

P.E.R.C. NO. 94-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOMS RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-1

SUPERVISORY COUNCIL OF
TOMS RIVER SCHOOLS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable a contract provision that the Supervisory Council of Toms River Schools seeks to include in a successor agreement with the Toms River Board of Education to the extent the provision requires the Board to grant extended sick leave to its employees after they have exhausted their annual sick leave and their accumulated sick leave.

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Appearances:

For the Petitioner, James L. Rigassio, Metzler Associates

For the Respondent, Wayne J. Oppito, attorney

DECISION AND ORDER

On July 2, 1993, the Toms River Board of Education petitioned for a scope of negotiations determination. The Board seeks a determination that a provision in its expired collective negotiations agreement with the Supervisory Council of Toms River Schools is not mandatorily negotiable. The Council seeks to include the provision in a successor agreement.

The parties have filed briefs. These facts appear.

The Council represents the Board's principals, assistant principals, educational supervisors, guidance and athletic directors and psychologists. The parties' collective negotiations agreement is effective from July 1, 1989 through June 30, 1993. Article 11 governs sick leave. It provides:

A. All Council members employed shall be entitled to sick leave days at the accumulative

rate of one day per month of employment for each school year.

B. It is further agreed that such sick leave as may be unused shall be accumulative without limit from year to year. Additional sick benefits shall be allowed according to the following schedule.

1. After a Council member has been in the Toms River School system for three years, and has completely utilized his or her sick leave, the member will receive five days remuneration at 2/3rds his or her regular pay. After expiration of the above mentioned five days of special consideration, a full day's pay will be deducted.

a. For each complete year of service beyond three years, the Council member will be eligible for a maximum of an additional five days of pay at 2/3rds his or her regular pay. For example, after six years of service, the member is eligible for fifteen (15) days of the above described special pay; after ten (10) years of service the member is eligible for thirty-five (35) days of special pay consideration.

b. If a Council member utilizes part or all of the eligible days of special sick leave pay consideration, this figure shall be subtracted from the total normally allowed that member for the following year or years if there had been illness beyond "sick leave" time. For example, if an administrator or supervisor after eight (8) years of service finds it necessary to utilize all twenty-five (25) days of special sick leave pay consideration, he or she shall be eligible for only five more such days after nine (9) years of service.

C. Upon retirement and after twenty (20) years of service in the district, unused sick leave will be compensated with pay for one (1) day for every three (3) days accumulated up to a maximum of five thousand (\$5,000) dollars. (one day = 1/240 of annual salary).

The Board contends that the second sentence of Section B and the following subsections violate a statutory prohibition against granting school employees extended sick leave on a blanket basis. The Association contends that the sick leave provisions are not preempted.

In Lyndhurst Bd. of Ed., P.E.R.C. No. 91-16, 16 NJPER 481 (¶21208 1990), aff'd App. Div. Dkt. No. A-341-90T2 (4/12/91), we addressed the negotiability of a similar extended sick leave benefit provision. We stated:

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; it must eliminate the employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

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.

This section preempts negotiations over any proposal granting extended sick leave on a

uniform or blanket basis. Extended sick leave determinations must be based on a consideration of individual circumstances, not on an application of a negotiated rule. See, e.g., Piscataway; Bayonne Bd. of Ed., P.E.R.C. No. 89-25, 14 NJPER 579 (¶19245 1988); Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 83-112, 9 NJPER 155 (¶14073 1983).

N.J.S.A. 18A:30-7 provides:

Nothing in this chapter shall affect the right of the board of education...to grant sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year.

This section permits negotiations over the initial number of sick leave days above the statutory minimum of ten days a year granted by N.J.S.A. 18A:30-2. Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78 (¶18036 1986); Newark Bd. of Ed., P.E.R.C. No. 85-24, 10 NJPER 545 (¶15254 1984). The order in which sick leave is taken -- for example, non-accumulative days before accumulative -- is also negotiable. Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd App. Div. Dkt. No. A-3379-80T2 (4/5/82), certif. disp. as improvidently granted, 93 N.J. 263 (1983). But N.J.S.A. 18A:30-6 does not permit negotiations over sick leave days which would automatically become available after all annual sick leave days and accumulative sick leave days had been exhausted. Verona Bd. of Ed., P.E.R.C. No. 79-29, 5 NJPER 22 (¶10014 1978), aff'd App. Div. Dkt. No. A-1696-78 (5/8/80); E. Orange Bd. of Ed., P.E.R.C. No. 79-4, 4 NJPER 309 (¶4155 1978). [Id. at 482]

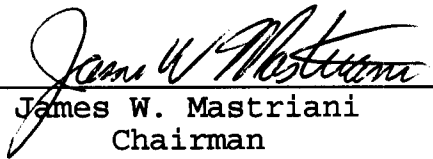
We hold that N.J.S.A. 18A:30-6 preempts negotiations of paragraph B's additional sick leave benefits. As in Lyndhurst, this provision does not simply grant a higher initial number of sick

leave days than the statutory minimum; instead, it requires the Board to grant extended sick leave to its employees after they have exhausted their annual sick leave and their accumulated sick leave.

ORDER

Article 11, paragraph B is not mandatorily negotiable to the extent it requires the Toms River Board of Education to grant extended sick leave to its employees after they have exhausted their annual sick leave and their accumulated sick leave.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Regan abstained from consideration.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993