

P.E.R.C. NO. 2002-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY BOARD OF CHOSEN
FREEHOLDERS and SOMERSET COUNTY
PROSECUTOR,

Petitioner,

-and-

Docket No. SN-2001-58

SOMERSET COUNTY DETECTIVES
UNIT, P.B.A. LOCAL NO. 307,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Somerset County Prosecutor/Somerset County Board of Chosen Freeholders for a restraint of binding arbitration of a grievance filed by Somerset County Prosecutor's Detective Unit, P.B.A. Local No. 307. The grievance contests the salary rate used to calculate payments for unused vacation days payable on retirement. The Commission concludes that compensation on retirement for unused leave is a negotiable term and condition of employment and a grievance seeking payment at the current rate is legally arbitrable. The Commission finds that the only question presented in this case is whether the contract, when read in light of relevant statutes and regulations, compels the employer to pay at the current rates. The Commission concludes that no managerial prerogative or statute bars the PBA from making that argument to an arbitrator.

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 Petitioner, Stanton, Hughes, Diana, Cerra,
Mariani & Margello, P.C., attorneys
(Mark Diana, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Charles E. Schlager, on the brief)

DECISION

On May 11, 2001, the Somerset County Board of Chosen Freeholders and the Somerset County Prosecutor petitioned for a scope of negotiations determination. The petitioners seek a restraint of binding arbitration of a grievance filed by Somerset County Prosecutor's Detective Unit, P.B.A. Local No. 307. The grievance contests the salary rate used to calculate payments for unused vacation days payable on retirement.

The parties have filed briefs, exhibits, and a certification. These facts appear.

The parties entered into a collective negotiations agreement effective from January 1, 2000 through December 31, 2002 covering Prosecutor's detectives. The grievance procedure ends in

binding arbitration. Certain provisions, unchanged since they were adopted in 1994, relate to the accumulation of and payment upon retirement for unused vacation leave. They provide:

- 7.3 Up to ten (10) vacation days per year may be carried over to a subsequent year, for a total accumulation not to exceed fifty (50) days over five (5) years. Employees with an excess of fifty (50) accrued days upon execution of the parties' 1994 Agreement shall not be required to forfeit such excess days.
- 7.4 Employees shall be compensated for accrued vacation days, or any portion thereof, not used prior to retirement, resignation or termination at a rate equal to the employee's salary in accordance with the memorandum of Freeholder Director Bateman dated May 20, 1992, which is attached hereto as Appendix A.

The May 20, 1992 memorandum referenced in this provision is addressed to County employees. It provides:

Over the past few months the Board of Chosen Freeholders has been reviewing the Vacation Policy. We are particularly concerned with the provision of carryover and the affect [sic] it has on staffing and budget.

Our findings show an extraordinary number of days have been accumulated over the normal limit of ten (10) as provided by the Policy. The accumulation eventually impacts on service because a Division may be short staffed due to longer term absences. The accumulation may also impact on budgets because payment of the days may be based on present salary as opposed to the salary rate in effect at the time the days were earned.

As a result of our findings the Board of Freeholders has decided to modify the Vacation Policy to address the issue of accumulation. Copies of the policy modifications are attached for you for distribution to your employees and

for insertion in your Personnel Policies and Procedures Manual. However, employees who have accumulated vacation time through 1991 will have those days grandfathered. Any future payment of those days will be at the 1991 salary rates. Thereafter, if payment of approved accumulated days is made, the days will be paid at the salary rate in effect at the time the days were earned.

The County later changed the payment of accrued vacation from the 1991 rate to the 1992 rate because the County computers were unable to determine which vacation bank days were earned in 1992 and which had been earned in prior years. The PBA did not object to this change.

On December 17, 1998, the PBA filed a grievance on behalf of two employees who were scheduled to retire at the end of 1998. The grievance asserts that a large portion of the money they were due for accumulated vacation days was improperly calculated based on their 1992 salary rates. The PBA alleges that under the current collective negotiations agreement and applicable laws, the vacation days should have been paid at the 1998 salary rate.

On January 4, 1999, the Chief of the Prosecutor's Detectives denied the grievance. He stated that, in accordance with Article VII, Section 7.4 and Appendix A, the employees were paid for their vacation days in accordance with the salary rates at the time the days were earned.

On February 18, 1999, the PBA submitted a grievance statement to the Prosecutor. It reads, in part:

Pursuant to Prosecutor Forest's February 3, 1999 memorandum, PBA Local 307 submits this

statement in further explanation of Grievance 98-1 which requests that all vacation time accrued by retiring members be paid at the rate of pay upon retirement for all members.

Your attention is directed to N.J.S.A. 40A:14-137.1:

The governing body of any municipality having a paid police or fire department shall be authorized, upon the death or retirement in good standing of any permanent member of such municipal police department or paid fire department occurring on or after the effective date of this act, to cause to be paid to him or his estate the full amount of any vacation pay accrued but unpaid at the time of his death or retirement. In the event that such vacation credit shall be calculated in terms of days off, the governing bodies shall pay for the same at the prevailing wage of the member at the time of death or retirement.

The statement asserts that the vacation provision in the agreement illegally conflicts with the statute.

On March 3, 1999, the Prosecutor denied the grievance, stating that N.J.S.A. 40A:14-137 does not apply to detectives in a county prosecutor's office. He asserts that the laws set forth in 40A:14-118 through 14-137 apply only to municipal law enforcement officers.

On April 9, 1999, the PBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the

agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we consider only the abstract question of whether the employer could have legally agreed that unused vacation days would be paid at the current salary rate upon retirement.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 92-93 (1981) outlines the steps of a scope of negotiations analysis for police and fire fighters:

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 fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking 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 petitioners argue that the grievance is not arbitrable because it involves a question of statutory construction that should be resolved by a court, i.e., whether N.J.S.A. 40A:14-137.1 applies to these employees and thus preempts the negotiated pay provision. The petitioners concede that arbitrators can decide if employees have been denied statutory entitlements when they are covered by the pertinent laws. They assert, however, that the question here is whether the employees are covered by the statute and that Essex Cty. Sheriff, P.E.R.C. No. 2000-79, 26 NJPER 202 (131082 2000), mandates that the issue be referred to a court.

The PBA asserts that its claim, even if based on a statute, is legally arbitrable. The PBA also cites Civil Service regulations and case law defining "local service" as including county employees.

The petitioners respond that the grievance does not involve any question of contract interpretation or application, but rather a question of legislative intent. The petitioners note that the County is not a Civil Service jurisdiction and asserts that the regulations cited by the PBA are inapplicable.

Absent preemption, compensation on retirement for unused leave is a negotiable term and condition of employment. See Morris School District Bd. of Ed. and The Ed. Ass'n of Morris, 310 N.J. Super. 332 (App. Div. 1998), certif. den. 156 N.J. 407 (1998). The petitioners are not arguing that it has a managerial prerogative to determine the rate at which unused vacation leave will be paid. Nor are they arguing that N.J.S.A. 40A:14-137.1 prohibits an agreement


to pay for unused vacation leave at current rates. Accordingly, there is no basis to find that the grievance seeking payment at the current rate is not legally arbitrable.

The only question presented by the parties is whether the contract, when read in light of relevant statutes and regulations, compels the employer to pay at the current rates. No managerial prerogative or statute bars the PBA from making that argument to an arbitrator. An arbitrator may interpret the parties' agreement in light of all relevant statutes and regulations. See Kearny PBA Local #21 v. Kearny, 81 N.J. 208, 217 (1979) (public sector arbitrator must apply pertinent statutory criteria). Should either party then disagree with the arbitration award, it may seek review in the courts. N.J.S.A. 2A:24-8.

ORDER

The request of the Somerset County Prosecutor and Somerset County Board of Chosen Freeholders for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Madonna abstained from consideration.

DATED: September 26, 2001
Trenton, New Jersey
ISSUED: September 27, 2001