QC

SUPREME COURT OF NEW JERSEY
DOCKET NO. 083434

JERSEY CITY EDUCATION ASSOCIATION,	:	Civil Action
Petitioner,	:	On Appeal to the Supreme Court of New Jersey
v.	:	
MOSHE ROZENBLIT and QWON KYU RIM,	:	Sat Below:
Respondents.	:	Hon. Jose L. Fuentes, J.A.D. Hon. Francis J. Vernoia, J.A.D. Hon. Scott J. Moynihan, J.A.D.

PROPOSED AMICUS CURIAE BRIEF ON BEHALF OF THE NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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ON THE BRIEF

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STATEMENT OF INTEREST OF AMICUS CURIAE

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (the Act) established the Public Employment Relations Commission (PERC) in 1968 as the administrative agency charged with administering and enforcing the Act's provisions governing the conduct of collective negotiations in New Jersey public employment. PERC serves the people of the State by preventing or promptly resolving labor disputes. N.J.S.A. 34:13A-2.[1/]

1/ N.J.S.A. 34:13A-2 declares:

> It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prevention or prompt settlement of labor disputes, both in the private and public sectors; that strikes, lockouts, work stoppages and other forms of employer and employee strife, regardless where the merits of the controversy lie, are forces productive ultimately of economic and public waste; that the interests and rights of the consumers and the people of the State, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such public and private employer-employee disputes under the guidance and supervision of a governmental agency will tend to promote permanent, public and private employer-employee peace and the health, welfare, comfort and safety of the people of the State. To carry out such policy, the necessity for the enactment of the provisions of this act is hereby declared as a matter of legislative determination.

PERC is a neutral labor relations agency which is independent to fulfill its statutory, regulatory and public policy mission. The Commission is a seven-member body appointed by the Governor with the advice and consent of the Senate to three-year terms. Two Commission members represent public employees, two represent public employers, and three represent the public.

The Act requires good faith negotiations over terms and conditions of employment. N.J.S.A. 34:13A-5.3. However, the statute does not define the phrase "terms and conditions of employment". Rather, the Legislature vested the Commission with the authority to make determinations as to what subjects are negotiable and what subjects are not negotiable. N.J.S.A. 34:13A-5.4d. Said another way, the Commission makes "scope of negotiations" determinations. Over the years, the Commission has issued over two thousand five hundred decisions clarifying the scope of negotiations.

PERC should be granted amicus curiae status because, in considering the effect of N.J.S.A. 18A:30-7 on the contractual provision providing for union release time, the Appellate Division made a scope of negotiations determination, but did not apply (or even mention) the proper test for negotiability set forth by this Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982). Since PERC is the administrative agency charged by the

Legislature with making scope of negotiations determinations, its participation is beneficial to these proceedings to clarify the appropriate test for determining the impact of N.J.S.A. 18A:30-7 on this dispute.

PRELIMINARY STATEMENT

The Appellate Division made a determination to focus exclusively on the impact of N.J.S.A. 18A:30-7 on this dispute. In doing so, it essentially made a scope of negotiations determination (i.e. determined that the subject of union release time was not a negotiable subject between the Jersey City Board of Education and the Jersey City Education Association). PERC is the administrative agency vested with the authority by the Legislature to make scope of negotiation determinations in the first instance. The appellate panel did not apply or even mention the proper test for negotiability that was established by this Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982), and has been followed by this Court, the appellate courts and the Commission for over thirty-eight years.

If N.J.S.A. 18A:30-7 had been analyzed via the framework of the Local 195 test, the question that should have been asked by the appellate court was whether that statute preempted the issue of union release time. In deciding whether a statute preempts a subject, this Court has held that where a statute addresses a term and condition of employment (i.e. union release time),

negotiations are not preempted unless the statute speaks in the imperative and "expressly, specifically and comprehensively" sets the employment condition. N.J.S.A. 18A:30-7 has been found by both the courts and the Commission to afford Boards of Education discretion to negotiate over union release time. Additionally, absent a preemptive statute or regulation, the issue of union release time has consistently been found to be a negotiable subject. Respectfully, given all of the above considerations, the appellate court decision should be reversed, or this matter should be remanded to PERC to make a scope of negotiations determination.

LEGAL ARGUMENT

POINT I. THE APPELLATE PANEL MADE A SCOPE OF NEGOTIATIONS DETERMINATION WITHOUT APPLYING THE CORRECT TEST.

When the Commission makes a scope of negotiations determination pursuant to the authority vested to it by the Legislature in N.J.S.A. 34:13A-5.4d, it is bound by the seminal test established by this Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982). That test provides that a subject is negotiable when:

> 1) the item intimately and directly affects the work and welfare of public employees;
>
> 2) the subject has not been fully or partially preempted by statute or regulation; and
>
> 3) a negotiated agreement would not significantly interfere with the determination of governmental policy.

The appellate court made a scope of negotiations determination that did not apply or even mention the Local 195 test. In making its determination, the appellate court did not reach the constitutional issue presented by the Respondents, but focused entirely on N.J.S.A. 18A:30-7 and whether that statute authorized the Board to enter into an agreement to provide for union release time.

If N.J.S.A. 18A:30-7 had been analyzed pursuant to the structure of the Local 195 test, the question that should have been asked by the appellate court was whether the statute preempted the issue of union release time. In deciding whether a statute preempts a subject, this Court has held that where a statute addresses a term and condition of employment (i.e. union release time), negotiations are not preempted unless the statute speaks in the imperative and "expressly, specifically and comprehensively" sets the employment condition (as more fully discussed in Point II). Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. Of Educ., 91 N.J. 38, 44 (1982). Once the court chose to focus exclusively on the impact of N.J.S.A. 18A:30-7 on this dispute, the Local 195 preemption standard should have been applied.

The Local 195 preemption standard is well-settled and has been applied by this Court in four decisions. State Troopers Fraternal Ass'n v. State, 149 N.J. 38 (1997)(holding that a DOP

regulation, N.J.A.C. 4A:3-4.20, preempted the implied contractual term that had provided retroactive pay adjustments for troopers who resigned in good standing (except for those employees who resigned prior to the promulgation of the regulation)); N.J. Tpk. Auth. v. N.J. Tpk. Supervisors Ass'n, 143 N.J. 185 (1996)(holding that State laws and policies, including the LAD, that prohibit discrimination do not statutorily preempt the ability of public employees and their representatives to negotiate disciplinary procedures, including binding arbitration, for imposing minor discipline based on workplace sexual harassment charges); Old Bridge Bd. of Education v. Old Bridge Education Ass'n, 98 N.J. 523 (1985)(holding that the authority of a local school district to make a reduction in force under N.J.S.A. 18A:28-9 does not preempt negotiation of procedures for giving notice to teachers of required layoffs); Spiewak v. Board of Education, 90 N.J. 63 (1982)(holding that the tenure statute, N.J.S.A. 18A:28-5, preempts contractual tenure language, so all teaching staff members who work in positions for which a certificate is required, who hold valid certificates, and who have worked the requisite number of years, are eligible for tenure unless they come within the explicit exceptions in N.J.S.A. 18A:28-5 or related statutes such as N.J.S.A. 18A:16-1.1).

The Local 195 preemption standard has been applied by the appellate court in numerous decisions in the 38 years since Local

195 was issued. Matter of New Brunswick Mun. Employees Association, 453 N.J. Super. 408 (App. Div. 2018)(finding that the Chapter 78 health insurance contribution percentages required by N.J.S.A. 52:14-17.28c and N.J.S.A. 40A:10-21.1, which top out at thirty-five percent, are a negotiations floor and do not preempt the provision in the parties' contract requiring eligible retirees to contribute fifty percent of the costs of their health care coverage); Teamsters Local 97 v. State, 434 N.J. Super. 393 (App. Div. 2014)(holding that the 1.5% health insurance contribution requirement enacted in P.L. 2010, c. 2 (codified at N.J.S.A. 52:14-17.28b(c)(2), N.J.S.A. 52:14-17.28b(d), and N.J.S.A. 52:14-17.46.9(b)) preempted the negotiability of contributions below that floor); In re Tp. of Parsippany-Troy Hills, 419 N.J. Super. 512 (App. Div. 2011)(holding that the issue of whether an FMLA eligible employee must submit a completed FMLA medical certification when they have declined FMLA leave, is not preempted by the FMLA, 29 U.S.C.S. § 2612 and its implementing regulations); Jackson Tp. Bd. of Educ. v. Jackson Educ. Ass'n ex rel. Scelba, 334 N.J. Super. 162 (App. Div. 2000), certif. den., 165 N.J. 678 (2000)(holding that N.J.S.A. 18A:27-4.1, which specifies that a school board may renew an employment contract only if the Chief School Administrator has so recommended, does not preempt arbitration over the non-renewal of a teacher's extracurricular golf coach position); State v.

Communications Workers of America, AFL-CIO, 285 N.J. Super. 541 (App. Div. 1995), certif. den. 143 N.J. 519 (1996)(finding that N.J.A.C. 4A:8-1.1 preempted negotiations over a reduction in the hourly work week because it had been amended to allow the State's managerial power to layoff employees to include the power to demote in the form of reductions in hours); Council of N.J. State College Locals, NJSFT, AFT/AFL-CIO v. State, 251 N.J. Super. 577 (App. Div. 1991)(holding that N.J.A.C. 9:6A-3.3(f) and N.J.A.C. 9:6A-3.6(d) do not preempt negotiations on additional procedural protections because they grant discretion to the chancellor on procedural matters); State, Dept. of Corrections v. Communications Workers of America, AFL-CIO, 240 N.J. Super. 26 (App. Div. 1990), certif. den., 122 N.J. 395 (1990)(holding that N.J.A.C. 4A:3-5.3(d), N.J.A.C. 4A:3-5.3(a)(2), and N.J.A.C. 4A:3-5.7(a)2 do not preempt negotiations over compensation for overtime or over compensatory time off on an hour for hour basis because they leave the discretion to the appointing authority); University of Medical and Dentistry of New Jersey v. Univ. of Medicine and Dentistry of New Jersey, Council of American Ass'n of University Professors Chapters, 223 N.J. Super. 323 (App. Div. 1988), aff'd o.b., 115 N.J. 29 (1989)(holding that N.J.S.A. 10:5-2.2 preempts negotiations over the decision by New Jersey State colleges to retire tenured employees upon reaching age 70, but not over the procedural aspects of mandatory retirement for

tenured employees).

Respectfully, once N.J.S.A. 18A:30-7 became the focus of the court's attention in this dispute, the appellate court should have applied the Local 195 preemption standard. Its failure to do so requires a reversal or a remand to PERC to issue a scope of negotiations determination.

POINT II. THE EXPRESS, SPECIFIC AND COMPREHENSIVE LANGUAGE OF N.J.S.A. 18A:30-7 AFFORDS THE BOARD DISCRETION ON THE SUBJECT OF NON-SICK PAID LEAVE.

N.J.S.A. 18A:30-7 provides:

> Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or to grant sick leave over and above the minimum sick leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year.

As stated in Point I, in deciding whether a statute preempts a subject, this Court has held that where a statute addresses a term and condition of employment (i.e. union release time), negotiations are not preempted unless the statute speaks in the imperative and "expressly, specifically and comprehensively" sets the employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. Of Educ., 91 N.J. 38, 44 (1982).

In State v. State Supervisory Employees Ass'n, 78 N.J. 54,

80 (1978), this Court found that statutes and regulations which permit a public employer a degree of discretion have limited preemptive effect. Moreover, this Court held that where the statute or regulation mandates a minimum level of benefits for public employees but does not bar the public employer from choosing to afford them greater protection, proposals by the majority representative seeking benefits in excess of that required by the statute or regulation are mandatorily negotiable.

The express, specific and comprehensive language of N.J.S.A. 18A:30-7 prohibits the accumulation of more than 15 sick leave days in any one year, but otherwise provides discretion on the issues of:

> 1) paid leaves that are not sick leave;
>
> 2) sick leave beyond the minimum 10 days set forth in N.J.S.A. 18A:30-2; and
>
> 3) the accumulation of sick leave beyond 10 days, but limited to the aforementioned 15 in a year, effectively providing a minimum and maximum number of accumulative sick days between which the parties may negotiate.

The critical phrase contained in N.J.S.A. 18A:30-7 that has been interpreted by courts and the Commission as granting discretion to negotiate over paid non-sick leave, rather than setting a term or prohibiting negotiations, is "Nothing in this chapter shall affect the right of the board of education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave..." The

statute leaves open the option for such paid non-sick leave days to be fixed "by rule" (e.g., collective negotiations). This has been distinguished from the language of N.J.S.A. 18A:30-6, which does not permit a board of education to negotiate a general rule granting employees additional, or extended, sick leave once they have exhausted all of their regular and accumulated sick leave.

N.J.S.A. 18A:30-6 provides (emphasis added):

> 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.

N.J.S.A. 18A:30-6, by specifically allowing extended sick leave to only be provided based on the board's determination "in each individual case," precludes the issuance of a generally applicable rule, thereby curtailing the board's discretion to negotiate in the area of extended sick leave.[2/]

2/ See, e.g., Piscataway Tp. Bd. of Ed., 152 N.J. Super. 235, 236 (App. Div. 1977) (N.J.S.A. 18A:30-6 plainly preempts extended sick leave except "as may be determined by the board of education in each individual case"); Hoboken Bd. of Ed., NJPER Supp.2d 113 (¶95 App. Div. 1982) ("N.J.S.A. 18A:30-6 prescribes the method for charging an employee's salary when sick leave exceeds his available annual and accumulated sick leave time"); and West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272, 273 (¶23117 1992), aff'd, NJPER Supp.2d 291 (¶232 App. Div. 1993) ("If an employee

The Commission directly confronted the distinctions between the language of N.J.S.A. 18A:30-6 and N.J.S.A. 18A:30-7 and their effects on the preemption analysis in Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2003-10, 28 NJPER 345 (¶33121 2002). In Bethlehem, the school board argued that N.J.S.A. 18A:30-7 mandates that it exercise its discretion to grant paid "professional leave" (i.e., union release time) on a case-by-case basis. The Commission found the issue of paid union leave to attend the three-day New Jersey School Boards Association convention was mandatorily negotiable. It held:

> [N.J.S.A. 18A:30-6] provides that with respect to additional sick leave, a board is authorized to determine whether and for how long to grant such leave "in each individual case." [18A:30-7] authorizes boards of education to grant "either by rule or by individual consideration," paid leave for absences other than sick leave. Where a statute addresses a term and condition of employment, the Supreme Court has held that negotiations are not preempted unless the statute speaks in the imperative and expressly, specifically and comprehensively sets that employment condition. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). As N.J.S.A. 18A:30-7 provides that paid leaves, other than sick leave can be granted "by rule or by individual consideration," it provides room for discretion and is not preemptive. See State v State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). The number of personal

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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").

> leave days and the reasons for allowing personal leave are negotiable. Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway, 152 N.J. Super. at 243-244; South Orange-Maplewood Ed. Ass'n, v. South Orange Bd. of Ed., 146 N.J. Super. 457 (App. Div. 1977). Paid leaves to attend professional conferences are thus negotiable. See Leonia Bd. of Ed., P.E.R.C. No. 81-115, 7 NJPER 231 (¶12101 1981). Cf. Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513, 515 (¶20213 1989).
>
> [28 NJPER at 346; emphasis added.]

Thus, through N.J.S.A. 18A:30-7, the Legislature chose to speak on the issue of non-sick leave days and to clarify that the Board could fix a rule (i.e. collective negotiations) on that subject. State Supervisory Employees Assn., supra, tells us that statutes concerning terms and conditions of employment which do not speak in the imperative but rather permit a public employer a degree of discretion have limited preemptive effect. Therefore, the multiple provisions setting limitations, minima, maxima, etc. on the use and accumulation of leave found in N.J.S.A. 18A:30-1 et seq. do not wholly regulate the area of paid leave for non-sick leave purposes.

The Commission's view that N.J.S.A. 18A:30-7 does not divest a board of education of its discretion to negotiate non-sick leave days is consistent with multiple judicial decisions interpreting the statute. In Demarest Bd. of Education v. Demarest Education Asso., 177 N.J. Super. 211 (App. Div. 1980),

the Appellate Division specifically endorsed the Commission's interpretation that N.J.S.A. 18A:30-7 makes paid non-sick leave negotiable.[3/] The court stated:

> It is true, as PERC stated in its opinion, that the board has the statutory authority to fix, either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, N.J.S.A. 18A:30-7, and thus a contractual provision relating to such absences -- e.g. compensation -- ordinarily may be negotiated. See Hunterdon Cent. High Sch. v. Hunterdon Cent. High Sch. Teachers' Ass'n, 174 N.J. Super. 468, 473 (App. Div.1980); Piscataway Tp. Bd. of Ed. v. Piscataway Main., 152 N.J. Super. 235, 243-244 (App. Div.1977).
>
> [Demarest, 177 N.J. Super. at 216; emphasis added.]

In Hackensack Bd. of Education, 184 N.J. Super. 311 (App. Div. 1982), the Appellate Division, while holding that N.J.S.A. 18A:30-1 specifically preempted the use of sick leave for child-rearing purposes, nonetheless recognized that child-rearing would have been allowed as a type of paid non-sick leave under N.J.S.A.

3/ The court ultimately reversed the Commission's arbitrability determination on other grounds relating to the board's right to discipline employees for allegedly abusing leave, holding: "But that does not mean that the board may limit in advance its discretionary managerial authority as to the minimum number of consecutive days of absence or similar criteria that may justify the sanction of suspension or discipline, particularly where, as here, there has been a defiance of a denial of a leave of absence." Demarest, 177 N.J. Super. at 216. As noted in Essex County College, P.E.R.C. No. 88-63, 14 NJPER 123 (¶19046 1988): "Demarest Bd. of Ed., 177 N.J. Super. 211 (App. Div. 1980) was decided prior to the amendment to N.J.S.A. 34:13A-5.3 which allows arbitration of disciplinary disputes."

18A:30-7. The court noted the contrast between the restrictive sick leave definition of N.J.S.A. 18A:30-1 versus the expansive discretion per N.J.S.A. 18A:30-7 to negotiate other paid leaves of absences, stating:

> N.J.S.A. 18A:30-7 clearly permits a board to provide for payment of salary for absences not for sick leave. This could include payment of salary during leave for child rearing purposes. But such a paid leave would not be from mandatorily allowed sick leave time. This provision for other paid leave convinces us that the Legislature intended that sick leave be used exactly for the purpose intended.
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> [Hackensack, 184 N.J. Super. at 318.]

In West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272, 273 (¶23117 1992), aff'd, NJPER Supp.2d 291 (¶232 App. Div. 1993), the Commission found that paid non-sick leaves of absence are negotiable under N.J.S.A. 18A:30-7 and also relied on the court's decision in Hackensack, stating:

> 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 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.
>
> [West Orange, 18 NJPER at 273; emphasis added.]

The Appellate Division affirmed. NJPER Supp.2d 291 (¶232 App. Div. 1993).

In State-Operated School Dist. of the City of Newark and City Ass'n of Supervisors and Administrators, AFSA/AFL-CIO, Loc. 20, 28 NJPER 154 (¶33054 App. Div. 2001), the Appellate Division again echoed the Commission's interpretation of N.J.S.A. 18A:30-7 as allowing collective negotiations on the issue of paid non-sick leave. The court, citing Hackensack, noted the contrast between a restrictive leave statute versus one that does not specifically set an otherwise negotiable term or condition of employment:

> In Hackensack, the provisions of N.J.S.A. 18A:30-7, which permits boards to pay salaries for absences not resulting from sick leave, "convinc[ed] us that the Legislature intended that sick leave be used exactly for the purpose intended." Id. at 318. . . . Non-sick leave benefits afforded pursuant to N.J.S.A. 18A:30-7 must be negotiated separately rather than as a part of a sick leave package.
>
> [NJPER 154, 156 (¶33054 App. Div. 2001); emphasis added.].

POINT III. UNION RELEASE TIME HAS BEEN FOUND TO BE MANDATORILY NEGOTIABLE.

Absent a preemptive statute or regulation, union release time has consistently been found to be mandatorily negotiable by the Commission. In Haddonfield Bd. of Ed., P.E.R.C. No. 80-53, 5 NJPER 488 (¶10250 1979), the Board terminated a past practice by which the Association President conducted union business in schools throughout the district during his non-assigned/prep

periods. The Board argued that limiting "on duty visitation rights" is a non-negotiable management prerogative. It also asserted "that transaction of union business during working time generally is incompatible with the New Jersey Constitution," because "[t]o permit the transaction of union business during working time means that public funds are being spent in furtherance of a cause totally independent of providing children with a quality education," and therefore "such expenditures are ultra vires and illegal." 5 NJPER at 489. Applying the test of Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978),[4/] the Commission rejected the Board's differentiation between negotiable time off generally and time off for the specific purpose of conducting union business, finding:

> We cannot accept this distinction as valid. Rather, the fact that the requested time off is to be used to carry out a majority representative's obligation of fairly representing all unit employees make the reasons for permitting negotiations all the more compelling. . . . The Board fails to cite to any case precedent in support of its position that release time for union activists or access to buildings for the conducting of such activities is non-negotiable.
>
> [5 NJPER at 490.]

4/ This negotiability test predated the Local 195 test and considered the following: 1) does the subject in dispute intimately and directly affect the work and welfare of public employees; 2) does it unduly interfere with an employer's ability to formulate management policy?

Noting that the Legislature and Supreme Court imposed upon exclusive majority representatives the duty to present grievances on behalf of their unit members,[5/] the Commission held:

> Entrusted with this responsibility, it is only reasonable that a majority representative should have the right to negotiate with the public employer over release time and access to other schools so as to further the carrying out [of] its statutory obligations. . . . We conclude that negotiations over release time and the right to visit other schools for the purpose of transacting union business do not interfere with any management prerogatives and have an intimate and direct effect upon employee work and welfare.
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> [5 NJPER at 490-491.]

Subsequent to Haddonfield, the Commission has consistently held that, absent a preemptive statute or regulation, union release time is mandatorily negotiable. Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER 431 (¶11218 1981); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981) (paid union leave for FMBA President); State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 497 (¶16177 1985) (paid union leave for STFA President and Vice President); City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26 (¶17010 1985); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶ 16184 1985); Maurice River Tp. Bd. of Ed., P.E.R.C. No.

5/ Red Bank Reg. Ed. Assn v. Red Bank Reg. High School Bd. of Ed., 78 N.J. 122, 136, 139 (1978), discussing N.J.S.A. 34:13A-5.3 and 5.4(a)(5).

87-91, 13 NJPER 123 (¶18054 1987) (paid union leave for Association President).

It is important to clarify that although the subject of union release time has been found to be mandatorily negotiable, that does not mean that an employer must agree to it. Rather, it means that the subject of union release time becomes a part of the give and take of negotiations like any other negotiable subject.

CONCLUSION

For the reasons set forth above, the judgment of the appellate court should be reversed, or this matter should be remanded to PERC for a scope of negotiations determination.

Respectfully submitted,

Christine Lucarelli/at

Christine Lucarelli
General Counsel

DATED: TRENTON, NJ
March 17, 2020