

P.E.R.C. NO. 90-60

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BRADLEY BEACH,

Petitioner,

-and-

Docket No. SN-90-7

P.B.A. LOCAL No. 50,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by P.B.A. Local No. 50 against the Borough of Bradley Beach. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied summer vacation leaves to a sergeant and a lieutenant. The Commission finds that the P.B.A. may arbitrate its claim that the requests for vacation were unreasonably denied given the employer's staffing levels.

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Appearances:

For the Petitioner, Ruderman & Glickman, Esqs.
(Mark S. Ruderman, of counsel)

For the Respondent, Joseph N. Dempsey, Esq.

DECISION AND ORDER

On August 7, 1989, the Borough of Bradley Beach petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by P.B.A. Local No. 50. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied summer vacation leaves to a sergeant and a lieutenant.

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

The PBA represents the Borough's regular full-time police officers, except the chief and deputy chief. The parties' most recent collective negotiations agreement contains an article entitled Vacations. It provides, in part:

- A. Regular full time employees shall receive vacation credits of one (1) working day for each

year of service up to ten (10) full years, and one-half (1/2) working day extra for each year after completion of ten (10) full years of service up to a maximum of twenty-two (22) working days.... All vacations shall be taken during the current year, and vacation time shall not be accumulated except with the permission of the Director. Vacation schedules shall be approved by the Chief of Police.

- B. The choice of vacation time shall be based upon seniority in service and one man per week will be entitled to take a vacation during the months of June 15th through September 15th. Two men per week shall be permitted to take vacation during all other times. Vacation time allowed by seniority shall be such that there will be a maximum of two (2) weeks per man during the time of June 15th through September 15th. Vacation weeks may be taken consecutively.

The contract's grievance procedure ends in binding arbitration.

Lieutenant Robert DeNardo asked to take vacation leave the weeks of July 7 and August 4, 1979. Sergeant Raymond Ortiz asked to take vacation leave the weeks of June 30 and July 28, 1989.

On May 25, 1989, the chief wrote DeNardo and Ortiz that "due to a severe staff shortage which will occur during the summer months," he had to deny their vacation requests.

The PBA grieved on behalf of DeNardo and Ortiz. It claimed that the denial of summer vacation violated the contractual article on vacations, specifically the provision that "vacation time allowed by seniority shall be such that there will be a maximum of two (2) weeks per man during the time of June 15 through September 15." The chief denied the grievance and the PBA appealed to the mayor. It asserted that the department's staff was the same as in previous summers, formal requests for vacation had been made in the fall of

1988 and should have been resolved earlier, and the two officers were being penalized for the department's understaffing. The Mayor denied the grievance, the PBA demanded binding arbitration, and this petition ensued.

An affidavit of the PBA's chairman makes these assertions: the officers did not ask to take their vacations at the same time; the number of lieutenants and sergeants has not changed during the last eight years; there were ten patrol officers, two sergeants and four other superior officers at work throughout the summer of 1989, and there was no staff shortage during that summer, except for a few days when officers were sick and could have been replaced by off-duty officers working overtime.

An affidavit of the police chief make these assertions: the Borough's population swells from about 5,000 to about 25,000 people each summer; he has never been confronted with two staff officers both taking their midnight shifts off during a period covering almost half the summer; if that happened he would have no staff officer during a critical time, and having two staff officers off at the same time would have produced unacceptable staffing levels.^{1/}

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 a mandatory category of negotiations. Compare Paterson Police PBA No. 1 v. Paterson, 87

^{1/} A document submitted by the Borough confirms the PBA's assertion that the officers did not request vacations during the same weeks.

N.J. 78, 88 (1981) and Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson 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 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]

Because this dispute arises as a grievance, arbitration will be permitted if the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). No preemption arguments have been made so we will concentrate on whether the grievance, if sustained, would substantially limit governmental policymaking. We consider that question in the abstract and express no opinion about the contractual merits of the grievance. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

Earlier this year we decided another scope of negotiations case involving these parties. Bor. of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989). During negotiations over a successor contract, a dispute arose over whether Section B of the article on vacations was mandatorily negotiable. We held it was. We stated:

Absent a specific staffing shortage, this provision is mandatorily negotiable. See Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1989); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). The arbitrability of a grievance filed under this article can be assessed in light of any alleged staffing shortages when a vacation request is denied. [Id. at 286]

Since we decided the first Bradley Beach case, we have decided another case which guides the resolution of this one. In Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989), a PBA affiliate asserted that the employer had to grant any timely personal leave request, even if granting a leave would prevent the employer from meeting its staffing level for that shift. We restrained arbitration over that claim, but permitted arbitration over a claim that a particular request for leave was unreasonably denied given the staffing level. See also Bor. of Garwood, P.E.R.C. No. 90-50, 15 NJPER ____ (¶_____ 1989).

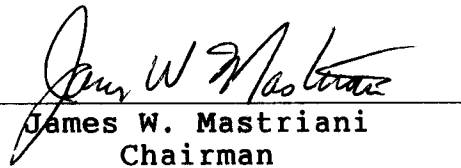
Under Livingston, the PBA may not challenge this employer's staffing levels -- the number of superior officers it needs to fill a summer shift. See also Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989). In particular, the employer has

a right to ensure that it has supervisory coverage on the midnight shift. Town of Irvington v. Irvington PBA Loc. No. 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980). The arbitrator cannot secondguess that determination. But we do not read the PBA's allegations as contesting the overall staffing levels. Instead, it asserts that these particular requests were unreasonably denied because the overall staffing levels had not changed, the occasional day-to-day absences could have continued to be filled by officers working overtime, and these two officers did not ask to take vacations at the same time. The PBA may therefore arbitrate its claim that the requests for vacation were unreasonably denied given the employer's staffing levels.

ORDER

The Borough's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 14, 1989
ISSUED: December 15, 1989