

P.E.R.C. NO. 91-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-91-20

UNION CITY FMBA LOCAL 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a negotiations proposal of Union City FMBA Local 12 is not mandatorily negotiable to the extent it would grant firefighters paid sick leave exceeding one year. A "manpower" proposal is not mandatorily negotiable because it addresses general staffing levels rather than individual employee safety concerns. The petition for scope of negotiations was filed by the City of Union City.

P.E.R.C. NO. 91-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF UNION CITY,

Petitioner,

-and-

Docket No. SN-91-20

UNION CITY FMBA LOCAL 12,

Respondent.

Appearances:

For the Petitioner,  
Gerald L. Dorf, attorney (John C. Scannell, on the brief)

For the Respondent, Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On October 16, 1990, the City of Union City petitioned for a scope of negotiations determination. The City seeks a determination that two negotiations proposals of Union City FMBA Local 12 are not mandatorily negotiable.

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

Local 12 represents the City's firefighters. The parties entered into a collective negotiations agreement effective from January 1, 1987 through December 31, 1989. That contract contained articles addressing sick leave and staffing. Local 12 seeks the inclusion of these articles in the next contract while the City maintains that they are not mandatorily negotiable. The parties are engaged in interest arbitration.

Section A of Article 6 of the 1987-89 contract is entitled Sick Leave. It provides:

Sick leave policy for all employees covered by the Agreement shall continue to be administered as in the past, i.e., unlimited sick leave regardless of the nature of the illness or injury.

Sick leave is a mandatorily negotiable subject unless a statute or regulation preempts negotiations over a particular proposal. Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd App. Div. Dkt. No. A-3379-80T2 (4/5/82), app. disp. 93 N.J. 263 (1983). Preemption will not be found unless a statute or regulation expressly, specifically, and comprehensively fixes an employment condition, thereby eliminating any discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The employer argues that N.J.S.A. 11A:6-5 preempts a clause which would afford firefighters a sick leave credit exceeding 15 working days a year. That statute provides:

Full-time State and political subdivision employees shall receive a sick leave credit of no less than one working day for each completed month of service during the remainder of the first calendar year of service and 15 working days in every year thereafter. Unused sick leave shall accumulate without limit.

The employer maintains that this statute establishes: (1) a minimum benefit of no less than one working day for each completed month of

service during the first calendar year of employment, and (2) a maximum benefit of 15 working days in every calendar year thereafter. We disagree.

N.J.A.C. 4A:6-1.3 implements the statutory sick leave rights of Civil Service employees. Section (a) provides in part:

Full-time local employees shall be entitled to a minimum of annual paid sick leave as follows:

\* \* \*

2. After the initial month of employment and up to the end of the first calendar year, employees shall be credited with one working day for each month of service. Thereafter, at the beginning of each calendar year in anticipation of continued employment, employees shall be credited with 15 working days. [Emphasis supplied]

The Department of Personnel thus interprets Civil Service statutes to afford local Civil Service employees a minimum of 15 sick leave days a year. We agree with that interpretation. Jersey City Bd. of Ed., P.E.R.C. No. 86-62, 11 NJPER 718 (¶16252 1985).

The employer contends, in the alternative, that N.J.S.A. 11A:6-9 makes N.J.S.A. 11A:6-5 inapplicable and that N.J.S.A. 40A:14-16 requires it to act by ordinance rather than negotiations. N.J.S.A. 11A:6-9 provides that leaves of absence for firefighter titles shall be governed by Title 40A. Even if N.J.S.A. 11A:6-5 does not apply, paid sick leave benefits not exceeding one year are mandatorily negotiable under N.J.S.A. 40A:14-16. See Atlantic City, P.E.R.C. No. 89-43, 14 NJPER 683 (¶19288 1988). Compare Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pertinent part, App. Div. Dkt. No. A-3564-78 (6/19/80) (identical

statute covering County employees); Morris Cty., P.E.R.C. No. 79-2, 4 NJPER 304 (¶4153 1978). That an employer has statutory power to grant sick leave through an ordinance does not preempt its statutory duty to negotiate. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330-331 (1989); City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979), aff'd App. Div. Dkt. No. A-1318-79 (2/10/81). Local 12 concedes, however, that Section A of Article 6 conflicts with N.J.S.A. 40A:14-16 and has offered to include language to limit paid sick leave to one year to avoid any dispute. See also City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (¶14104 1983).

Section A of Article 21 is entitled Manpower. It provides:

It is recognized that the health, safety and welfare of employees is dependent, in part, upon the availability of sufficient manpower. Accordingly, the manpower strength minimums whenever practicable shall not be less than established by ordinance.

Minimum staffing is not a mandatorily negotiable subject. See, e.g., Bor. of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); City of Plainfield, P.E.R.C. No. 84-29, 9 NJPER 601 (¶14254 1983); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983); Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11194 1980, aff'd App. Div. Dkt. No. A-4851-79 (7/15/81)). The employees' desire for a safe and healthful workplace is mandatorily negotiable. State of New Jersey, P.E.R.C. No. 86-11, 11 NJPER 457 (¶16162 1985); Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976). This clause addresses general staffing levels rather than

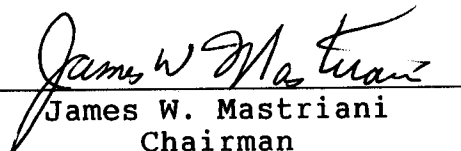
individual employee safety concerns. See City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976). It is therefore not mandatorily negotiable.<sup>1/</sup>

ORDER

Article 6, Section A is not mandatorily negotiable to the extent it would grant firefighters paid sick leave exceeding one year.

Article 21, Section A is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Regan and Wenzler voted in favor of this decision. Commissioner Smith voted in favor of the decision with regards to Article 6, but abstained with regards to Article 21. None opposed.

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

---

<sup>1/</sup> We do not consider whether this proposal is permissively negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981); City of Atlantic City v. Atlantic City Firefighters Local 198, IAFF, 234 N.J. Super. 596 (Ch. Div. 1989).