

P.E.R.C. NO. 86-82

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF RIVER VALE,

Petitioner,

-and-

Docket No. SN-86-5

RIVER VALE PBA, LOCAL 206,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance which the River Vale PBA, Local 206 has filed. The grievance alleges that the Township violated its collective negotiations agreement with the PBA when it refused to permit a police officer on a terminal leave of absence to accrue vacation pay and other benefits.

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Appearances:

For the Petitioner, Aron & Salsberg, Esqs.  
(Richard H. Bauch, of Counsel)

For the Respondent, Alfred G. Osterweil, Esq.

DECISION AND ORDER

On July 22, 1985, the Township of River Vale ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks to restrain binding arbitration of a grievance which the River Vale PBA, Local 206 ("PBA") has filed. The grievance alleges that the Township violated its collective negotiations agreement with the PBA when it refused to permit a police officer on a terminal leave of absence to accrue vacation pay and other benefits.

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

The PBA is the majority representative of the Township's police officers besides the chief and captain. The Township and the

PBA have entered a collective negotiations agreement effective from January 1, 1984 through December 31, 1985. The grievance procedure ends in binding arbitration. Section 49.01 provides:

Each employee shall be entitled to a terminal leave period of one month for every three years of service.1/

Other provisions of the contract provide for vacations and other benefits.

On February 5, 1985, the PBA filed a grievance alleging that the Township had violated the collective negotiations agreement when it failed to pay employees "accrued vacation and other benefits, which are earned during employee's terminal leave period."2/

On February 11, the Township Administrator denied this grievance, asserting that it was non-negotiable and that "...employees cannot earn time when they are not actively employed." The Mayor agreed.

The PBA demanded binding arbitration. This petition ensued.

The Township asserts that the accrual of vacation benefits during a terminal leave is an illegal gift of public money. The PBA responds that the accrual of vacation pay and other benefits while on terminal leave presents a mandatorily negotiable issue of compensation.

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1/ The PBA alleges, and the Township does not deny, that it made concessions on other economic issues to obtain this benefit.

2/ The grievance also raised another issue, later settled.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. Id. at 154.

Thus, we do not decide the contractual merits of the PBA's grievance or the Township's defenses.

Paterson Police Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), tells how to determine the negotiability and arbitrability of a police officer's grievance:

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.

(Id at 92-93, citations omitted)

A grievance which involves a permissively negotiable subject may be submitted to binding arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Here, paid vacations and terminal leaves are indisputably mandatorily negotiable. Both subjects directly and intimately affect these police officers and neither would significantly interfere with managerial prerogatives or substantially limit the Township's policy-making powers. See, e.g., Taureck v. City of Jersey City, 149 N.J. Super. 503, 515-16 (App. Div. 1977); City of Newark, P.E.R.C. No. 83-143, 9 NJPER 296 (¶14137 1983).

Accordingly, this grievance is arbitrable unless a specific constitutional provision, statute or regulation preempts it.

The Township alleges that the New Jersey Constitution preempts this grievance's claim for relief. N.J. Const. (1947), Art. VIII, §III, ¶2 states:

No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation.

We disagree.

In Maywood Ed. Ass'n, Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1974), the Court held that school boards could negotiate a provision paying retired employees for their unused sick leave. Rejecting the employer's reliance on this constitutional provision, the Court stated:

It is fair to say that our courts generally have adopted the view that compensation paid to public employees, whatever the label, is not a gift so long as it is included within the conditions of employment either by statutory direction or contract negotiation.  
Id. at 557.

In this case, payment for vacation leave accruing during a terminal leave and before the date of retirement, and based on length of service, would appear to be a form of compensation rewarding employees for long service.

The Township alleges that N.J.S.A. 40A:14-137.1 preempts this grievance. This statute provides:

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.

This statute does not define "retirement." On its face, however, it does not preclude the PBA's argument that employees who are on

terminal leave, and who will not retire until the end of that leave, may receive accrued vacation pay if the governing body has in fact authorized such payment.<sup>3/</sup>

The Township also argues that the public interest prohibits the accrual of vacation benefits during terminal leave. It relies upon James v. N.J. State Prison, 176 N.J. Super. 207 (App. Div. 1980) ("James"). There, the Court held that a wrongfully discharged Civil Service employee was not entitled to receive, as back pay, statutory vacation benefits in addition to his regular salary or straight-time wages since statutory vacation leave is predicated upon service in employment under Civil Service statutes; in effect the employee, unlike here, would have received more than a full year's pay if he received vacation benefits. This case contains dicta that the public interest militates against accruing vacation benefits during time not worked, but does not answer this precise question: in the abstract, is a claim that a public employer contractually agreed to accrual of vacation benefits during terminal leave arbitrable? Further, James did not consider a contractual

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<sup>3/</sup> The Township is not a Civil Service community. Inapplicable therefore is a Civil Service rule, N.J.A.C. 4:1-17.3, stating that vacation leave credits shall not accrue after an employee has resigned or retired although the employee is being retained on the payroll until the expiration of vacation or other compensatory time. This rule is also inapplicable since it applies to employees in State service. No similar limitation is placed on employees in local service; this omission may signify a local employer's discretion to adopt a different rule.

provision like this one, tying a particular form of compensation to the length of past services.

The Township had also relied upon Atlantic City Professional Firefighters, Local #198 v. City of Atlantic City, Dkt. No. L-7805-84E (Ch. Div. 1984). There, Judge Weinstein had vacated an arbitration award which had granted an employee a full year's vacation benefits even though he had retired on a lump sum payment basis; the parties' submission distinguished this situation from an employee taking terminal leave before retirement. This case, like James, contained dicta that the public interest militates against accruing vacation benefits during time not worked, but, also like James, did not consider the precise issue here.

Further, on October 29, 1985, the Appellate Division reversed and reinstated the arbitration award. App. Div. Dkt. No. A-1625-84T7. It specifically rejected contentions that N.J.S.A. 40A:14-137.1, James and the public interest precluded this award. It stated:

The facts do not compel the conclusion of the Law Division that "[i]t is a windfall to employees at the expense of the taxpayer" to permit a municipality to agree through negotiation to permit certain employees to receive the value of their vacation pay once they have worked at least one day during the year of their terminal leave or death. Such a payment may be considered compensation for services rendered during the employee's prior term of public employment. Cf. James v. N.J. State Prison, et., 176 N.J. Super. 207 (App. Div. 1980). We hold that the decision of the



arbitrator is not in conflict with the public interest.  
(Slip opinion at p. 5)<sup>4/</sup>

Given that this dispute is arbitrable under Paterson's tests, arbitration should be allowed to proceed. If the Township's renews its "public interest" argument, the arbitrator should consider it; resolution of that issue may encompass consideration of a myriad of factors including what the claimed benefit would cost, what concessions may have been made to get that benefit, how specific were the negotiations on that issue and the public interest in management-labor stability under our statute. Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 200 (1979); Communications Workers of America, Local 1087 v. Monmouth County Bd. of Social Services, 96 N.J. 442 (1984). Should the Township not prevail, it may then initiate proceedings under N.J.S.A. 2A:24-7 and reargue that James bars the claimed vacation benefits. This course is normally pursued when a grievance satisfies the standard negotiability and arbitrability tests, but a particular resolution may nevertheless raise a "public interest" issue. Kearny; Monmouth County, Atlantic City. In the absence of cases directly on point, we will not deviate from this course in applying Paterson's negotiability tests.

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<sup>4/</sup> The Township has asked us to hold this case pending a petition for certification which it intends to file. We decline that request.

ORDER

The request of the Township of River Vale for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. Commissioner Hipp was opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
December 12, 1985  
ISSUED: December 13, 1985