

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOONACHIE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-100

MOONACHIE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Moonachie Board of Education for a restraint of binding arbitration of a grievance filed by the Moonachie Education Association. The grievance asserts, in part, that the Board violated the parties' collective negotiations agreement by failing to recredit an employee with sick leave for absences covered by a 1982 workers' compensation claim and by denying the employee extended sick leave benefits. Cases interpreting N.J.S.A. 18A:30-6 have required that extended sick leave determinations be based on a school board's consideration of individual circumstances, not on an application of a negotiated rule. The Commission finds, given this case law, that this claim for extended sick leave is not enforceable through binding arbitration.

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, Anthony P. Sciarrillo, attorney

For the Respondent, John Biondi, NJEA Representative

DECISION AND ORDER

On March 1, 1996, the Moonachie Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Moonachie Education Association. The grievance asserts, in part, that the Board violated the parties' collective negotiations agreement by failing to recredit an employee with sick leave for absences covered by a 1982 workers' compensation claim and by denying the employee extended sick leave benefits.

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

^{1/} The parties agreed to hold this case in abeyance while they explored settlement.

The parties entered into a collective negotiations agreement effective from July 1, 1995 through June 30, 1998. In Article I, the Board recognized the Association as the exclusive representative for all certificated teachers and the nurse/health instructor. The agreement's grievance procedure ends in binding arbitration. Article XI provides:

A. Teachers shall be allowed sick leave with full pay for ten days each school year. Any unused allowance shall be accumulated. Teachers employed after the beginning of the official school year shall be entitled to one (1) sick leave day for each month remaining in the school year, such days to be accumulated in the same manner as stated above.

B. Records of absence due to illness will be kept by the Board. The Board agrees to notify each staff member of his accumulated days by the first day of school.

C. A teacher absent by reason of illness beyond the expiration of his accumulated sick leave will receive payment of the difference between the substitute and his daily salary until a full-time replacement is hired.

Carmella Mucci is a tenured teacher employed by the Board since September 1, 1964. On February 9, 1996, the Association filed a grievance on Mucci's behalf seeking restoration of sick leave in accordance with the terms of the final disposition of a 1982 workers' compensation case and payment for extended sick leave pursuant to Article XI.C. The Board denied the grievance and the Association sought arbitration. This petition ensued.

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 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. Specifically we do not address the Board's argument that the portion of the grievance seeking credit for absences covered by a 1982 workers' compensation claim is untimely.

The Board's sole negotiability argument is that N.J.S.A. 18A:30-6 preempts the extended sick leave claim. That statute 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.

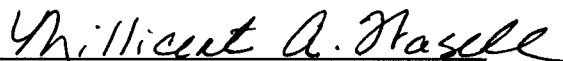
Cases interpreting N.J.S.A. 18A:30-6 have required that extended sick leave determinations be based on a school board's consideration of individual circumstances, not on an application of a negotiated rule. See, e.g., Piscataway Tp. Bd. of Ed. v.

Piscataway Maint. & Cust. Ass'n, 152 N.J. Super. 235 (App. Div. 1977); 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); Red Bank Bor. Bd. of Ed., P.E.R.C. No. 96-2, 21 NJPER 270 (¶26174 1995); Toms River Bd. of Ed., P.E.R.C. No. 94-68, 20 NJPER 59 (¶25022 1993); Bayonne Bd. of Ed., P.E.R.C. No. 89-25, 14 NJPER 579 (¶19245 1988); Essex Cty. Voc. School Dist. Bd. of Ed., P.E.R.C. No. 88-36, 13 NJPER 812 (¶18311 1987); Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 83-112, 9 NJPER 155 (¶14073 1983). Given this case law, the claim for extended sick leave is not enforceable through binding arbitration.

ORDER

The request of the Moonachie Board of Education for a restraint of binding arbitration is granted to the extent the grievance seeks additional paid sick leave.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997