

In the Matter of Vacation Leave Entitlement, Millville School District
CSC Docket No. 2010-886
(Civil Service Commission, decided January 9, 2013)

The Millville School District (School District), represented by Alan R. Schmoll, Esq., requests that the Civil Service Commission (Commission) review the vacation leave entitlement for employees and former employees of the School District.

By way of background, the New Jersey Education Association (NJEA) contacted the former Division of State and Local Operations (SLO)¹ requesting its assistance in securing vacation time owed to “10-month” Civil Service employees of the School District in the titles of “security aides,” “full-time classroom aides,” “10-month secretaries” and “cafeteria staff.” Specifically, the NJEA stated that it had attempted to resolve this matter through discussions but the School District refused to apply the provisions of *N.J.A.C. 4A:6-1.2(d)*. Therefore, the NJEA requested that SLO direct the School District to apply vacation allotments consistent with the aforementioned regulatory provision to all eligible employees.

In support of its request, the NJEA provided SLO with an 18-page listing of current and former School District employees. In response, by letter dated June 30, 2009, SLO advised the School District that in accordance with *N.J.S.A. 11A:6-7*, *N.J.S.A. 11A:6-3*, *N.J.A.C. 4A:6-1.2(b)*, *N.J.A.C. 4A:6-1.2(e)*, and *N.J.A.C. 4A:1-1.3*, all of its part-time and 10-month employees must receive retroactive proportionate amounts of vacation leave from their date of hire. However, SLO noted that *N.J.A.C. 4A:6-1.2(g)* specified that an employee can only carry over vacation time for one year or the time is lost. *See also, N.J.S.A. 11A:6-3(e)*. Upon the School District’s response, SLO referred the matter to the Commission for direct review.

The School District states that it has generally met its obligations in regard to the categories of employees involved in this matter – “10-month secretaries,” “10-month cafeteria employees,” “10-month classroom aides,” and “10-month security employees.” It presents that each of the employees in the above categories are employed from September 1 to June 30 of each school year and are paid on the 15th and the 30th of each of the 10 months they are employed for a total of 20 pay periods. The School District explains that these pay periods include pay for periods when school is not in session which occur in November and December, in the spring, and after the last teacher work day in June. The School District provides copies of school calendars for the school years from 1996-1997 to 2008-2009 in support of its position. For example, during the 1996-1997 school year, “paid vacation days” for impacted staff were taken on November 14 and November 15,

¹ SLO is now the Division of Classification and Personnel Management (CPM).

1996 since teaching staff were off during the NJEA convention. Further, impacted staff members were provided paid vacation days for December 23, 24, 26, 27, 30, and 31 for a total of eight days (which is not inclusive of the paid holidays of Thanksgiving, Christmas Day, and New Year's Day) in 1996. Additionally, five paid vacation days were provided on March 28, and April 1, 2, 3, and 4, 1997 (not including the paid holiday of Easter Monday). Finally, the impacted staff members were afforded six more paid vacation days from June 23 to June 27, 1997 and June 30, 1997. The School District notes that this example has been repeated for every school year up to the one ending in 2009. Stated differently, for the school years between 1996-1997 and 2008-2009, staff has been paid for between 16 to 20 vacation days, which the School District asserts, for the most part, is greater in number than any 10-month employee is entitled based on a pro-rata calculation for up to 20 years of employment.

The School District also states that its collective negotiations agreement expressly provides for paid vacations for 10-month secretaries and cafeteria employees. In support of this contention, it provides copies of Articles 22:2 and 22:3 of its collective negotiations agreement. In pertinent part, Article 22:2 states that in lieu of required Civil Service vacations, 10 month secretaries are paid for 225 days, but the actual work year is 195 days. With respect to cafeteria staff, Article 22:3 states that except under emergency circumstances, cafeteria employees are expected to schedule their vacation after the 10-month school year and that exceptions would require prior approval of the Food Service Manager.

With respect to its "10 month classroom aides," the School District asserts that since January 2002, these individuals have been required to have a significant educational background or have been required to meet rigorous standards of quality in order to participate in the instructional process in the school district. Thus, it maintains that it is appropriate to exclude them from vacation eligibility, just as teaching staff members are also excluded vacation eligibility. In this regard, the School District argues that it does not believe that the regulatory provisions regarding vacation entitlement were intended to give vacations to employees intimately involved in the instructional process.

Finally, the School District asserts that the doctrine of laches should be applied to the facts in this case should any of the vacation claims asserted by the NJEA be determined to be valid. In this regard, it underscores that the employees involved in this matter have at all times been represented by labor organizations and have been involved in collective negotiations for a number of years, and it was well known that the School District was subject to Civil Service law and rules. Nevertheless, no claim has ever been made until this time. As a result, the School District claims that it would now be forced to make payments for years of past vacation that will impose an unreasonable financial burden on the taxpayers.

Under these circumstances, the School District maintains that no past vacation claims by 10-month employees should be enforceable.

In response, the NJEA, represented by William Hannan, Esq., presents that the School District's response does nothing to diminish or extinguish its responsibility to credit 10-month employees with vacation time as required by applicable statutory and regulatory provisions. The NJEA disagrees with the School District that the time off contained in the school calendars it provided is equivalent to vacation time owed to 10-month employees. In this regard, it maintains that these days are unpaid days that are simply part of the school year. Further, it notes that the calendars do not utilize the word "vacation" and nothing in the collective negotiations agreement between the Millville Education Association and the School District states or implies that the time off in November, December, in the spring, or after the last teacher workday in June is vacation time. While the contract language in Article 22:2 does contain specific language with respect to 10-months secretaries, the NJEA asserts that all of the other titles presented are entitled to the owed vacation time. Additionally, it notes that Article 22:3 concerning cafeteria workers does not address whether the vacation time is owed, it only covers the scheduling of vacation time. Finally, the NJEA states that the School District's argument that "10-month classroom aides" are paraprofessional employees that were not entitled to be provided vacations under Civil Service law and rules is not supported. Based on these arguments, the NJEA requests that the Commission direct the School District to credit vacation time to its 10-month employees.

In correspondence dated July 2, 2010, staff from the former Division of Merit System Practices and Labor Relations (MSPLR)² advised the parties that in accordance with *N.J.S.A.* 11A:6-3(e) and *N.J.A.C.* 4A:6-1.2(g), vacation leave not taken in a given year can only be carried over to the following year. Therefore, since the accumulation of vacation leave is statutory, the School District would not be required to make payments to prior and current employees for asserted past vacation claims. Thus, staff advised that the only obligation that the School District has is to properly calculate the amount of pro-rated vacation leave to which each part-time or 10-month employee is entitled. However, since it appeared that the School District was stating that it paid its part-time and 10-month employees for time off during the Thanksgiving, Winter and Spring recesses when school was not in session and after the last work day for teaching staff in June up through June 30, staff advised that calculation of leave in this manner would be an issue of first impression for the Commission. Therefore, staff requested that the School District provide additional information regarding how it ensures that part-time and 10-month employees receive at least the minimum pro-rated amount of vacation entitlement based on length of service. Although no

² MSPLR is now the Division of Appeals and Regulatory Affairs (DARA).

response was received by staff to this specific inquiry, on June 15, 2011 the School District submitted a payroll report listing non-tenured (non-teaching) staff members for the period from September 1, 2009 to April 30, 2011. This report includes the hire dates and “job titles” of these staff members. It is noted that the job titles utilized are “Cafeteria,” “Security Aide,” “Truancy/Residence Officer,” “Classroom Aide Part-Time,” “Classroom Aide Full-Time,” “Classroom Aide [Pre-Kindergarten],” “Classroom Aide [Kindergarten],” “Library Aide, Full-Time,” and “Secretary 10-Month.” However, the report does not specify the hours each of these employees are required to work.

CONCLUSION

N.J.S.A. 11A:6-3 states that vacation leave for full-time political subdivision employees shall be at least:

- a. Up to one year of service, one working day for each month of service;
- b. After one year and up to 10 years of continuous service, 12 working days;
- c. After 10 years and up to 20 years of continuous service, 15 working days;
- d. After 20 years of continuous service, 20 working days; and [in pertinent part]
- e. Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only.

N.J.A.C. 4A:6-1.2(b) echoes this statutory provision by providing for “annual paid vacation leave for full-time local employees.” *N.J.A.C.* 4A:1-1.3 defines “local service” as “employment in any political subdivision operating under Title 11A, New Jersey Statutes.”

N.J.S.A. 11A:6-7 provides that part-time employees shall receive proportionate vacation, sick and administrative leave. There is no statutory reference directed to vacation leave for 10-month employees. However, *N.J.A.C.* 4A:6-1.2(e) states that part-time and 10-month employees shall be entitled to a proportionate amount of paid vacation leave. Further, *N.J.A.C.* 4A:1-1.3 provides that part-time employee means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

Initially, the Commission notes that the State Classification Plan only utilizes specific “10-month” titles for employees in educational institutions in State service (*e.g.*, Education Program Development Specialist, 10-months and Teacher, 10-months) who are only required to work a 10-month work year. The 10-month titles are pegged to such things as the workweek and class codes assigned to the title to establish the salary range for compensation under the State Compensation

Plan. Thus, specific “10-month” titles are allocated to State service positions but not necessarily local government titles. In this regard, the State Classification Plan does not include local government titles of “10 month secretaries,” “10-month cafeteria employees,” “10-month classroom aides,” and “10-month security employees.” Rather, the NJEA employees at issue are either full-time or part time employees who work 10 months out of a 12-month year.³

In *Headen v. Jersey City Board of Education*, 212 N.J. 437 (2012), the Supreme Court reviewed a situation that is strikingly similar to the matter before the Commission. In *Headen*, the Court specifically addressed whether school districts that have adopted Title 11A are required to extend vacation leave to a school district’s 10-month food service employees pursuant to N.J.S.A. 11A:6-3 and N.J.A.C. 4A:6-1.1(e). In finding that school districts were required to do so, the Court stated that the vacation leave provisions in Title 11A apply to 10-month school district employees since they are *political subdivision* employees. The Court also indicated that it is acceptable to require career service employees to use vacation time during scheduled breaks during the academic year since N.J.A.C. 4A:6-1.2(g) authorizes a local employer to exert control over the scheduling of vacation leave.

In the instant matter, the School District argues that it provides a proportionate equivalent of vacation leave to its 10-month employees and the NJEA contends that vacation leave for 10-month, non-teaching and classroom aide school district employees must comport with N.J.S.A. 11A:6-3 and N.J.A.C. 4A:6-1.2. As noted in *Headen, supra*, N.J.S.A. 11A:6-3 applies in this situation and all career service School District employees are entitled to pro-rated vacation leave based on 10 months of employment. For example, an employee with 20 years of service who works full-time for 10 months would be entitled to 16.6 days of pro-rated vacation per year. Of course, the number of vacation days earned by an employee is contingent upon the number of hours he or she works. Accordingly, an employee with 20 years of service who works less than full-time for 10 months would be entitled to a pro-rated amount of vacation leave based on the number of hours he or she works.

In this case, since the School District provides between 16 and 20 paid days off during the school year for scheduled breaks in November, December, the spring, and after the end of the academic year in June, as the Court indicated in *Headen, supra*, this practice would comport with the leave provisions of Title 11A.

³ There are no County and Municipal Personnel System (CAMPS) records for the majority of individuals listed by the NJEA as “10-month secretaries,” “10-month cafeteria employees,” “10-month classroom aides,” and “10-month security employees” or for the majority of individuals listed in the payroll report provided by the School District. However, there are CAMPS records for some of the employees listed by the NJEA as “10 month secretaries,” which indicate that they were appointed to the former non-competitive title of Clerk Typist (now Keyboarding Clerk 1).

However, should the number of paid days off during scheduled breaks not equate to the statutory minimum required for each employee based on length of service, the School District would be required to afford those impacted employees additional vacation leave required to satisfy the statutory minimum. The NJEA has not presented any documentation demonstrating that the impacted employees did not receive their statutory minimum allotment of paid vacation leave.

One additional matter needs to be addressed. As noted above, there are no CAMPS records for the majority of individuals listed by the NJEA as “10-month secretaries,” “10-month cafeteria employees,” “10-month classroom aides,” and “10-month security employees” or for the majority of individuals listed in the payroll report provided by the School District. Since the School District is a political subdivision that has adopted the provisions of Title 11A, this agency is required to provide for the classification of all positions in the jurisdiction. *See N.J.A.C. 4A:9-1.1*. Further, in order to ensure political subdivision employees are afforded all of their rights under Civil Service law and rules, such as vacation leave allotments, appointing authorities are required to timely submit all information, documents and other materials to this agency for the purpose of efficiently and accurately administering the Civil Service system. *See N.J.A.C. 4A:10-1.1(f)*. These requirements are achieved by appointing authorities recording the employment of their career service employees in CAMPS.⁴ In this case, the School District has not recorded many of the employees it listed on its payroll report in CAMPS. Therefore, the School District is directed to work with CPM to ensure that all of its career service employees have the proper position classification and that their employment is properly recorded in CAMPS.

ORDER

Therefore, it is ordered that the Millville School District, if it has not already done so via its payment for leave during periods when school is not in session, provide its 10-month Civil Service employees the appropriate amount of pro-rated vacation leave based on each employee’s years of service for the year of 2012 and going forward. *See N.J.S.A. 11A:6-3e* and *N.J.A.C. 4A:6-1.2(g)*. It is further ordered that the Millville School District work with the Division of Classification and Personnel Management to ensure that all of its career service employees have the proper position classification and that their employment is recorded in CAMPS.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

⁴ As a matter of practice, school districts are not required to record the appointments of teaching staff members and other unclassified employees in CAMPS. However, all other Civil Service political subdivisions are required to record both career service and unclassified appointments in CAMPS