

P.E.R.C. NO. 92-114

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-79

WEST ORANGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the West Orange Education Association against the West Orange Board of Education. The Association seeks to arbitrate a claim that the Board violated the parties' collective negotiations agreement and past practice when it discontinued health insurance benefits for employees on unpaid leaves of absence. The Commission finds that health insurance benefits during unpaid leaves of absence are mandatorily negotiable.

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Appearances:

For the Petitioner, Stephen J. Christiano, of counsel

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On February 24, 1992, the West Orange Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the West Orange Education Association. The Association seeks to arbitrate a claim that the Board violated the parties' collective negotiations agreement and past practice when it discontinued health insurance benefits for employees on unpaid leaves of absence.

The parties have filed exhibits and briefs. These facts appear.

The Association represents the Board's certificated personnel. The parties entered into a collective negotiations agreement effective from July 1, 1990 through June 30, 1992.

Article XV is entitled Sick Leave and Temporary Leaves of Absence. Sections A, B, E, I, and L provide:

A. Sick Leave for Personal Illness

1. All Full-time employees and part-time regularly contracted secretaries shall be allowed ten (10) days or two (2) calendar weeks' absence annually with full salary for sickness in person or quarantine. All employees shall receive credit for their accumulated days of sick leave as of June 30, 1954. Thereafter, all unused sick leave shall be added to the accumulated total. Full salary shall be paid for absence due to sickness until such accumulated leave is exhausted. Thereafter, full salary shall be deducted in accordance with the present method of calculating the daily rate.

2. Employees shall be given a written notice of accumulated sick leave and supplementary sick leave no later than September 30th of each year.

B. Supplementary Sick Leave

1. Full-time employees shall be credited with five (5) days supplementary sick leave allowance for each year of service, beginning with the 1960-61 school year, with unused days to be accumulated. Full-time employees who have exhausted their regular sick leave may utilize the accumulated supplementary sick leave to the extent necessary to provide total compensation of up to three (3) days beyond this period in any month wherein less than three (3) days' compensation has been earned.

E. Leave of Absence Due to Personal Illness

Employees may request, in writing, a leave of absence due to illness of health reasons. Such a request shall be made to the Superintendent of Schools who shall transmit the request for Board action. The Board reserves the right to grant special extension of such leave in individual cases which, in its judgment, are deserving of such. Accumulated sick leave and supplementary days will be paid to employees granted a Sick Leave of Absence. Payment of the above

accumulated sick days will terminate at the end of the leave of absence or when the accumulated days are exhausted, whichever comes first.

I. Maternity

The Board will provide leaves of absence for maternity as provided by the statutes and court decisions.

L. Other leaves of absence without pay may be granted to tenure teachers.

The grievance procedure ends in binding arbitration.

On January 22, 1992, the Association filed a grievance asserting its claim. The Board denied the grievance; the Association demanded arbitration; and this petition ensued.

The Board asserts that N.J.S.A. 18A:30-1, as interpreted by Hackensack Bd. of Ed. v. Hackensack Ed. Ass'n, 184 N.J. Super. 311 (App. Div. 1982), prohibits allowing employees who are not disabled to use sick leave. The Association responds that this dispute does not involve the use of sick leave under N.J.S.A. 18A:30-1, but rather the mandatorily negotiable subjects of health insurance and unpaid leaves of absence.

Sick leave, unpaid maternity leaves, and health insurance are all mandatory subjects of negotiations in general. See, e.g., Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243 (App. Div. 1977); City of Atlantic City, P.E.R.C. No. 88-93, 14 NJPER 313 (¶19112 1988), aff'd App. Div. Dkt. No. A-4580-87T3 (5/30/89), certif. den. 117 N.J. 636 (1989). Ocean Tp. Bd. of Ed., P.E.R.C. No. 86-60, 11 NJPER 716 (¶16250 1985); City of New Brunswick, P.E.R.C. No. 85-61, 11 NJPER

24 (¶16012 1984); Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984). A grievance concerning such subjects would thus be legally arbitrable unless preempted by a statute or regulation which expressly, specifically, and comprehensively fixes the employment condition in dispute. Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed., 91 N.J. 38, 44 (1982).

N.J.S.A. 18A:30-1, provides:

Sick leave is hereby defined to mean the absence from his or her post of duty, of any person because of personal disability due to illness or injury, or because he or she has been excluded from school by the school district's medical authorities on account of a contagious disease or of being quarantined for such a disease in his or her immediate household.

N.J.S.A. 18A:30-2 requires that a school board grant each employee a minimum of 10 paid sick leave days each year and N.J.S.A. 18A:30-3 requires that a school board permit employees to accumulate unused sick leave days for use in future years. If an employee exhausts all annual and accumulated sick leave, N.J.S.A. 18A:30-6 authorizes a school board to exercise its non-negotiable discretion in each individual case to continue paid sick leave. A school board may also continue unpaid leaves pursuant to a negotiated agreement. N.J.S.A. 18A:30-7 authorizes a school board to grant paid leaves of absence for reasons besides illness and limits the number of accumulative sick leave days to 15 a year.

Hackensack held that a teacher who is not sick as defined by N.J.S.A. 18A:30-1 may not use the paid sick leave days granted by N.J.S.A. 18A:30-2 and N.J.S.A. 18A:30-3. The Court thus restrained

arbitration over a grievance asserting that a nondisabled teacher should have been allowed to use statutorily-mandated sick leave days for child-rearing. The Court noted, however, that the employer could have provided for a paid child-rearing leave under N.J.S.A. 18A:30-7 so long as statutorily-mandated sick leave days were not used.

Hackensack does not control this case. There, the grievant was seeking to be paid for statutory sick leave days. Here, the Association is not seeking to use paid sick leave days mandated by statute (and incorporated in Section A of Article XV).^{1/} It is instead asserting that employees should continue to receive health insurance benefits during unpaid leaves of absence. The issue before us, therefore, is narrow. Could the Board legally have agreed to continue health insurance benefits for employees on unpaid leaves of absence? We believe the answer is yes. The Board has cited statutes regulating the use of paid sick leave. It has not cited any statutes prohibiting an agreement to provide health insurance during unpaid leaves of absence. We therefore will not restrain binding arbitration.

In its brief, the Board states that this dispute concerns health benefits during unpaid maternity leaves. Although the Association does not limit its claim to employees on maternity leave, we note that the Family Leave Act, N.J.S.A. 34:11B-1 et seq.,

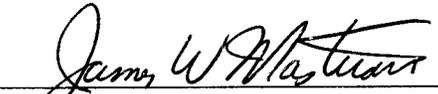
^{1/} Nor does the Association appear to be claiming that Article XV.B.1 entitles employees to extended paid sick leave. Piscataway.

requires the continuation of health insurance coverage during the 12-week unpaid family leaves required under that act. N.J.S.A. 34:11B-8. It also provides that the act shall not be construed to prohibit the negotiation and provision through collective bargaining agreements of leave policies or benefit programs which provide benefits in excess of those required by the act.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992
Trenton, New Jersey
ISSUED: April 29, 1992