

OPINION NO. 75-028

Syllabus:

1. When a board of education increases the amount of sick leave which may be accumulated by teaching employees under R.C. 3319.141, that increase must be extended to all other employees within the ambit of that section.

2. The board of education is required to give the other employees, covered under R.C. 3319.141, a retroactive increase in accumulated sick leave from the date the increase was granted to the teachers.

To: Donald L. Jones, Washington County Pros. Atty., Marietta, Ohio
By: William J. Brown, Attorney General, May 2, 1975

I have before me your request for my opinion which reads in part as follows:

"1. When a Board of Education agrees through negotiations with one group of school employees, e.g. teachers, to grant an increase in accumulation of sick leave, is the Board required to grant such an increase in accumulated sick leave to another group of school employees, e.g. non-certified employees?

"2. If the response to question No. 1 is Yes, is the Board of Education required to go back and give the other group of school employees, i.e. non-certified employees, this increase in accumulated sick leave for the period between the time the first group of employees, i.e. teachers, was granted the increase in accumulated sick leave and when the other group of employees was granted such an increase?"

The accumulation of sick leave by employees of a board of education is controlled by R.C. 3319.141 which provides in pertinent part:

"Each person who is employed by any board of education in this state shall be entitled to fifteen days sick leave with pay, for each year under contract, which shall be credited at the rate of one and one-fourth days per month. Teachers and nonteaching school employees, upon approval of the responsible administrative officer of the school district, may use sick leave for absence due to personal illness, pregnancy, injury, exposure to contagious disease which could be communicated to others, and for absence due to illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative up to one hundred twenty work days, unless more than one

hundred twenty days are approved by the employing board of education. * * *

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"This section shall be uniformly administered."
 (Emphasis added.)

A board of education has discretionary authority to negotiate and enter into agreements with its employees. However, such agreements may not conflict with or abrogate the legal duties and responsibilities of the board. Dayton Classroom Teachers Assn. v. Dayton Bd. of Educ., 41 Ohio St. 2d 127 (1975). Your request letter indicates that the board negotiated with its teachers, and agreed to grant an increase in the accumulation of sick leave hours. R.C. 3319.141 permits the board to grant such an increase, and there is no indication that any duties or responsibilities of the Board were abrogated in these negotiations.

However, R.C. 3319.141 specifically requires that the section be uniformly administered. Throughout the entire statute reference is made to its application to both teaching and nonteaching school employees. The language can only mean that the statute is to be applied equally to nonteaching and teaching school employees. When, as here, the Board grants the increase to one group of employees, automatically excluding employees in other groups, the statute is not being uniformly administered. I conclude, therefore, that when the Board of Education increases the amount of sick leave which may be accumulated for teaching employees, that increase must be extended to all other employees within the ambit of R.C. 3319.141.

Your letter refers to 1961 Op. Att'y Gen. No. 2073 and to 1969 Op. Att'y Gen. No. 69-077. Both of those opinions dealt with R.C. 143.29 (now R.C. 124.38), and they held that the provision for uniform administration of sick leave applied only to employees of agencies of the state government. They are no longer controlling here, since the General Assembly, by the enactment of R.C. 3319.141 in 1970 (133 Ohio Laws 2884-2887), has made the uniformity provision applicable to school board employees. See 1971 Op. Att'y Gen. No. 71-624 and 1972 Op. Att'y Gen. No. 72-032.

Your second question inquires whether the Board must go back and grant the increase in accumulation of sick leave hours to the noncertified employees for the period between the time the teachers received such increase, and the date when noncertified employees received the same increase. I understand that this was a three-month period. Since R.C. 3319.141 requires uniform administration of the statute to all employees, I conclude that the Board of Education must do this. Any other decision would ignore the clear meaning of the statute since the requirement of uniform administration would not be met.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. When a board of education increases the amount of sick leave which may be accumulated by teaching employees under R.C. 3319.141, that increase must be extended to all other employees within the ambit of that section.
2. The board of education is required to give the other employees, covered under R.C. 3319.141, a retroactive increase in

accumulated sick leave from the date the increase was granted to the teachers.