

P.E.R.C. NO. 83-97

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF  
THE BOROUGH OF SAYREVILLE,

Petitioner,

-and-

Docket No. SN-83-21

THE SAYREVILLE EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds non-negotiable a contractual clause which would limit the discretion of the Board of Education of the Borough of Sayreville to grant extended sick leave pursuant to N.J.S.A. 18A:30-6 for more than 90 days.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF  
THE BOROUGH OF SAYREVILLE,

Petitioner,

-and-

Docket No. SN-83-21

THE SAYREVILLE EDUCATION  
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Boehm and Campbell, Esqs.  
(Casper P. Boehm, Jr., of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.  
(Arnold S. Cohen, of Counsel)

DECISION AND ORDER

On August 23, 1982, the Sayreville Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a determination that a contractual provision currently included in its agreement with the Sayreville Education Association ("Association") and proposed for reinclusion in a successor agreement is outside the scope of negotiations. Both parties have supplied briefs.

The contractual provision in dispute, Article 18B, entitled Sick Leave ("18B"), provides:

B. Teachers with more than three years experience in the Sayreville School System who require sick leave in excess of the number of days accumulated, may receive the difference between their salary and that of a daily replacement up to 90 days. The Board reserves the right to deny sick leave under the

provisions of this paragraph for cause.  
(Emphasis supplied) 1/

The Board alleges that 18B is preempted by N.J.S.A.

18A:30-6, which reads:

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. (Emphasis supplied)

The Board claims that the 90 day limitation on the extension of paid sick leave imposed by Article 18B impinges on the Board's statutory obligation to exercise its "unfettered discretion" in deciding each individual case.

The Association maintains that N.J.S.A. 18A:30-6 does not preempt Article 18B because that provision does not limit the Board's right to exercise its discretion in granting paid sick leaves on a case by case basis, does not automatically grant sick leave in direct conflict with the statute, and does not impose a limit on the length of extended sick leaves which the Board may grant.

It is well established that N.J.S.A. 18A:30-6 limits the authority of a board of education to grant extended sick leaves on a uniform or blanket basis. Piscataway Twp. Bd. of Ed.

1/ Article 18C provides: "Tenure teachers requiring sick leave in excess of that provided for above may be granted sick leave without pay, up to two years, unless the Board of Education acts otherwise in a specific case." The petition filed by the Board requests this agency to determine whether Articles 18B and 18C are within the scope of collective negotiations. In its brief, however, the Board only seeks a ruling concerning 18B. Therefore, this determination will be limited to that article.

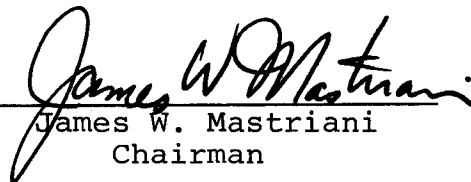
v. Piscataway Maintenance Custodial Assoc., 152 N.J. Super. 235 (App. Div. 1977); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 81-58, 6 NJPER 548, 550 (¶11278 1980); Hoboken Bd. of Ed., P.E.R.C. No. 82-7, 7 NJPER 443, 444 (¶12197 1981). These cases have all held that blanket clauses providing extended sick leave as a matter of right are precluded by N.J.S.A. 18A:30-6. That statute requires the Board to determine the length of such leave, if any, on an individual basis.

Although Article 18B does not automatically entitle employees to extended paid sick leave, it does contain a blanket 90 day limitation on paid leaves that the Board can grant. This limitation restricts the Board's exercise of its discretion in determining the length of such leaves. Therefore, Article 18B, as written, is an illegal subject of negotiation.<sup>2/</sup>

ORDER

IT IS ORDERED that the Sayreville Education Association refrain from insisting on negotiating Article 18B, entitled Sick Leave, as written, with the Sayreville Board of Education.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
January 19, 1983  
ISSUED: January 20, 1983

<sup>2/</sup> The Board has not challenged the negotiability of Article 18B on any other basis than its 90 day limitation on additional paid sick leave.