

P.E.R.C. NO. 96-49

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERNARDSVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-37

BERNARDSVILLE EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds the subject of the grievance filed by the Bernardsville Education Association against the Bernardsville Board of Education is mandatorily negotiable and legally arbitrable. The grievance asserted that the Board violated the parties' collective negotiations agreement when it required teachers seeking personal leave to justify their requests and when it denied some requests. The Commission holds that whether the Board had the right under the collective negotiations agreement to restrict the usage of personal leave time is for an arbitrator, not the Commission, to decide.

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, Schwartz, Simon, Edelstein, Celso & Kessler, attorneys (Lawrence S. Schwartz, of counsel; Mark A. Tabakin, on the brief)

For the Respondent, Klausner & Hunter, attorneys (Stephen E. Klausner, of counsel; Stephen E. Klausner and James P. Madden, on the brief)

DECISION AND ORDER

On October 24, 1994, the Bernardsville Board of Education petitioned for a scope of negotiations determination. The Board sought a restraint of binding arbitration of a grievance filed by the Bernardsville Education Association. The grievance asserted that the Board violated the parties' collective negotiations agreement when it required teachers seeking personal leave to justify their requests and when it denied some requests.

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

The Association represents the Board's classroom teachers, pupil service personnel, and support staff. There are about 170

employees in the unit. The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1994 and until a successor contract is negotiated. The grievance procedure ends in binding arbitration of contractual disputes.

Article VII is entitled Temporary Leaves of Absences. It provides:

A. ALLOWANCES

1. Three (3) workdays of absence per school year shall be allowed, without pay deduction, for urgent personal business. Urgent personal business may include absence for the purpose of caring for a sick member of the immediate family, legal commitments other than jury duty, and other urgent personal business which cannot be handled outside of school hours. It does not include personal illness, vacations, non-urgent business or other activities which can reasonably be expected to be scheduled outside of school hours.

2. EMPLOYEES WHO WORK MORE THAN TWENTY (20) HOURS PER WEEK, AND AIDES WHO WORK LESS THAN TWENTY (20) HOURS PER WEEK ON A PRO RATA BASIS, SHALL RECEIVE:

- a. A maximum of five (5) workdays of absence with full pay shall be allowed for each death in the immediate family. The immediate family shall be considered: father, mother, father-in-law, mother-in-law, spouse, child, brother, sister and any relative who permanently resides in the immediate household.
- b. A maximum of two (2) workdays of absence with full pay shall be allowed for each death in the non-immediate family. The non-immediate family shall be considered anyone not mentioned in Section 2.a of this article who is related by blood or marriage.
- c. A maximum of one (1) workday of absence with full pay shall be allowed for the death of a close friend.

- d. Absences not covered above or in excess of the allowance specified above, and which the board is required by law to grant, shall be granted.
- e. Urgent personal business days which are left unused at the end of the year shall be added to the employee's accumulated sick days.

B. SUPPLEMENTAL ALLOWANCE FOR URGENT PERSONAL BUSINESS

Personal absence for urgent personal business in excess of those specified in Section A.1 may be granted, without pay deduction, by the Superintendent of Schools. In granting such absence, the Superintendent shall be guided by the personal circumstances requiring the absence, the circumstances of the school, and shall be limited to the unused urgent personal business days from previous years. The decision of the Superintendent shall not be arbitrable.

C. OTHER TEMPORARY LEAVES OF ABSENCE

Upon the request of the employee, temporary leaves of absence other than those specified in Sections A and B of this article may be granted by the Superintendent.

When granted they shall be without pay, except in extraordinary circumstances and with the approval of the Board. The decision to grant or deny said leave shall not be arbitrable.

D. PROCEDURE

- 1. Requests for temporary leaves of absence shall be made by the employee to the Superintendent of Schools through the building Principal at least 24 hours in advance. In emergency situations, the 24 hour notice shall be waived provided such notices shall be given as soon as practicable.
- 2. Upon return to duty, the employee shall report the absence on the Report of Absence Form.

E. VERIFICATION

The employee shall be responsible and accountable for correctly categorizing each absence according to the categories of Section A of this article. In the case of absence under Section A.1, it shall not be

necessary to specify the nature of the urgent personal business in order to be granted leave of absence, but the employee shall be accountable for the determination that the business is urgent and cannot be handled outside of school hours.

During the winter of 1993-1994, schools were closed because of snowstorms on an unspecified number of days. The Board rescheduled three of the lost school days. Two days were made up during the February vacation. A third day was made up on Saturday March 5, 1994.

Before the mid-week make-up days in February, the Board and the Association agreed that employees would be permitted to use paid personal leave if they could demonstrate a hardship or had a non-refundable vacation scheduled. No dispute arose over the February make-up days.

Before the Saturday make-up day in March, the administration was worried that eight or nine teachers and staff members would request personal leave, not enough substitute teachers would be available, and classroom coverage would be inadequate. Teachers were told at a staff meeting that requests for "urgent personal business leave" would be approved case-by-case and that the administration would review requests based on the same criteria it had used in February. According to the Board, these criteria included economic hardship and the contractual reasons and exclusions specified in Section A.1.

Six teachers requested leaves on the Saturday make-up day. Five requests were approved. The teacher (Sharon Brum) whose

request was denied had asked leave to attend a friend's wedding; she was allowed to leave early, however. Another teacher (Beth Huck) told an administrator that she had another job, but was told that a request for leave would not be approved so she did not file one. Brum and Huck are from the same elementary school and constitute ten percent of the classroom teachers from that school.<sup>1/</sup>

On April 11, 1994, the Association filed a grievance asserting that the Board had violated the contract on March 5, 1994 by reviewing and denying requests for personal days. According to the Association, the contract precludes the Board from asking for reasons. The grievance sought written assurances that requests would not be reviewed for denial and extra compensation for employees who were denied leaves.

The Board denied the grievance and the Association demanded arbitration. The demand listed this issue to be arbitrated: "denial of urgent personal business days." This petition ensued.

On August 9, 1995, the arbitrator issued an award denying the grievance. She found that:

during the emergency situation, the Board acted reasonably and within its management authority when it instituted the process of verifying leaves in a consistent manner prior to the leave request.

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<sup>1/</sup> One teacher filed a grievance asserting that the Board should not have charged her with a personal day for a make-up day she missed while on a trip to Costa Rica. The parties settled that grievance.

Considering all the facts, this Arbitrator must decide that the Board did not violate the Agreement in reviewing and/or denying UPB leave requests under extraordinary circumstances during the winter of 1993/94.

The Association has sought to have the award vacated by the Superior Court.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we cannot consider the contractual merits of this grievance or any contractual defenses the Board may have.

The issue before us is narrow. The Association does not dispute the Board's power to make up a snow day on a Saturday, and the Board does not dispute the Association's right to seek to arbitrate any claims that individual requests for leave were unreasonably denied given the Board's staffing levels.<sup>2/</sup> The issue before us is simply whether or not, under the circumstances of

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<sup>2/</sup> The Board does assert that the grievance does not encompass any such claims. That assertion is outside our jurisdiction. Ridgefield Park.

this case, the Board had a managerial prerogative to require a statement of reasons for a requested leave and to review those reasons for contractual sufficiency before deciding whether to grant the leave.

Personal leave is a mandatorily negotiable term and condition of employment. In particular, the number of personal leave days and the reasons for allowing personal leave are fully negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243-244 (App. Div. 1977); South Orange-Maplewood Ed. Ass'n, v. South Orange Bd. of Ed., 146 N.J. Super. 457 (App. Div. 1977).

The Board asserts that it has a managerial prerogative to deny a teacher personal leave if necessary to assure adequate staffing levels. We agree. See Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20852 1989); Jersey City Med. Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986); Newark Bd. of Ed., P.E.R.C. No. 80-93, 6 NJPER 53 (¶11028 1980). But this prerogative is not inherently incompatible with a claim that a contract does not require a teacher to disclose the reasons for requesting personal leave before receiving such leave.

The Board argues that Barneget Tp. Bd. of Ed., P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984), creates an exception to the rule that personal leave is mandatorily negotiable. In Barneget, we held that once the parties have contractually agreed that personal leave



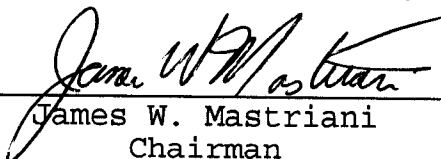
may be used only for specified contractual reasons, the employer has a prerogative to verify that personal leave is being used for one of those reasons. However, Barnegat is limited to a situation where a majority representative does not dispute that the contract restricts the use of personal leave. Wood-Ridge Bd. of Ed., P.E.R.C. No. 92-7, 17 NJPER 380 (¶22179 1992). Barnegat itself noted that employers could legally agree that employees would be able to keep their reasons confidential.

The collective negotiations agreement contains a comprehensive negotiated scheme for paid and unpaid leave. This case centers on whether the Board had the right under the collective negotiations agreement to restrict the usage of personal leave time on March 15, 1994. As in Wood-Ridge that issue is for an arbitrator, not us, to decide. We thus determine that the arbitrator's decision concerned a mandatorily negotiable and legally arbitrable grievance.

ORDER

The subject of the grievance filed by the Bernardsville Education Association against the Bernardsville Board of Education is mandatorily negotiable and legally arbitrable.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: December 21, 1995  
Trenton, New Jersey  
ISSUED: December 21, 1995