

P.E.R.C. NO. 84-102

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY REGIONAL HIGH
SCHOOL DISTRICT NO. 1,

Petitioner,

-and-

Docket No. SN-84-16

UNION COUNTY REGIONAL FED-
ERATION OF TEACHERS, LOCAL
3417,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that Union County Regional Federation of Teachers, Local 3417 filed against Union County Regional High School District No. 1. The grievance challenged the District's decision to require staff members absent for five days because of illness to attend a conference with the principal.

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LOCAL 3417,

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Appearances:

For the Petitioner, Weinberg and Manoff, P.A.
(Richard J. Kaplow, of Counsel)

For the Respondent, Sauer, Boyle, Dwyer & Canellis, P.C.
(Christopher M. Howard, of Counsel)

DECISION AND ORDER

On October 27, 1983, Union County Regional High School District No. 1 ("District") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The District seeks a permanent restraint of binding arbitration over a grievance the Union County Regional Federation of Teachers, Local 3417 ("Local 3417") has filed. The grievance concerns the superintendent's promulgation of a policy entitled "Modification in Attendance Procedures Pertaining to Frequent and Intermittent Absences." Specifically in dispute now is a requirement that a staff member absent for five days because of illness attend a conference with the principal.

The parties have filed briefs and documents. The following facts appear.

Local 3417 is the majority representative of the District's teaching personnel. The District and Local 3417 have entered into a collective negotiations agreement effective between September 1, 1982 and August 31, 1984. That agreement contains a grievance procedure culminating in binding arbitration. Article XVII B., entitled Doctor's Certificate, provides, in pertinent part:

1. In all cases of personal illness of four (4) or more consecutive days, a certificate signed by the attending physician shall be furnished by the employee upon return to duty upon request.

2. In the case of frequent or intermittent illness, the Board or superintendent may require the employee to submit a certificate of illness signed by the attending physician, or submit to an examination or series of examinations by the school physician. As a general rule such a request will not be made until after the third day of illness.

* * *

4. Any employee who is absent for more than five (5) consecutive school days shall notify his/her principal as to the nature of his/her disability and the anticipated date of resumption of normal duties as indicated by the employee's physician.

On February 7, 1983, the superintendent promulgated a bulletin entitled "Modification in Attendance Procedures Pertaining to Frequent and Intermittent Absences." That bulletin is attached to this opinion as an appendix.

On March 11, 1983, Local 3417 filed a grievance. The grievance asserted that the bulletin violated Article XVII B and sought the bulletin's rescission.

The District contends that it has a non-negotiable managerial prerogative to establish a sick leave verification policy applicable to frequent and intermittent absences. It relies upon In re Piscataway Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982) ("Piscataway I"); In re Freehold Regional High School District Bd. of Ed., P.E.R.C. No. 83-10, 8 NJPER 438 (¶13206 1982) ("Freehold"); and In re Rahway Valley Sewerage Authority, P.E.R.C. No. 83-80, 9 NJPER 52 (¶14026 1982) ("Rahway"). In addressing the negotiability of the bulletin's conference requirement, the District stresses that:

It cannot be overemphasized that the February 7th, 1983, administrative procedures in no way impose any discipline upon employees who exceed the stipulated number of daily absences within the prescribed time frame. Instead the procedures simply provide a uniform and rational basis for deciding whether counseling, physician verification, etc., is appropriate in any given situation. In no case will a disciplinary action be taken solely because an employee has exceeded the prescribed limitations on absences. In this manner, each employee is assured of being allowed the full number of sick days provided by the agreement but may be counseled or asked for supplemental verification regarding frequent or intermittent patterns of absenteeism which have an adverse affect on overall job performance.^{1/}

Local 3417 asserts that while the establishment of a sick leave verification policy is not mandatorily negotiable

^{1/} The District also asserts that it has a contractual prerogative under a management rights clause to promulgate the bulletin. In scope of negotiations cases, however, we only address the abstract issue of whether the subject matter in dispute is negotiable; we do not address the contractual merits of a grievance or asserted defense. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975).

under Piscataway I, the requirement of a conference set forth in paragraph 2 of the bulletin is a form of discipline which must be negotiated under N.J.S.A. 34:13A-5.3.

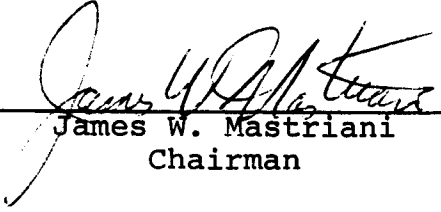
In Piscataway I, the Commission determined that the mere establishment of a sick leave verification policy is not mandatorily negotiable. The application of the policy, however, may be submitted to contractual grievance procedures. See also In re Piscataway Twp. Bd. of Ed., P.E.R.C. No. 83-111, 9 NJPER 152 (¶14072 1983); In re City of East Orange, P.E.R.C. No. 84-68, 10 NJPER ____ (¶____ 198_); In re City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER ____ (¶____ 198_); Freehold; Rahway.

In the instant case, it appears that only the negotiability of paragraph 2's requirement of a conference is specifically in dispute. We do not believe, given the limitations the Board has placed on the purposes of the conference, that its ability to hold such a conference is mandatorily negotiable. In the instant case, there is simply no indication that the employer has, as a result of holding a conference, withheld sick leave benefits. Thus, on balance, we believe that paragraph 2's requirement of a conference predominantly affects the Board's managerial prerogative to establish sick leave verification policies.

ORDER

The Public Employment Relations Commission restrains binding arbitration over the grievance of the Union County Regional Federation of Teachers, Local 2417 concerning the February 7, 1983 bulletin entitled "Modification in Attendance Procedures Pertaining to Frequent and Intermittent Absences."

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch and Suskin voted in favor of this decision. Commissioners Graves and Hipp opposed the decision. Commissioner Newbaker abstained and Commissioner Hartnett was not present.

DATED: Trenton, New Jersey
February 15, 1984
ISSUED: February 16, 1984

APPENDIX

I. MODIFICATION IN ATTENDANCE PROCEDURES PERTAINING TO FREQUENT AND INTERMITTENT ABSENCES

As a result of a review of the administrative procedures utilized in cases of frequent or intermittent illness and the request by staff to consider individual records of absence rather than automatically applying the 5-day rule to everyone, the following has been developed:

1. The definition of frequent and intermittent illness has not been changed. It is still defined as 5 days of personal illness and includes individual days or up to 3 days of consecutive illness.
2. When a staff member is absent for 5 days of personal illness, he/she must participate in a conference with the Principal. The purpose of the conference is for the Principal to ascertain why the 5 days of illness occurred and also to provide positive attendance counseling.
3. Prior to the conference, the Principal will review the staff member's record of attendance for the past three-year period. The Principal will ascertain whether the absence rate has averaged more than 5 days of personal illness per year over the three-year period. An average of more than 5 days of personal illness absence for the past three-year period will be considered to be indicative of the need for receipt of a physician's note for the next (6th) day of absence.
4. As a result of this conference and the historical record of absences over the past three-year period, the Principal will:
 - a. forward the name of the staff member to the Superintendent with the recommendation that the staff member receive a letter mandating that a physician's note is required for each day of personal illness beginning with the next (6th) day of absence; or,
 - b. forward the name of the staff member to the Superintendent with the notation that although the staff member has reached 5 days of personal illness this year, due to the attendance record in the past 3 years and/or other extenuating circumstances, no letter is to be sent requiring a physician's note for the next (6th) day of absence. However, should a pattern of continuing personal illness absence be found, the Principal will forward the name of the staff member to the Superintendent and recommend that a physician's note be required for additional days of absenteeism.

These modifications in administrative procedures will be implemented for second semester; i.e., effective January 31, 1983.