P.E.R.C. NO. 98-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WOODBRIDGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-97-117

PBA LOCAL 38,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Woodbridge for a restraint of binding arbitration of a grievance filed by PBA Local 38. The grievance contests the denial of paid sick leave to a police officer. The Commission holds that this dispute over whether the officer's injury is a new or separate injury entitling him to another year of paid leave under the parties' contract can be decided by an arbitrator consistent with the statutory mandates of N.J.S.A. 40A:14-137.

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, Loccke & Correia, attorneys
(Leon B. Savetsky, of counsel)

For the Respondent, Genova, Burns & Vernoia, attorneys
(James J. McGovern, III, of counsel)

DECISION

On May 19, 1997, the Township of Woodbridge petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by PBA Local 38. The grievance contests the denial of paid sick leave to a police officer.

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

PBA Local 38 represents all of the Township's police officers below the rank of deputy chief. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of contractual disputes.

Article XVII is entitled Sick Leave. Subsection B provides:

> If an employee sustains a major injury, sickness or disability which is related to his employment, then he/she shall be entitled to full salary during the period of one (1) year from the date of said disability or injury or sickness and there shall be no use of accumulated sick time. For all periods after one (1) year, accumulated sick time must be utilized. Furthermore, all compensation checks received for said major injury, sickness or disability must be returned to the Township.

On October 27, 1995, Mullane injured his left shoulder while on duty and was placed on sick leave. On February 18, 1996, he returned to work and was assigned to light duty. On March 30, 1996, Mullane reinjured his left shoulder while on duty and was again put on sick leave.1/ Mullane returned to work on April 14, 1996 and was sent home the next day due to the medication he was taking. Mullane went out on sick leave again on April 17, 1996.

On January 21, 1997, the Township notified Mullane that as of October 27, 1996, one calendar year from the date of his original injury, he would have to start using his accumulated sick leave since the parties' contract only provides for one year of paid leave for on-duty injuries and since N.J.S.A. 40A:14-137 prohibits paid disability leave for more than one year from the date of the injury.

1/ The parties submitted a worker's compensation questionnaire and a supervisor's accident investigation report which characterize the March injury as a re-injury dating from the original shoulder injury. The parties disagree as to whether the second injury is a new injury or a reoccurence of the October injury.

N.J.S.A. 40A:14-137 provides:

> The governing body of any municipality, by ordinance, may provide for granting leaves of absence with pay not exceeding one year, to members and officers of its police department and force who shall be injured, ill or disabled from any cause, provided that the examining physician appointed by said governing body, shall certify to such injury, illness or disability.

Local 58 filed a grievance challenging the Township's decision to require Mullane to use his accumulated sick leave as of October 27, 1996 and claiming that Mullane was entitled to another contractual year of paid leave dating from his injury on March 30, 1996. The grievance was denied and 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 do not consider the merits of the grievance or any contractual defenses the City might have.

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 PBA No. 1 v. Paterson, 87 N.J. 78 (1981 with Local 195, IFPTE v. State, 88 N.J. 393 (1982). The Court in Paterson set forth these negotiability tests:

> 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 subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

The Township asserts that arbitration is preempted by N.J.S.A. 40A:14-137 which prohibits granting more than one year of

paid leave due to injury, illness or disability. The Township rejects the assertion that leave entitlement begins anew from the March 30, 1996 injury. Rather it argues that the March injury stems from the initial October injury and should be treated as a single injury for purposes of calculating the one year paid leave entitlement. It relies on Borough of Sayreville, P.E.R.C.No. 92-4, 17 NJPER 376 (¶22176 1991); Ocean Tp., P.E.R.C. No. 86-37, 11 NJPER 594 (¶16211 1985)(holding that N.J.S.A. 40A:14-137 prohibits leave beyond one year for injuries, illness or disability arising from the same cause); and Dover Tp., P.E.R.C. No. 85-44, 10 NJPER 629 (¶15302 1984)(holding that a brief return to work in between absences attributed to a single injury or cause does not necessarily interrupt the running of the one year period set out in N.J.S.A. 40A:14-137).2/

Local 38 argues that since N.J.S.A. 40A:14-137 permits the Township by ordinance to grant paid injury, illness or disability leave not to exceed one year and since the Township has not enacted an ordinance, the statute is inapplicable. It relies

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2/ The Township relies on Williams v. Deptford Tp. Bd. of Ed., 192 N.J. Super. 31 (App. Div. 1983), aff'd 98 N.J. 319 (1985) in support of the proposition that N.J.S.A. 40A:14-137 entitles an employee to paid injury leave of one calendar year from the date of the original injury. However, in City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992), we held that N.J.S.A. 40A:14-137 gives a municipality the discretion to provide up to one cumulative year of paid leave.

on an unpublished Appellate Division decision. Landau v. Marlboro Tp., App. Div. Dkt. No. A-1209-90T1 (7/19/91).

A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively fixes an employment condition and thereby eliminates the parties' discretion to vary it through negotiations. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

There is no dispute that paid injury leave is a mandatorily negotiable subject absent a statute or regulation preempting negotiations. See Morris Cty., P.E.R.C. No. 79-2, 4 NJPER 304 (¶4153 1978). We have held that N.J.S.A. 40A:14-137 bars arbitration of claims for compensation for injury leave in excess of one year. See City of Hoboken, P.E.R.C. No. 95-10, 20 NJPER 328 (¶25170 1994); City of Camden, P.E.R.C. No. 93-3, 18 NJPER 392 (¶23177 1992); Ocean Tp.; Dover Tp. The sole remaining issue is whether the March 30, 1996 shoulder injury is a new and separate injury entitling Mullane to another year of paid injury leave under the parties' contract. This factual dispute can be decided by the arbitrator consistent with the statutory mandates of N.J.S.A. 40A:14-137.

ORDER

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

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998