

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

VERONA BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2021-035

VERONA EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of two articles in the collective negotiations agreement (CNA) between Verona Board of Education and Verona Education Association. The Commission finds not mandatorily negotiable an Agency Fee Provision that requires the Board to deduct agency fees for the term of the CNA because it is inconsistent with the holding in Janus v. Am.Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018). The Commission finds that the Agency Fee Provision is not mandatorily negotiable without the critical qualification that the provision is inapplicable to employees who do not consent to agency fee deductions. The Commission further finds not mandatorily negotiable a portion of a sick leave payment provision which allowed employees to be paid accumulated sick leave upon termination due to a reduction in force because it was statutorily preempted by N.J.S.A. 18A:30-3.6.

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, Kenney, Gross, Kovats & Parton,  
attorneys (Daniel R. Roberts, of counsel)

For the Respondent, Oxfield Cohen, P.C., attorneys  
(Rachel Leigh Adelman, of counsel)

DECISION

On March 9, 2021, the Verona Board of Education (Board) petitioned for a scope of negotiations determination. The Board seeks a determination that two articles in its collective negotiations agreement (CNA) with the Verona Education Association (Association) are not mandatorily negotiable and cannot be included in a successor CNA.

The Board filed a brief and the parties' CNA as an exhibit. The Association filed a brief in response. These facts appear.

The Association represents all teachers, nurses, guidance counselors, librarians, special services personnel, substance awareness coordinators, athletic trainers, administrative assistants, custodians and maintenance personnel. The Board and

Association are parties to a CNA with a term from July 1, 2014 through June 30, 2021. The parties are currently negotiating a successor CNA.

The Board seeks removal of the following provision in the parties' CNA, under the "Dues Deduction" section, fourth bullet point, which provides:

An Agency Fee provision is to be effective for the term of the Agreement contingent upon VEA establishing that it has 90% of unit employees paying dues to the Association. The amount of annual dues for non-member unit employees shall be consistent with applicable law. ("Agency Fee Provision")

The Board further seeks removal of the underlined portions of the following CNA provisions:<sup>1/</sup>

Part A, Article 17

17:1 Employees with ten (10) or more years of service in the district who retire from the district and who apply to 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: ("Sick Leave Payment Provision")

Our 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

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<sup>1/</sup> The Board seeks removal of identical portions of the following provisions in the parties' CNA found in Part B, Article 10.1, Part C, Article 13.1, Part D, Article 8.1, and Part E, Article 13.1.

matter in dispute within the scope of collective negotiations.”

We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[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.

[Id. at 404-405].

The Board argues that provisions such as the CNA's Agency Fee Provision were declared unconstitutional in Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018). As such, the Agency Fee Provision is preempted under the second prong of the Local 195 test and must be stricken from the CNA.

The Association argues that Janus held that mandating agency fee dues from non-members was unconstitutional. However, the Association argues that the Agency Fee Provision does not mandate that non-members pay dues without their consent. The Association further argues that the Agency Fee Provision merely states that non-members' dues will be consistent with applicable law, which includes Janus, and thus, the provision remains mandatorily negotiable and should not be removed from the CNA.

Janus held that "States and public-sector unions may no longer extract agency fees from nonconsenting employees." Id. at 2486 (emphasis added). The Agency Fee Provision, as written, requires the Board to deduct dues for the term of the CNA with no mention of the consenting or non-consenting status of the employees. The Agency Fee Provision further states that there is an "amount of annual dues" for non-members, regardless of their consent to the agency fee, and that amount shall be consistent with applicable law. As such, without the critical qualification that the Agency Fee Provision is inapplicable to employees who do not consent to agency fee deductions, we find that the Agency Fee Provision, as written, is not mandatorily negotiable.

Regarding the Sick Leave Payment Provision, the Board argues that the phrase "or are terminated as a result of a reduction-in-force" must be stricken from the various CNA provisions because

it is statutorily preempted by N.J.S.A. 18A:30-3.5 and 3.6.

N.J.S.A. 18A:30-3.5 provides, in pertinent part:

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.

As used in this section, "officer or employee" means an elected official; or a person appointed by the Governor with the advice and consent of the Senate, or appointed by the Governor to serve at the pleasure of the Governor only during his or her term of office; or a person appointed by an elected public official or elected governing body of the political subdivision, with the specific consent or approval of the elected governing body of the political subdivision that is substantially similar in nature to the advice and consent of the Senate for appointments by the Governor of the State as that similarity is determined by the elected governing body and set forth in an adopted resolution, pursuant to guidelines or policy that shall be established by the Department of Education, but not including a person who is employed or appointed in the regular or normal course of employment or appointment procedures and consented to or approved in a general or routine manner appropriate for and followed by the political subdivision, or the agency or instrumentality thereof.

N.J.S.A. 18A:30-3.6, provides in pertinent part:

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.

The Board argues that those statutes allow payment for unused, accumulated sick leave only upon retirement and not for termination as a result of a reduction in force. Thus, the Board argues the language at issue is statutorily preempted, non-negotiable, and must be removed from the parties' CNA.

The Association argues that N.J.S.A. 18A:30-3.5 only applies to certain high level officers. The Association acknowledges that N.J.S.A. 18A:30-3.6 preempts sick leave payment at times other than retirement but only for employees hired after the statutes' effective date, May 21, 2010. However, the Association argues that the Sick Leave Payment Provision remains mandatorily negotiable and valid for employees hired before May 21, 2010.

Where a statute is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically, and comprehensively. 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).

Here, we find that N.J.S.A. 18A:30-3.5 applies only to "elected officials" and other high level employees as defined in the third paragraph of the statute. The Recognition Clause of the parties' CNA covers teachers, nurses, guidance counselors, librarians, special services personnel, substance awareness coordinator, athletic trainer, administrative assistants, full-time custodians and maintenance personnel, and excludes the Superintendent, Business Administrator, Principals, Assistant Principals, among others. Accordingly, that statute is inapplicable to the Sick Leave Payment Provision.

However, regarding N.J.S.A. 18A:30-3.6, we find that the phrase "or are terminated as a result of a reduction-in-force" in the Sick Leave Payment Provision is statutorily preempted and not mandatorily negotiable for employees hired on or after May 21, 2010, but is mandatorily negotiable for employees hired before May 21, 2010. See Southampton Tp., P.E.R.C. No. 2018-57, 45 NJPER 28 (¶8 2018). In Southampton, we found a similar sick leave payment provision statutorily preempted by N.J.S.A. 40A:9-10.4, which is nearly identical to N.J.S.A. 18A:30-3.5 and 3.6 except that it applies to non-civil service employers rather than



boards of education. These statutes mandate that supplemental compensation for accumulated sick leave shall be payable only at the time of retirement for employees hired after the effective date of the statutes, which is May 21, 2010 for N.J.S.A.

18A:30-3.6. See Little Falls Tp., P.E.R.C. No. 2016-42, 42 NJPER 303 (¶87 2015).

ORDER

The Agency Fee Provision is not mandatorily negotiable without the critical qualification that the provision is inapplicable to employees who do not consent to agency fee deductions. Thus, the Agency Fee Provision, as written, is not mandatorily negotiable. The Sick Leave Payment Provision is not mandatorily negotiable for employees hired after May 21, 2010, but is mandatorily negotiable for employees hired before May 21, 2010.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself.

ISSUED: August 26, 2021

Trenton, New Jersey