

P.E.R.C. NO. 93-108

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-93-44

DISTRICT 1199J,
NUHHCE, AFSCME,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of two contract proposals of District 1199J, NUHHCE, AFSCME in successor negotiations with the County of Hudson. The Commission finds not mandatorily negotiable a proposal that interferes with the employer's prerogative to establish a sick leave verification policy. The Commission finds mandatorily negotiable a proposal concerning vacation benefits. Civil service regulations do not preclude parties from negotiating over contractual benefits which may exceed civil service minimums.

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Appearances:

For the Petitioner, Genova Burns, attorneys (James J. McGovern, III, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On December 3, 1992, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a declaration that two successor contract proposals submitted by District 1199J, NUHHCE, AFSCME are not mandatorily negotiable. These proposals concern sick leave verification and vacation pay calculation.

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

District 1199J represents the County's non-supervisory, non-professional employees. The parties entered into a collective negotiations agreement effective from July 1, 1989 to June 30, 1992. They are now engaged in successor contract negotiations.

District 1199J has proposed that previous contractual provisions on sick leave verification and vacation pay calculation be retained in any successor contract. The County has responded that these provisions are not mandatorily negotiable.

Article XVII of the predecessor contract is entitled Sick Leave. Section 6 provides, in part:

The Employer may, after three (3) consecutive days of illness, request an Employee to bring in a doctor's certificate. The County may request a doctor's certificate under suspicious circumstances.

The County contends that this provision is not mandatorily negotiable given its managerial prerogative to establish a sick leave verification policy. We agree. See, e.g., City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). We reject District 1199J's contention that this provision is mandatorily negotiable under the discipline amendment to N.J.S.A. 34:13A-5.3. However, the application of a sick leave verification policy to discipline an employee presents a mandatorily negotiable issue which may be submitted to binding arbitration if the employee lacks an alternate statutory appeal procedure. Teaneck Tp., P.E.R.C. No. 93-44, 19 NJPER 18 (¶24009 1992).

Article XVI of the predecessor contract is entitled Vacations. Section 12 provides:

Absences due to established illness, maternity leave or injury up to one (1) month shall be considered as time worked in determining the amount of vacation pay for Employees.

The County contends that N.J.A.C. 4A:6-1.2(c)(2) partially preempts negotiations over this provision.

Employees in local communities covered by civil service statutes and regulations are entitled to certain minimum amounts of vacation leave. Pursuant to N.J.A.C. 4A:6-1.2(b), the amount of that statutory vacation leave depends upon the employee's years of "continuous service." N.J.A.C. 4A:6-1.2(c) specifically, expressly, and comprehensively defines "continuous service" for purposes of calculating the vacation leave required by civil service regulations. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982). "Continuous service" is "employment for the same jurisdiction without actual interruption due to resignation, retirement or removal." Under subsection (c)(2), "continuous service" shall include periods of employment before and after unpaid leaves of absence; however, "the period of time on a...leave without pay, except for military leave, shall not be included in calculating years of continuous service." N.J.A.C. 4A:6-1.2(c) thus does not permit unpaid leaves of absences (besides military leave) to be used to calculate the minimum amounts of vacation leave required by civil service regulations.

N.J.A.C. 4A:6-1.2(b) provides, however, that vacation leave for local employees shall be "at least" the minimum amounts provided by civil service regulations. Because N.J.A.C. 4A:6-1.2(b) sets only a minimum level of benefits, it does not preclude the parties from negotiating over contractual vacation benefits which may exceed

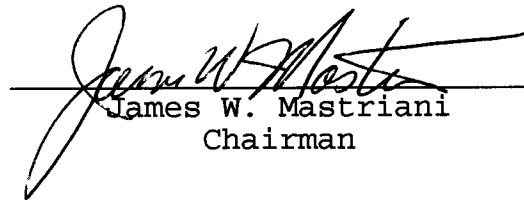
civil service minimums. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). The parties may agree on a broader definition of eligibility for such contractual benefits than civil service regulations provide for statutorily-mandated benefits.

ORDER

Article XVII, Section 6 is not mandatorily negotiable.

Article XVI, Section 12 is mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: May 20, 1993
Trenton, New Jersey
ISSUED: May 21, 1993