

P.E.R.C. NO. 96-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK BOROUGH
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-87

RED BANK TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Red Bank Teachers Association against the Red Bank Borough Board of Education. The grievance seeks 40 days of additional sick leave for a teacher pursuant to a contractual sick leave provision. The Commission reaffirms that N.J.S.A. 18A:30-6 provides that extended sick leave determinations must be based on a school board's consideration of individual circumstances, not on an application of a negotiated rule.

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, Kenney, Gross & McDonough, attorneys
(Malachi J. Kenney, of counsel; Mark S. Tabenkin, on the
brief)

For the Respondent, Klausner Hunter & Seid, attorneys
(Stephen B. Hunter, of counsel; Lawrence Van Wess, on the
brief)

DECISION AND ORDER

On April 5, 1995, the Red Bank Borough Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Red Bank Teachers Association. The grievance seeks 40 days of additional sick leave for a teacher pursuant to a contractual sick leave provision.

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

The Association represents the Board's professional certificated personnel. The parties entered into a collective negotiations agreement effective from July 1, 1993 through June 30, 1995. The agreement's grievance procedure ends in binding

arbitration. Article XV of the agreement is entitled "Sick Leave."

It provides, in part:

A. All teachers employed shall be entitled to one day of sick leave per month based upon their contractual term of employment. Unused sick leave days shall be accumulated from year to year with no maximum limit.

B. Non-accumulative sick leave benefits shall be allowed to teachers according to the following schedule: Up to forty (40) days additional sick leave each year less the cost of a substitute. Additional sick leave for a major illness without any cost to the teacher may be requested of the Board by the individual teacher. Approval of such additional leave shall not be unreasonably denied.

Anne Marie R. Facendo is a teacher. On or about December 23, 1994, she exhausted her ten days of sick leave for the 1994-95 school year. She had no accumulated sick leave days. On December 30, she wrote to the superintendent:

I am writing to you today to request that you petition the Red Bank Board of Education on my behalf for an additional forty days of sick leave, less the cost of a substitute teacher, as stated in Article 15, Section B of the R.B.T.A. Teacher's Contract.

Her request was denied.

On January 31, 1995, the Association filed this grievance:

The Red Bank Teachers Association is filing a grievance on behalf of Ms. Anne-Marie Facendo in that she was denied sick leave in accordance with Article XV of the Collective Bargaining Agreement currently in effect between the parties.

The relief sought from the Red Bank Borough Board of Education is the immediate granting of her request for forty (40) days additional sick leave.

On March 3, 1995, the Board's attorney informed the Association that the Board had denied the grievance. His letter stated that the Board believed that Section B of Article XV violated applicable statutes and that any decision on a request for additional paid leave must rest in the sole discretion of the Board. His letter also explained that the decision not to grant the leave was based on the district's severe budgetary constraints and, more specifically, on the refusal of the Commissioner of Education to restore funding to the budget for additional fifth and sixth grade classes.

On March 3, 1995, the Association demanded arbitration. This petition ensued.

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 statute provides that extended sick leave determinations must 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

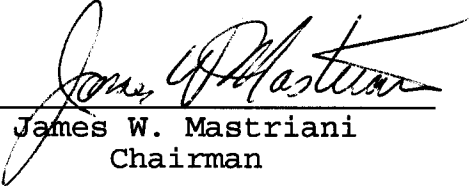
Supp.2d 252 (¶210 App. Div. 1991); Bayonne Bd. of Ed., P.E.R.C. No. 89-25, 14 NJPER 579 (¶19245 1988); Matawan-Aberdeen Reg. School Dist. Bd. of Ed., P.E.R.C. No. 83-112, 9 NJPER 155 (¶14073 1983).

We therefore restrain arbitration over any claim that the Board was obligated to grant Facendo additional sick leave beyond that provided by Article XV, Section A.

ORDER

The request of the Red Bank Borough Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: July 28, 1995
Trenton, New Jersey
ISSUED: July 28, 1995