

P.E.R.C. NO. 2001-16

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY STATE JUDICIARY
(ADMINISTRATIVE OFFICE OF
THE COURTS),

Petitioner,

-and-

Docket No. SN-2000-109

PROBATION ASSOCIATION OF
NEW JERSEY,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the New Jersey State Judiciary (Administrative Office of the Courts) for a restraint of binding arbitration of grievances filed by the Probation Association of New Jersey. The grievances contest the denial of the requests of two probation officers for reimbursement of leave time they used after workplace injuries. The officers ultimately received workers' compensation settlements. The State asserts that the employees were County employees at the time of their injuries and that, by statute, the County is responsible for any claims. The Commission concludes that the grievances do not involve any statutorily-barred claims, specifically workers' compensation claims, and may be submitted to binding arbitration.

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, John J. Farmer, Jr., Attorney General
(George N. Cohen, Deputy Attorney General, on the brief)

For the Respondent, Fox and Fox, LLP, attorneys
(Dena E. Epstein, on the brief)

DECISION

On June 16, 2000, the New Jersey State Judiciary
(Administrative Office of the Courts) petitioned for a scope of
negotiations determination. The Judiciary seeks a restraint of
binding arbitration of grievances filed by the Probation
Association of New Jersey. The grievances contest the denial of
the requests of two probation officers for reimbursement of leave
time they used on injury leaves. The officers ultimately received
workers' compensation settlements.

The parties have filed briefs and exhibits. The
Judiciary has filed an affidavit of the AOC's Administrator of the
Labor and Employment Relations Unit. These facts appear.

PANJ represents all non-supervisory employees in the case-related professional unit. The Judiciary and PANJ are parties to a collective negotiations agreement effective from January 1, 1995 through June 30, 1999. The grievance procedure ends in binding arbitration.

In 1994, the State Judicial Unification Act, N.J.S.A. 2B:10-1 et seq. was passed. Pursuant to that Act, the State assumed the costs of all County court systems. Employees in the County courts became State employees effective January 1, 1995.

On December 28, 1994, a Letter of Agreement was executed between the Judiciary and the labor representatives of Judiciary employees. The letter established the framework for employer-employee relations and addressed compensation, benefits and treatment of employees before and upon transfer to State service. Article 15 of the parties' current contract provides that unless specifically altered by the agreement, all provisions of prior contracts covering employees in the bargaining unit as well as the Letter of Agreement shall remain unchanged.

Jean Lackey is a probation officer in the Essex vicinage. On December 15, 1994, Lackey was injured. She used 42 days of sick, personal and vacation time between then and May 25, 1995.

Lackey filed a workers' compensation claim. On March 16, 1998, that claim was settled. The order approving the settlement found that she had 42 days of lost compensable time. PANJ requested that the 42 days of leave be restored.

On July 26, 1999, the Judiciary denied that request. It asserted that Lackey was a County employee at the time of her injury and that the County, not the State, was responsible for the claim. The Judiciary asserts that the workers' compensation settlement agreement does not require it to restore the 42 days since the Judiciary was not a party to the workers' compensation proceeding.

Patricia A. Phillips is a senior probation officer in the Middlesex vicinage. On August 5, 1994, Phillips injured her back while on duty. She was granted an injury leave and returned to work one week later. On March 1, 1995, she had back surgery due to the earlier injury. She returned to work on May 24, 1995.

Phillips filed a workers' compensation claim. On March 5, 1997, Phillips' claim was settled. Phillips then sought restoration of the 16 sick days and 4.75 vacation days she had used.

On June 23, 1999, a hearing officer appointed by the Judiciary denied Phillips' request, holding that the County was responsible under the Unification Act for claims that arose prior to unification. The hearing officer further held that Phillips had not been denied contractual benefits since she, along with all other Judiciary employees, was credited with her annual allotment of sick, vacation and personal days on January 1, 1995 and had the option to use those days or take an unpaid leave.

On August 25, 1999, PANJ requested arbitration of both grievances. This petition ensued.

The Judiciary asserts that the counties are responsible for any workers' compensation claims filed by a judicial employee where the date of injury preceded January 1, 1995. It asserts that since both employees' injuries occurred prior to January 1, 1995, N.J.S.A. 2B:10-7c(2) preempts binding arbitration of the claim for restoration of lost time. This statute provides:

Any workers' compensation claim filed by a judicial employee of a county, any tort claim, or any auto liability claim arising out of the maintenance, operation or use of any vehicle by a judicial employee of a county where the date of loss was prior to January 1, 1995 shall be the liability of the county.

PANJ responds that these injured employees were entitled to Sick Leave Injury (SLI) benefits. It also observes that the employees held the same positions and were assigned to the same workplace both before and after their injuries and maintains that they should have lost leave benefits restored. PANJ further asserts that benefits such as sick, vacation and personal days are mandatorily negotiable and the sole issue is whether crediting leave benefits to these employees is legally arbitrable.

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 cannot consider the contractual merits of the grievances or any contractual defenses the parties may have.

The employer is not arguing that a claim for restoration of leave allowances is, in general, outside the scope of mandatory negotiations. That position is consistent with our case law finding the subject of paid leaves of absence for injured employees to be mandatorily negotiable and specifically rejecting an argument that workers' compensation laws preempt contractual claims to have lost leave time restored. See Burlington Cty., P.E.R.C. No. 98-86, 24 NJPER 74 (¶29041 1997); Burlington Cty., P.E.R.C. No. 97-84, 23 NJPER 122 (¶28058 1997), aff'd 24 NJPER 200 (¶29092 App. Div. 1998); City of Camden, P.E.R.C. No. 96-33, 21 NJPER 399 (¶26244 1995); Riverside Tp., P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987); Jackson Tp., P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, 6 NJPER 338 (¶11169 App. Div. 1980). Cf. In re Prosecutor Of Middlesex Cty., 255 N.J. Super. 333 (App. Div. 1992) (prior-employment credit for longevity, vacation and sick leave benefits is mandatorily negotiable).

The Judiciary's preemption argument is more limited. It asserts that the compensable injuries occurred prior to 1995 and that N.J.S.A. 2B:10-7c(2) insulates the Judiciary from liability and requires the injured employees to look to their former county employers for recourse.

As a rule, an otherwise negotiable topic cannot be the subject of a negotiated agreement if it is preempted by a statute. However, the mere existence of legislation relating to a given term or condition of employment does not automatically preclude negotiations. Preemption occurs only if the regulation fixes a term and condition of employment "expressly, specifically and comprehensively." Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978).

N.J.S.A. 2B:10-7c(2) does not preempt arbitration of these claims. Burlington Cty., P.E.R.C. No. 98-86, explains that workers' compensation laws do not address or foreclose a majority representative's efforts to negotiate contractual clauses providing leaves of absence and to enforce such clauses by seeking remedies limited to restoring sick leave days. Claims that such clauses have been violated are different from the tort-based claims meant to be preempted by the workers' compensation laws.

N.J.S.A. 2B:10-7c(2) provides that the Judiciary will not be liable for the payment of workers' compensation claims, tort claims, or auto liability claims where the date of the loss was prior to January 1, 1995. The statute does not expressly, specifically or comprehensively prohibit arbitration of grievances or bar other actions seeking the restoration of paid leaves for employees injured on the job, even if that injury occurred before January 1, 1995. Because these grievances involve claims for negotiable leave benefits, and do not involve any of the statutorily-barred claims, specifically workers' compensation, they may legally be submitted to binding arbitration.

We note that the counties are no longer the employers of judicial employees and would not legally be in a position to grant leave time to current employees of the Judiciary. Whether the Judiciary, as a successor employer to the counties, has contractually obligated itself to restore the disputed days is an issue the arbitrator must decide.

ORDER

The request of the New Jersey State Judiciary
(Administrative Office of the Courts) for a restraint of binding
arbitration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Madonna, McGlynn, Muscato, Ricci and
Sandman voted in favor of this decision. None opposed. Commissioner
Buchanan was not present.

DATED: September 28, 2000
Trenton, New Jersey
ISSUED: September 29, 2000