

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG BOROUGH EDUCATION ASSO-
CIATION,

Petitioner,

Docket No. SN-80-60

-and-

WATCHUNG BOROUGH BOARD OF
EDUCATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission determines that a provision of a collective negotiations agreement which provides disability income insurance is a required subject of negotiations. Contrary to the argument of the Board, the Commission concludes that N.J.S.A. 18A:30-6, which prohibits the granting of extended sick leave on other than an individual basis, does not preclude the negotiation of disability income insurance. The statute is not a specific statute which preempts negotiations regarding this matter. The Commission notes that although it is the Board which pays the insurance premiums, it is the insurance carrier which pays any benefits.

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Appearances:

For the Petitioner, Rothbard, Harris & Oxfeld, Esqs.
(Mr. Sanford R. Oxfeld, of Counsel)

For the Respondent, Daniel C. Soriano, Esq.

DECISION AND ORDER

On December 11, 1979, a Petition for Scope of Negotiations Determination was jointly filed with the Public Employment Relations Commission by the Watchung Borough Board of Education (the "Board") and the Watchung Borough Education Association (the "Association") seeking a determination concerning the negotiability of a portion of Article XVI^{1/} of the collective negotiations agreement between the parties. This disputed provision provides for disability income insurance.^{2/}

1/ The pertinent provision of the article follows: "As of July 1, 1973, the Board will provide disability income protection, as outlined in the Union Mutual Life Insurance Company master contract, henceforth referred to as Disability Plan, and as designated below. The Board shall pay the full premium for each qualified teacher. To be qualified a teacher must be employed at 3/4 or more of full time."

2/ This dispute arose due to opinion of the Board's attorney that the provision was illegal. The parties agreed to submit this petition and let the Commission determine the continued enforceability of the provision.

The Board argues that this provision is an illegal subject of negotiations because negotiations are preempted by N.J.S.A. 18A:30-6.^{3/} Although the Board recognizes that prior Commission and judicial decisions are distinguishable in that they did not involve disability insurance provisions, it nonetheless asserts that any benefit provided on a blanket or automatic basis is ultra vires the statute. The Commission has held^{4/} and the Board and the Association acknowledge that any agreement which provides for blanket extended sick leave violates N.J.S.A. 18A:30-6 and is an illegal subject for negotiations. The Board contends that any benefit granted on a blanket basis after a disabled employee has exhausted sick leave is inconsistent with N.J.S.A. 18A:30-6 and, hence, is an illegal subject of negotiations.

The Association avers that the disputed provision is a term and condition of employment and the sole question is whether it contravenes N.J.S.A. 18A:30-6. Simply stated, the Association contends that the disputed provision bears no relationship with the statute since there is no grant of extended sick leave.

Initially, the Commission must determine whether the

^{3/} See e.g., 18A:30-6. Prolonged absence beyond sick leave period. 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.

^{4/} Rockaway Twp. Ed. Assn. and The Board of Ed. of the Twp. of Rockaway, P.E.R.C. No. 78-12, 3 NJPER 325 (1977); Teaneck Board of Education and Teaneck Teachers' Assn., P.E.R.C. No. 78-18, 3 NJPER 329 (1977), affm'd App. Div. Docket No. A-948-77, (1978); Borough of Verona Board of Education and Verona Education Assn., P.E.R.C. No. 79-29, 5 NJPER 22 (¶10014 1978), appeal pending App. Div. Docket No. A-1696-78.

issue is a term and condition of employment. Then, under the mandate of the Supreme Court in State v. State Supervisory Employees Association, 78 N.J. 54 (1978), the Commission must determine whether negotiations with respect to the term and condition of employment, if that is what it is, are preempted by a specific statute. There can be no doubt that sick leave and other leaves of absence are terms and conditions of employment.^{5/} Furthermore, blanket extended sick leave which contravenes N.J.S.A. 18A:30-6 is an illegal subject of negotiations.^{6/}

The Appellate Division in Piscataway held:

We do not mean to imply that nothing pertaining to sick leave or other leaves of absence may be negotiated merely because the subject is covered by N.J.S.A. 18A:30-1 et seq. We are certain that there is ample room for negotiation on particular matters. But we need not stake out the boundaries of that which is mandatorily negotiable within the framework of that statute.... Our concern is over the payment of salary, in whole or in part, for prolonged absence beyond the allowable annual and accumulated sick leave. As to such payment, the controlling statute, N.J.S.A. 18A:30-6, plainly leaves the matter to the discretion of the local board of education, which may pay any such person each day's salary, less the pay or estimated cost of a substitute for such length of time as may be determined by the board of education in each individual case. 152 N.J. Super. at 246.

The concern of the Court was with a board of education granting leave and paying the salary of an employee without determining such payment

^{5/} Burlington County College Faculty Assn. v. Board of Trustees, 64 N.J. 10 (1973).

^{6/} See cases cited in note 4 and Board of Education Piscataway Twp. v. Piscataway Maintenance and Custodial Assn., 152 N.J. Super 235, (App. Div. 1977).

on a case-by-case method.

In the instant matter, the disputed provision concerns a disability insurance policy, and not the grant of extended sick leave on a blanket basis. The latter would incur an obligation on the part of the Board to grant an employee leave and to pay the employee his/her salary. The former, the disputed provision, creates no obligation on the part of the Board to grant the leave. It cannot be denied that the Board has an obligation to pay the insurance premiums,^{7/} but the key element is the granting of the leave.

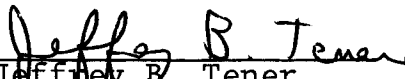
This distinction is the "ample room" for negotiations as expressed by the Court in Piscataway, supra. This disability policy does not contravene N.J.S.A. 18A:30-6 nor does the statute specifically preclude disability insurance. In fact, it is a policy which the employees as individuals or as a group could purchase. The Association has simply been successful through negotiations in having the Board agree to pay for the disability insurance policy which intimately effects terms and conditions of employment without interfering with the exercise of managerial prerogatives pertaining to the determination of governmental policy. Disability insurance simply provides employees with the security that they will receive income even when disabled.

^{7/} The Board pays the premiums; it does not provide extended sick leave benefits. Any benefits are paid by the insurance carrier.

ORDER

Accordingly, for the reasons cited herein, the Commission finds the disputed provision to be a term and condition of employment and is valid and enforceable.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener and Commissioner Parcels voted for this decision. Commissioners Hipp and Newbaker abstained. Commissioner Graves was not present at the time of the vote. Commissioner Hartnett was not present. None opposed.

DATED: Trenton, New Jersey
February 19, 1980
ISSUED: February 21, 1980