

P.E.R.C. No. 91-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PROSECUTOR OF MIDDLESEX COUNTY,

Respondent,

-and-

Docket No. SN-91-42

PBA LOCAL NO. 214, MIDDLESEX COUNTY
PROSECUTOR'S DETECTIVES AND
INVESTIGATORS,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that a terminal leave clause that was part of an interest arbitration award challenged in the Superior Court is mandatorily negotiable.

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Appearances:

For the Respondent, Department of Personnel & Employee
Relations (Henry H. Orszulski and James J. McDonnell Jr.,
Labor Relations Specialists)

For the Petitioner, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On December 21, 1990, PBA Local No. 214, Middlesex County
Prosecutor's Detectives and Investigators, pursuant to an order of
the Superior Court, petitioned for a scope of negotiations
determination. The PBA seeks a determination that a terminal leave
clause is mandatorily negotiable. The clause was part of an
interest arbitration award challenged by the Middlesex County
Prosecutor in Superior Court and initially vacated by Judge J.
Norris Harding. But on December 17, 1990, Judge Harding granted the
PBA's application for reconsideration and remanded "the effect of
the 'terminal leave clause' and its application" to the Commission
for a scope of negotiations determination. This petition

is therefore properly before us. See Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983).

The parties have filed briefs and documents. These facts appear.

The PBA represents the Prosecutor's detectives and investigators. The parties entered into a collective negotiations agreement effective from January 1, 1988 through December 31, 1989. During negotiations and interest arbitration proceedings over a successor contract, the PBA made this proposal:

The employee shall be entitled, upon declaration of intent to retire, to convert all earned and unused sick leave to terminal leave. Terminal leave shall be used in computing the employee's retirement service time and shall be paid in accordance with the County's regular pay period schedule; employee shall be entitled to all benefits except employees who select this option shall not be eligible to accrue vacation, sick and personal days.

The interest arbitrator accepted this proposal.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory

Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

The PBA asserts that the terminal leave clause is not illegal and is not materially different from similar benefits found to be mandatorily negotiable. The Prosecutor contends that "terminal leave" is a status not authorized by any statute or regulation. He further contends that allowing an employee to remain on the payroll and be compensated without being at work would constitute a gift of public moneys and credit toward pension benefits. Finally, the Prosecutor asserts that the benefit would hamper law enforcement by allowing a "terminal leave" employee to occupy a vacancy which could be filled by an active duty officer.

We believe this terminal leave clause is mandatorily negotiable. Granting employees compensation for unused leave allowances is mandatorily negotiable. See Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); River Vale Tp., P.E.R.C. No.

86-82, 12 NJPER 95 (¶17036 1985); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984); City of Newark, P.E.R.C. No. 83-143, 9 NJPER 296 (¶14137 1983); Somers Point, P.E.R.C. No. 77-48, 3 NJPER 99 (1977). Such benefits are not gifts of public moneys. In Maywood Ed. Ass'n, Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1974), which upheld a provision paying retired employees for their unused sick leave, the Court stated:

It is fair to say that our courts generally have adopted the view that compensation paid to public employees, whatever the label, is not a gift so long as it is included within the conditions of employment either by statutory direction or contract negotiation. [Id. at 557]

The employer has not identified any statutes or regulations which prohibit terminal leave benefits and thus preempt negotiations. It argues instead that there is no express statutory authorization for this benefit. But that is not necessary -- the employer's authority to negotiate over terms and conditions of employment includes the power to negotiate over this specific employment condition. Thus, City of Camden v. Juanita Dicks, 135 N.J. Super. 559 (Law Div. 1975), held that no express statutory authorization was necessary for the employer to negotiate an agreement to pay employees for their unused sick leave upon their retirement. The Court found that negotiations over this term and condition of employment were authorized by the New Jersey

Employer-Employee Relations Act. Id. at 562.^{1/} Similarly, in N.J. Civil Service Ass'n v. Camden, 135 N.J. Super. 308, 314 (Law Div. 1975), the Court stated:

In the absence of an express legislative restriction against bargaining for that benefit of employment, the authority to provide that benefit rests in the municipality under the broad powers and duties delegated by the [Employer-Employee Relations Act and Title 40A]. Were it otherwise a municipality would not be able to bargain collectively and to make agreements with its employees unless specific statutory authority for each provision of the agreement existed.

These cases remain good law today. See Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140, 150 (1987), citing Maywood, and Teamsters Local 331 v. Atlantic City, 191 N.J. Super. 404, 410 (Ch. Div. 1983), aff'd 191 N.J. Super. 394 (App. Div. 1983). Teamsters Local 331 applied both Camden cases.

The assertion that the benefit would give employees electing terminal leave extra pension credit does not make it non-negotiable. We rejected a similar claim in Paramus Bor., P.E.R.C. No. 86-17, 11 NJPER 502, 506-507 (¶16178 1985). In Prof. Fire Officer's Ass'n of Newark, Local 1860, I.A.F.F. v. Newark, App. Div. Dkt. No. A-4450-87T2 (3/22/89), the Appellate Division adopted our reasoning in Paramus.

Finally, making periodic, as opposed to lump-sum, payments for unused leave does not compromise an employer's ability to provide adequate law enforcement protection. The employer has a

^{1/} We also note that N.J.A.C. 17:6-2.1, a regulation governing the administration of the Policemen-Firemen's Pension Fund, expressly mentions "terminal leave."

prerogative to determine the level of desired law enforcement services and the size of a law enforcement unit. Paterson at 97-98. The terminal leave provision does not prevent the employer from adding extra positions whenever it wants. Instead the terminal leave provision simply presents a budgetary issue.

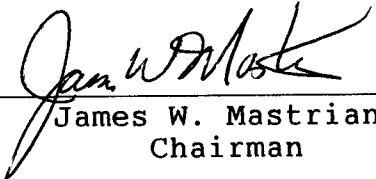
Woodstown-Pilesgrove. The employer does not dispute that a lump-sum payment would be mandatorily negotiable and that the overall amount of expenditure is not increased by having the benefit paid in the form of terminal leave instead. Paying an officer on terminal leave has no greater impact on the level of police protection than paying an officer on sick leave, vacation leave or an extended paid disability leave which can last up to one year. See N.J.S.A. 40A:9-7; Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pert. pt., App. Div. Dkt. No. A-3564-78 (6/19/80). All such paid leaves, including terminal leave, are mandatorily negotiable terms and conditions of employment which do not significantly interfere with an employer's prerogative to determine the level of desired law enforcement services. If the Prosecutor believes more detectives and investigators are needed, the terminal leave proposal does not prevent hiring additional personnel and seeking the funds from the County or, if necessary, the Supreme Court. In re Bigley, 55 N.J. 53 (1969); Sullivan v. Burlington Cty.

Freeholder Bd., 179 N.J. Super. 228 (App. Div. 1981); In re Sullivan, 184 N.J. Super. 463 (Law Div. 1981).^{2/}

ORDER

The "terminal leave" clause is mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 28, 1991
ISSUED: March 28, 1991

^{2/} The record indicates that no such problems will result from adding the terminal leave benefit to the agreement. The interest arbitrator found that for the life of the new contract, no member of the unit would benefit from the terminal leave clause. Thus the clause will have no economic effect until after the parties engage in negotiations for a contract to succeed the one established by the interest arbitration award. During such negotiations, the Prosecutor could propose that the benefit be discontinued.