous CNA provided in Article XVII B(1) that any faculty member who retires after 30 years of service OR after age 55 shall be granted a payment of one school day for each unused sick leave day up to a total of 120 days. A subsequently negotiated clause, that became effective July 1, 2017, changed the threshold requirements to qualify for payment for accumulated

sick leave upon retirement. The subsequently negotiated clause requires both that the employee who retires be at least 55 years of age AND have 30 years of service.

Eight individual Association members who were adversely impacted by the changes in the threshold requirements to qualify for payment for accumulated sick leave upon retirement filed a lawsuit in the Superior Court, Chancery Division on June 27, 2019. The complaint alleges the plaintiffs' contractual rights have been violated because they acquired vested rights in the calculation and payment for their accumulated sick leave pursuant to the earlier requirements to qualify for that benefit. Further, the complaint asserts that payment for accumulated sick leave constitutes deferred compensation earned during the time period that the previous requirements in the CNAs were in effect and could not be reduced. The Association is not a party to the Chancery Court action.

On June 10, 2019, the Commission case administrator wrote to the Board's attorney, stating that the Board had not met the threshold requirements to file a scope petition pursuant to N.J.A.C. 19:13-2.2(a)(4). On July 1, 2019, the Board's attorney responded, asserting that the complaint raised the issue of whether earned sick leave is a mandatorily negotiable issue, and that the Commission's jurisdiction to decide that issue is primary. Further, the Board cited Barila v. Bd. of Educ. of

Cliffside Park, 2018 N.J. Super. Unpub. LEXIS 1633 (App. Div. 2018), certif. granted, 236 N.J. 259 (2019), as support for processing the scope petition, asserting that the Commission's scope jurisdiction is at issue in the pending Supreme Court matter.^{1/}

On July 2, 2019, the Association responded that the Association is not a party to the Chancery Division action, and that there is no authority allowing a public employer to file a scope of negotiations petition regarding a legal dispute between it and individual employees. It also asserted that plaintiffs are alleging violation of their contractual rights, and are not raising any scope of negotiability issues.

On July 9, 2019, the Commission Case Administrator advised the parties that the Board's scope petition would not be processed, finding that the conditions of N.J.A.C. 19:13-2.2(a)(4) had not been satisfied, and noted that the limited issue before the Commission does not raise a scope of negotiations issue. On July 15, the Board's attorney appealed that decision, raising again her previous arguments. On July 16, the Commission Case Administrator advised the Board that the issue of whether special circumstances exist warranting processing of the Board's scope of negotiations petition would be presented to the Commission.

^{1/} The Commission is not a party to the Barila matter.

On July 24, 2019, the Association responded, asserting again that a negotiability determination was not appropriate and that the Board had failed to assert any special circumstances warranting processing of the Board's petition pursuant to the standards set forth in Cinnaminson Bd. of Educ., P.E.R.C. No. 78-11, 3 NJPER 323 (1977), aff'd in part and rev'd in part, NJPER Supp.2d 15 (¶8 App. Div. 1979), pet. for certif. den., 81 N.J. 341 (1979). On July 25, the Board filed a final response asserting that Cinnaminson is not applicable to the dispute as the addition of the words "special circumstances" in N.J.A.C. 19:13-22(a)(4)(iv) did not exist at the time Cinnaminson was issued.

N.J.S.A. 34:13A-5.4d provides that "the commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations." The Supreme Court of New Jersey has held that the Commission's scope jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) states:

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.

N.J.A.C. 19:13-2.2(a)4 provides that a scope of negotiations petition must include, in pertinent part:

A statement that the dispute has arisen:

i. During the course of collective negotiations, and that one party seeks to negotiate with respect to a matter that the other party contends is not a required subject for collective negotiations;

ii. With respect to the negotiability and legal arbitrability of a matter sought to be submitted to binding arbitration pursuant to a collectively negotiated grievance procedure;

* * *

iv. Other than in (a)4i, ii . . . above, with an explanation of any special circumstances warranting the exercise of the Commission's scope of negotiations jurisdiction. . . .

The Board's scope petition is not related to the negotiability of a contract provision during negotiations for a successor CNA (N.J.A.C. 19:13-2.2(a)4(i)) or a demand for arbitration (N.J.A.C. 19:13-2.2(a)4(ii)). Thus, we must determine whether "special circumstances" exist pursuant to N.J.A.C. 19:13-2.2(a)4(iv) to warrant processing of the Board's petition.

In Cinnaminson, the Commission established its policy that N.J.S.A. 34:13A-5.4(d) does not extend the Commission's scope jurisdiction to the issuance of advisory opinions without an actual, as opposed to a potential, controversy. Cinnaminson addressed the conditions which would qualify as "special circumstances" warranting the processing of a scope petition in the absence of a demand for arbitration or a dispute over the negotiability of a contractual provision during negotiations for a successor CNA. The Commission held as follows:

Where a petitioner has made a prima facie showing that (1) a particular clause in a contract has been declared to be illegal, as opposed to a mandatory or permissive, subject of collective negotiations by an intervening Commission or judicial decision or (2) specific legislation mandates the conclusion that a particular contractual provision is an illegal subject for collective negotiations, the Commission will assert jurisdiction over that matter and will render, where appropriate, a scope of negotiations determination on the issue or issues in dispute.

[Id. at 7.]

Since Cinnaminson's issuance over forty years ago, its requirements have been met in a select few cases. Camden Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 81-71, 7 NJPER 20 (¶12007 1980), granting recon. P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1980) (finding special circumstances because although the parties had not been in negotiations when the scope petition was initially filed and dismissed, upon the filing of a motion for

reconsideration, it was established that the parties were engaged in negotiations); see also Borough of Closter, P.E.R.C. No. 92-42, 17 NJPER 484 (¶22235 1991) (finding special circumstances as to whether an overtime increment provision had been declared illegal by an intervening decision of the United States Department of Labor); N.J.I.T. and Newark Coll. of Engineering Prof. Staff Ass'n, Inc., P.E.R.C. No. 83-72, 9 NJPER 33 (¶14016 1982), aff'd, NJPER Supp.2d 141 (¶126 App. Div. 1984) (although the parties were not in collective negotiations over a successor CNA, the employer's decision related to the award of tenure and three-year appointments to faculty and whether the union had waived negotiations on those issues were sufficiently tied to the course of negotiations to warrant the triggering of the Commission's scope jurisdiction); Bergenfield Bd. of Ed. and Bergenfield Ed. Ass'n, P.E.R.C. No. 2008-47, 34 NJPER 44 (¶13 2008) (finding special circumstances where the Association asserted that specific legislation mandated the conclusion that a CNA provision was an illegal subject for collective negotiations). We do not find that the facts of the instant matter meet Cinnaminson's "special circumstances" requirements as neither party has asserted that the subject CNA provision is illegal due to intervening legislation or a subsequent Commission or court decision.

We next turn to the Board's reliance on Barila as support for its position that the Commission should process its scope petition. Barila involves similar facts to the facts that prompted the filing of the Chancery Division action in the instant matter. In Barila, four individual plaintiffs filed a lawsuit in the Superior Court, Chancery Division against the Board of Education of Cliffside Park. The Board and the Cliffside Park Education Association (CPEA) negotiated changes to payment for earned sick leave upon retirement in two significant ways. Specifically, the formula for calculating sick leave payment was modified and the maximum amount of compensation for earned unused sick leave was decreased. Plaintiffs asserted that they were adversely impacted by these changes, which resulted in the filing of the complaint challenging the retroactive divestiture of their earned unused sick leave. Subsequent to the filing of a motion for summary judgment and a cross-motion, the Chancery Division judge issued a decision rejecting the defendant's position that the plaintiffs' claims involved a scope of negotiations issue, and found that he had jurisdiction to hear and decide the merits of the case. The judge concluded that compensation for accumulated but unpaid sick leave was a form of deferred compensation that once earned, could not be divested retroactively through negotiated CNAs.

On appeal, the defendant challenged the finding that plaintiffs' claims did not implicate a scope of negotiations issue, and again asserted that the dispute involved the ability of the Board and the CPEA to negotiate changes to the accumulated sick leave provisions. The Court affirmed the trial judge's opinion. With regard to whether the trial judge had jurisdiction to decide the issue, the Court noted that the plaintiffs could not file a scope petition with the Commission since N.J.S.A. 34:13A-5.4(d) only permits public employers and majority representatives to file such petitions. The court further noted that the Board did not express an interest in obtaining a scope determination from the Commission. The court went on to find that the Board's and CPEA's ability to negotiate changes to accumulated sick leave provisions was not in dispute. The court defined the disputed issue as whether the "Board and the [CPEA] could retroactively divest the plaintiff of their vested right to deferred compensation". It held as follows:

[C]ompensation for accumulated sick leave is "earned" during the service performed by teachers during the term of any particular [CNA]. Once vested, the right to compensation is a form of deferred compensation that cannot be retroactively negotiated away.

[Barila, at 12.]

In making this finding, the court relied on Matter of Morris School District Bd. of Educ., 310 N.J. Super. 332 (App. Div.

1998), pet. for certif. den., 156 N.J. (1998), among other cases. In Morris, the disputed issue was whether the Board and the majority representative should be bound by a fact-finder's proposal that placed a retroactive cap on earned sick leave payable on retirement to employees. The Morris court found that such benefit was a form of deferred compensation that could not be divested absent a knowing and intentional waiver by the persons affected. Id. at 347-348.

We find that the Board's reliance on Barila does not provide a basis to trigger our scope jurisdiction. The disputed issue in the instant matter is not broadly whether payment for accumulated sick leave upon retirement is mandatorily negotiable. It is well-settled that payment to an employee for unused sick leave is a form of compensation rather than a gift, Maywood Educ. Ass'n v. Maywood Bd. of Educ., 131 N.J. Super. 551 (App. Div. 1974), and that compensation is generally mandatorily negotiable. Woodstown Pilesgrove Bd. of Educ. v. Woodstwon-Pilesgrove Ass'n., 81 N.J. 582 (1980); see also Teaneck Bd. of Educ. v. Teaneck Teachers Ass'n., 94 N.J. 9 (1983).

The more narrowly disputed issue in the instant matter is whether a public employer and a majority representative can retroactively divest, through negotiations, employees of payment for accumulated sick leave upon retirement. Again, the abstract negotiability of the CNA provision addressing payment for

accumulated sick leave upon retirement is not in dispute. Rather, the application of that provision to the individual plaintiffs is what is disputed in the Chancery Division matter. That is an issue that involves individual contractual rights as opposed to a general issue of negotiability. This is supported by the fact that the Association is not a party to the Chancery Division action, but rather the lawsuit has been filed by four individual plaintiffs. As instructed by New Jersey's Supreme Court, the Commission's scope jurisdiction is narrow, and does not encompass principles of contract application. Ridgefield Park.

Moreover, consideration of the narrow disputed issue in this matter may also trigger the application of equitable principles. Given the Commission's narrow scope jurisdiction, it generally does not consider whether equitable principles would or should be applied as part of its scope jurisdiction. The Commission has found that equitable claims are more appropriately resolved in a judicial forum. Hudson Cty., P.E.R.C. No. 90-6, 15 NJPER 495 (¶20203 1989); see also City of Millville, P.E.R.C. No. 2003-21, 28 NJPER 418 (¶33153 2002) and Northern Bergen Cty. Regional Bd. of Educ., P.E.R.C. No. 2001-19, 26 NJPER 436 (¶31172 2000). Finally, we note that the issue of whether payment for accumulated sick leave upon retirement may be retroactively

divested is already settled. Morris, 310 N.J. Super. at 347-348; and Barila, at 12.

The Board has not proven "special circumstances" warranting the processing of its scope petition. The "special circumstances" standards identified in Cinnaminson and permitted by N.J.A.C. 19:13-2.2(a)4(iv) have not been met. Moreover, the disputed issue involves issues of individual contract rights and equitable principles that are outside the Commission's narrow scope jurisdiction.

ORDER

The Harrison Board of Education's scope of negotiation petition is dismissed.

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