

P.E.R.C. NO. 2024-36

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE PBA  
STATE LAW ENFORCEMENT UNIT,

Respondent,

-and-

Docket No. IA-2023-026

STATE OF NEW JERSEY,

Appellant.

SYNOPSIS

The Public Employment Relations Commission denies the State of New Jersey's appeal of an interest arbitration award. The State asserts that the arbitrator improperly awarded a provision allowing union officials to request unpaid, full-time union leave because that provision is statutorily preempted. The State further asserts that the arbitrator improperly awarded a provision increasing union leave hours because it was not supported by substantial credible evidence and the arbitrator relied on inadmissible settlement discussions. The Commission finds that the State's statutory preemption claim regarding the Award's provision on unpaid full-time union leave is time-barred by N.J.A.C. 19:16-5.5(c), which requires negotiability objections to be raised within certain timeframes in the interest arbitration process. The State did not raise its statutory preemption claims at any time during the interest arbitration process, but instead, raises them for the first time in its appeal. The Commission further finds that the arbitrator's award regarding the increase of union leave hours was based on substantial credible evidence in the record, rather than inadmissible settlement discussions. The State may file a scope of negotiations petition in the ordinary course.

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 Respondent, Beckett and Paris, LLC., attorneys  
(David B. Beckett, Esq., of counsel and on the brief)

For the Appellant, Genova Burns, LLC., attorneys  
(Joseph M. Hannon, of counsel and on the brief;  
Christopher Manley, on the brief)

DECISION

On December 21, 2023, the State of New Jersey (State) appealed the November 27, 2023 interest arbitration award (Award) covering the New Jersey State PBA State Law Enforcement Unit (SLEU).<sup>1/</sup> SLEU is the exclusive representative representing approximately three hundred (300) police officers employed in various titles by multiple departments and divisions of the State of New Jersey, including several State Universities and Colleges, Department of Human Services, Division of Fish, Game, and

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<sup>1/</sup> The State's appeal included a request for oral argument. The request is denied given that the parties have fully briefed the issues raised.

Wildlife, Department of Treasury, and Division of Parks and Forestry. (Award at 1). The State and SLEU are parties to a collective negotiations agreement (CNA) with an expired term of July 1, 2015 through June 30, 2019. On March 3, 2023, SLEU filed a Petition to Initiate Compulsory Interest Arbitration pursuant to N.J.S.A. 34:13A-16(b)(2) to resolve an impasse over the terms of a successor CNA.

On August 25, 2023, the interest arbitrator was appointed pursuant to N.J.S.A. 34:13A-16(e)(1). After the parties did not resolve their impasse at a pre-interest arbitration mediation session on August 28, the parties proceeded with interest arbitration hearings held on October 3, 4, and 13. At the hearings, the parties provided testimony, stipulated to the admission of exhibits, certifications, and financial reports. The parties filed post-hearing briefs on November 2.

On November 27, 2023, the arbitrator issued a 136-page conventional Award setting the terms of a successor CNA for a term of four years, from January 1, 2019 through June 30, 2023. A conventional award is crafted by an arbitrator after considering the parties' final offers in light of statutory factors. N.J.S.A. 34:13A-16(f)(1) and (g). The instant appeal ensued. Although the Award resolved numerous issues submitted by the parties, the State's appeal raises the following two issues only:

1. The interest arbitrator awarded a provision regarding union leave that is unlawful. The Award permits an employee that is an official of SLEU who is elected or appointed to a full-time position with the NJ State PBA to take a long-term leave of absence while the employee's salary is paid by the State PBA. In addition, the Award permits these union officials to continue to contribute to the Police and Firemen's Retirement System (PFRS). However, this provision is preempted by statute.

2. The interest arbitrator improperly relied on evidence submitted by the Union regarding settlement positions in awarding an increase in union leave hours. The award of an increase of union leave hours is not supported by the credible evidence in the record.

[State's brief at 1.]

SLEU's March 3, 2023 Petition to Initiate Compulsory Interest Arbitration raised union leave as a disputed issue under "Non-Economic Issues," as follows:

Article 25 - Leave for NJ State PBA- SLEU Activity: Increase in the amount of chargeable union leave is proposed as is a revision that adds to certain categories of nonchargeable union leave time, and that streamlines process for notification to GOER on union leave requests/use.

SLEU's September 26, 2023 Final Offer was as follows:

**Article XXV**  
**Leave for NJ State PBA-SLEU Activity**

**Counter on Union Leave:**

Will accept 1386 hours offer only if the State agrees to create separate Union Leave categories along the lines done for Local 105, which are in addition to the 1386 hours that there are 11 release days for each of

the seven locals (subunits of SLEU) allowing them to send 1 representative (Delegate, President, or designee) to attend the following required PBA meetings:

- State meetings;
- Local meetings;
- County meetings;

***NOTE: Meetings occur every month except August.***

**Add Union Leave - Full Time position with NJ State PBA:**

In the event, an official of SLEU is appointed by the NJ State PBA President or designee or elected to fill a full time position with the State PBA the employee shall be permitted full release as unpaid leave with the State PBA responsible for paying the salary of the unit employee who shall retain all rights to return to service and shall be permitted to continue to contribute to retirement pension and such years of service for the State PBA shall also count toward health benefits in retirement and seniority for purposes of leave and other benefits under this contract. In the event that the State permits the unit employee to purchase health benefits from the SHBP, such purchase shall be at the employee's expense at cost.

A request for such leave shall be filed annually and shall not be unreasonably denied, or a contract for a longer term may be entered into between the State and the NJ State PBA.

SLEU's proposed new language regarding unpaid full-time union leave was included in its proposals as early as December 2022 during negotiations that preceded the filing of the interest arbitration petition in March 2023. SLEU also raised the issue

throughout the interest arbitration process. (See SLEU's sur-reply brief at 2, Exhibit A at 4).

The State's Final Offer did not respond to SLEU's union leave proposals. However, the State's post-hearing brief addressed SLEU's union leave proposals. In response to SLEU's proposal to increase union leave hours to 1386, the State wrote:

It is not entirely clear what the Union's final offer is proposing. In any event, an increase in union leave for the union is not warranted. The State has submitted the following chart, showing that SLEU does not use all the union leave to which they are currently entitled: [Chart omitted]. The Union explained this by saying that it has been "very frugal with it." T250:22-24. Clearly, the fact that the Union has not used all the time it is currently allotted is strong evidence that an increase is not warranted.

In response to SLEU's full-time union leave, the State wrote:

The Arbitrator should not award this proposal because it is a hypothetical. If a SLEU official is appointed to a full-time PBA position, it would be appropriate at that time for the State and SLEU to address this arrangement.

The Union has not justified its proposals for union leave and therefore they should not be awarded.

The arbitrator awarded SLEU's proposal regarding unpaid full-time union leave. The arbitrator explained his reasoning as follows:

I also award the SLEU proposal, if and when it should occur, to provide unpaid leave to an official of SLEU who has been appointed by

the NJ State PBA President or elected to fill a full time position with the State PBA. This award shall be limited to one (1) such official of SLEU at a time and shall be in accordance with the guidelines contained in the SLEU proposal concerning, among other things, the State PBA' obligations to pay the salary of the unit employee and the purchase of SHBP health benefits if permitted to do so. The State's position to address this issue only if such appointments or election occur is not reasonable as such situation could occur mid-contract and cause uncertainty and delay over the conditions for release.

The arbitrator awarded the following modification to the SLEU's proposal to increase union leave hours to 1386:

Commencing at the end of June 30, 2023, the number of annual hours of chargeable leave shall be increased to 1,386. There shall be an additional three (3) release days made available annually for each of the seven locals (sub-units) of SLEU to send 1 representative (Delegate, President, or designee) to attend the following required PBA meetings:

- State meetings;
- Local meetings;
- County meetings

(Award at 125).

The arbitrator partially awarded SLEU's proposal on increased union leave hours as follows:

The 1,386 hours, as discussed in negotiations, is a reasonable increase given the evidence that certain officers may have been allowed union leave without having been charged union leave. I award this without SLEU' condition that it be awarded eleven (11) release days for each of its seven (7) sub-units. The proposal to create separate

Union Leave categories for each of the seven locals, or sub-units, by adding eleven (11) release days for each sub-unit, has not been justified. Given the unique structure to the SLEU unit, the parallel asserted by SLEU with Local 105 is not persuasive. However, I find it reasonable to award some such release time in each individual sub-unit due to the diversity of work in the sub-units and the desirability of having broader representation for all members at union meetings. Accordingly, effective June 30, 2023, I award three (3) release days for each sub-unit consistent with the purpose stated in the SLEU proposal.

In its appeal, the State argues that the Award is not a mutual, final, and definite award, pursuant to N.J.S.A. 2A:24-8<sup>2/</sup>, as to the issue of unpaid full-time union leave because it is preempted by statute. The State argues that the police officers represented by SLEU are governed by Title 40A. N.J.S.A. 40A:9-7.3<sup>3/</sup> permits leaves of absences for certain employees,

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2/ N.J.S.A. 2A:24-8 ("Vacation of award; rehearing") provides: The court shall vacate the award in any of the following cases:

d. Where the arbitrators exceeded or so imperfectly executed their powers that a mutual, final and definite award upon the subject matter submitted was not made.

3/ N.J.S.A. 40A:9-7.3 ("Unpaid leaves of absence for union officers, representatives of certain public employees") provides:

Any employee, except a policeman or firefighter, elected or appointed as an officer or representative of a local, county or State labor organization which represents, or is affiliated with a local, county or State labor organization which represents, public employees may be granted, by a county, municipality or agency thereof, an unpaid leave of  
(continued...)



such as the union leave provision in the Award; however, it expressly excludes policemen and firefighters. Moreover, the State argues that even if the awarded union leave provision is not statutorily preempted, the PFRS statute, N.J.S.A. 43:16A-4<sup>4/</sup>, preempts the possibility of receiving retirement service credit for the time the employee is serving as a union official. The State also maintains that the Award's increase of union leave hours to 1,386 must be vacated because the arbitrator improperly relied on inadmissible settlement negotiations proffered by SLEU. The State claims it provided credible evidence that SLEU had not used its current allotment of 1,260 hours in recent years, and thus, SLEU could not provide any rationale for why an increase in union leave hours was necessary.

SLEU responds that the State's appeal should be denied because the arbitrator properly applied the N.J.S.A. 34:13A-16g factors in awarding, based on substantial evidence in the record, the two proposed union leave provisions. SLEU argues that the

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3/ (...continued)  
absence.

4/ N.J.S.A. 43:16A-4 ("Creditable service within act")  
provides:

a. Only service as a policeman or fireman paid for by an employer, which was rendered by a member since that member's enrollment, or since that member's last enrollment in case of a break in service, plus service, if any, covered by a prior service liability, shall be considered as creditable service for the purposes of this act.

State did not raise its statutory preemption claims in an expedited scope of negotiations petition, as required by N.J.A.C. 19:16-5.5(c), and thus it is barred from raising those claims for the first time in its appeal of the Award. SLEU asserts that the State was aware of the SLEU's union leave proposals when they were sent in December 2022 and February 2023, yet the State never raised its negotiability objections throughout the interest arbitration process. Further, SLEU asserts that the State retains the discretion to deny the union leave pursuant to the awarded provision, which has not occurred yet, rendering the issue not ripe. Moreover, SLEU argues that the State's statutory preemption claims lack merit because the subject of union leave is mandatorily negotiable and not preempted by the statutes cited by the State. Lastly, SLEU claims that the Award's increase of union leave hours to 1386 was supported by substantial credible evidence in the record, and thus, should not be disturbed.

In its reply brief, the State argues that notwithstanding the requirements of N.J.A.C. 19:16-5.5(c) it cannot waive a negotiability objection if the awarded provision is illegal. The State further argues that it could not have complied with the requirement to file an expedited scope petition because it was not aware of the disputed issue of union leave until SLEU submitted its final offer on September 26, 2023. The State further asserts that the Commission should decide the merits of

the statutory preemption issue now, as it is authorized to so pursuant to N.J.A.C. 19:16-5.5(c)(8) and 19:16-5.7(i). In the alternative, the State claims that if the Commission were to not decide the statutory preemption issue and vacate the illegal provisions in the Award, then the Commission should allow the State to file a scope of negotiations petition pursuant to N.J.A.C. 19:13-2.2(a)(4)(iv), which permits a party to file a scope petition under "special circumstances".

The standard for reviewing interest arbitration awards is well-established. We will not vacate an award unless the appellant demonstrates that: (1) the arbitrator failed to give "due weight" to the subsection 16(g) factors judged relevant to the resolution of the specific dispute; (2) the arbitrator violated the standards in N.J.S.A. 2A:24-8 and -9; or (3) the Award is not supported by substantial credible evidence in the record as a whole. Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 289, 306 (App. Div. 2002), aff'd o.b., 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 1997). Because the Legislature entrusted arbitrators with weighing the evidence, we will not disturb an arbitrator's exercise of discretion unless an appellant demonstrates that the arbitrator did not adhere to these standards. Teaneck, 353 N.J. Super. at 309; Cherry Hill.

First, we review the Commission rules applicable to this dispute. N.J.A.C. 19:16-5.5(c) ("Response to the petition requesting the initiation of compulsory interest arbitration") provides:

Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission Chair, a petition for an expedited scope of negotiations determination. The failure to file a request for a scope determination pursuant to N.J.A.C. 19:13 or this chapter shall be deemed a waiver of the negotiability objection.

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2. The issues for which a negotiability determination is sought must be among those identified as being in dispute in either the interest arbitration petition or the response to the interest arbitration petition. . . .

3. The party filing a request for an expedited scope determination shall file a supporting brief with its request, a copy of which shall be served simultaneously upon the other party. The other party shall file with the Commission Chair a brief in response to the request within seven business days of receipt of the request and shall serve simultaneously a copy of the brief upon the party who requested the expedited scope determination. . . .

4. Within 10 days after receipt of an expedited scope of negotiations petition, the Commission Chair will advise the parties whether the petition will be resolved using the expedited procedure. . . .

5. If the Commission Chair decides to issue an expedited scope of negotiations ruling, the Commission or Commission Chair, pursuant to the authority delegated to the Chair by the full Commission, shall issue a written decision within 21 days after the respondent's brief is due. . . .

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8. If the Commission Chair decides not to issue an expedited scope of negotiations ruling, then any negotiability issues pending in interest arbitration may be raised to the interest arbitrator and either party may seek a negotiability determination by the Commission as part of an appeal from an interest arbitration award. See N.J.A.C. 19:16-5.7(i).

[Emphasis added.]

N.J.A.C. 19:16-5.7(i) (Conduct of the arbitration proceeding") provides:

Unless the Commission Chair decides to issue an expedited scope of negotiations determination pursuant to N.J.A.C. 19:16-5.5(c), if a party objects to an issue as being outside the scope of mandatorily negotiable subjects, the parties may state their positions to the arbitrator on the record. The arbitrator shall be permitted to take evidence and render a preliminary decision on the issue for purposes of rendering the award. Any further negotiability argument may be made to the Commission post-award if the award is appealed.

[Emphasis added.]

N.J.A.C. 19:16-5.5(c) requires parties to raise negotiability concerns at the outset of the interest arbitration proceeding and bars parties from raising such objections outside

of its time parameters. Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999. The import of N.J.A.C. 19:16-5.5(c)'s time parameters are to provide for an expeditious, effective and binding interest arbitration process that ensures the parties and the arbitrator know the nature and extent of the controversy at the outset. City of Newark, P.E.R.C. No. 92-20, 17 NJPER 416 (¶22200 1991) (dismissing scope petition filed one month after arbitration record closed where employer knew of negotiability issue for over two years); see also Borough of Ft. Lee, P.E.R.C. No. 2008-70, 34 NJPER 261 (¶92 2008); Lower Tp., P.E.R.C. No. 2005-30, 30 NJPER 449 (¶150 2004); Wyckoff Tp., P.E.R.C. No. 2004-63, 30 NJPER 107 (¶43 2004).

N.J.A.C. 19:16-5.5(c)'s time parameters have become even more critical since the 2010 amendments to the interest arbitration law. State of New Jersey, P.E.R.C. No. 2014-60, 40 NJPER (P160 2014), aff'd on different grounds, In re State, 443 N.J. Super. 380 (App. Div. 2016) (rejecting union's statutory preemption claims in interest arbitration appeal where expedited scope petition was not filed, and after union offered no evidence it was unaware of State's proposal or was otherwise prevented from making such a filing). Those amendments set out hastened statutory time limits for an arbitrator to conduct interest arbitration proceedings, for the parties to file an appeal of an interest arbitration award, and for the Commission

to issue a decision on an interest arbitration appeal. N.J.S.A. 13A:16f(5) and (5)a.

Based on the above precedent, we find that the State's negotiability claim regarding the Award's provision on unpaid full-time union leave is time-barred by N.J.A.C. 19:16-5.5(c). SLEU's March 3, 2023 interest arbitration petition identifies union leave as a disputed issue for interest arbitration, and specifically references streamlining the process for notification on union leave requests/use. Moreover, the record shows that the State was aware of SLEU's proposal for unpaid full-time union leave as early as December 2022 during negotiations that preceded the filing of the interest arbitration petition in March 2023.

Despite being put on notice of SLEU's proposal for unpaid full-time union leave, the State did not raise its negotiability claim at any point during the interest arbitration process. It did not file an expedited scope petition when interest arbitration was initiated. Nor did it raise its negotiability claims to the arbitrator during mediation, the interest arbitration hearings, or in its post-hearing brief.

The State relies on N.J.A.C. 19:16-5.5(c)(8) and N.J.A.C. 19:16-5.7(i) to assert that we could consider its negotiability claims for the first time on appeal. However, those regulations presume that the party raising the negotiability concern on appeal previously filed an expedited scope petition that was

denied by the Chair. As discussed above, that did not occur here. To consider the State's negotiability argument for the first time at this appeal stage would undermine the statutory goal of an expeditious and effective interest arbitration process.<sup>5/</sup>

We note that the State is not without an avenue to contest the Award's provision regarding unpaid full-time union leave. That provision expressly leaves the discretion to the State to grant or deny such leave. Thus, if the State denies such a request, and SLEU challenges that denial through the filing of a grievance, the State can then properly file a scope of negotiations petition. N.J.A.C. 19:13-2.2(a)4ii. A scope petition filed in an appropriate course will allow for the disputed issue to be adequately briefed by the State and SLEU.

Lastly, we find that the arbitrator's award regarding the increase of union leave hours to 1386 was based on substantial credible evidence in the record, rather than inadmissible settlement discussions proffered by SLEU. On this issue, the arbitrator found that the proposed increase was reasonable "given the evidence that certain officers may have been allowed union leave without having been charged union leave." Further,

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<sup>5/</sup> We also find that the State's reliance on our decisions in Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER 431 (¶11218 1980) and P.E.R.C. No. 81-38, 6 NJPER 455 (¶11233 1980) is misplaced since those decisions were issued prior to the 2010 amendments to the interest arbitration law.



the arbitrator did not award SLEU's requested 11 release days, but instead awarded three release days. The arbitrator stated, "I find it reasonable to award some release time in each individual sub-unit due to the diversity of work in the sub-units and the desirability of having broader representation for all members at union meetings." Despite the Award's references to prior negotiations discussions, we find the arbitrator articulated an independent rationale for increased union leave hours based on the substantial credible evidence in the record as a whole. We will not disturb the arbitrator's exercise of discretion regarding his weighting of the evidence. Teaneck, 353 N.J. Super. at 309; Cherry Hill.

For the foregoing reasons, we deny the State's appeal and affirm the interest arbitration award. The State may file a scope of negotiations petition in the ordinary course in accordance with our rules in the event a unit member seeks union leave. The Commission will examine the relevant statutes and regulations at that time.

#### ORDER

The State's appeal is denied and the interest arbitration award is affirmed.

BY ORDER OF THE COMMISSION

Chair Hennessy-Shotter, Commissioners Bolandi, Eaton, Ford, Higgins, Kushnir and Papero voted in favor of this decision. None opposed.

ISSUED: February 20, 2024

Trenton, New Jersey