

P.E.R.C. NO. 98-114

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY (DEPARTMENT
OF ENVIRONMENTAL PROTECTION),

Petitioner,

-and-

Docket No. SN-98-17

COMMUNICATIONS WORKERS OF AMERICA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the State of New Jersey (Department of Environmental Protection) for a restraint of binding arbitration of grievances filed by the Communications Workers of America. The grievances assert that the employer violated the parties' collective negotiations agreements when it reduced the hours of sick, vacation, and administrative leave time accrued by employees in the Department of Environmental Protection. The Commission restrains arbitration over the recalculation of sick leave time as preempted by N.J.A.C. 4A:6-1.5(f). Since no comparable regulation specifies a formula for recalculating administrative and vacation time balances in the event of workweek reductions, the Commission declines to restrain arbitration over those aspects of the grievance.

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, Peter Verniero, Attorney General
(Michael L. Diller, Sr. Deputy Attorney General)

For the Respondent, Weissman & Mintz, attorneys
(Steven P. Weissman, on the brief)

DECISION

On August 14, 1997, the State of New Jersey (Department of Environmental Protection) petitioned for a scope of negotiations determination. On September 16, 1997, the petitioner amended its petition. The petition, as amended, seeks a restraint of binding arbitration of grievances filed by the Communications Workers of America. The grievances assert that the employer violated the parties' collective negotiations agreements when it reduced the hours of sick, vacation, and administrative leave time accrued by employees in the Department of Environmental Protection (DEP).

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

CWA affiliates represent four negotiations units of State employees: administrative and clerical employees, professional employees, primary-level supervisors and higher-level supervisors. The parties have entered into collective negotiations agreements effective from July 1, 1995 through June 30, 1999. The negotiated grievance procedures end in binding arbitration of contractual grievances. Articles in each contract provide for various amounts of administrative leave, sick leave, and vacation leave; require the employer to maintain certain benefits during the contract term; and govern salary program administration.

Effective July 8, 1995, the employer reduced the workweek of approximately 1800 DEP employees by eliminating their 40 hour per week positions and placing them in 35 hour per week positions. This workweek reduction was described and held non-negotiable in State of New Jersey (DEP), P.E.R.C. No. 95-115, 21 NJPER 267 (¶26172 1995), aff'd 285 N.J. Super. 541 (App. Div. 1995), certif. den. 143 N.J. 519 (1996).

On or about November 1, 1995, DEP employees received a form entitled "1995 Time Balances, Employee Year-to-Date Attendance Detail." This form listed each employee's accrued hours of administrative, sick and vacation leave for the 1995 calendar year; included were any unused hours carried over from the 1994 calendar year. Given the workweek reduction, the employer recalculated the time balances based on a 35 hour

workweek composed of seven hour work days rather than a 40 hour workweek composed of eight hour days. It did not distinguish between time balances accrued before the workweek reduction and those accrued afterwards. The recalculations decreased the number of leave time hours employees could use.

CWA filed grievances on behalf of DEP employees in all four negotiations units. The grievances asserted that DEP had violated the contractual provisions pertaining to leaves of absence, maintenance of benefits, and salary program administration by reducing the employees' accrued and earned leave time. The grievances also asserted that DEP had changed a longstanding practice of allowing employees to accrue and use administrative, sick, and vacation time in hours. The grievances asked that DEP stop violating "the union contract regarding leaves of absence and maintenance of benefits" and that "[a]ll affected employees should be made whole in every way."

The Director of DEP's Division of Personnel denied the grievances. He asserted that N.J.A.C. 4A:6-1.5(f) required the recalculations and that CWA could appeal to the Department of Personnel in accordance with contractual provisions concerning DOP rules and grievance procedures. CWA has filed such an appeal.

CWA 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 contractual merits of these grievances or any contractual defenses the employer may have.

Administrative leave, sick leave, and vacation leave are mandatorily negotiable subjects unless a statute or regulation preempts negotiations. See, e.g., Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); State of New Jersey (Dept. of Corrections) and CWA, 240 N.J. Super. 26 (App. Div. 1990); Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Barnegat Tp. Bd. of Ed., P.E.R.C. NO. 84-123, 10 NJPER 269 (¶15133 1984). A statute or regulation will not preempt negotiations unless it specifically, expressly and comprehensively sets an employment condition, thereby eliminating the employer's discretion to vary it. See, e.g., 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).

N.J.S.A. 11A:6-1 provides that the Merit System Board "shall designate the types of leaves and adopt rules for State employees in the career and senior executive services regarding

procedures for sick leave, vacation leave and other designated leaves with or without pay as the board may designate." N.J.S.A.

11A:6-2 and N.J.S.A. 11A:6-5 entitle State employees to receive certain minimum numbers of working days off for purposes, respectively, of vacation leave and sick leave; unused vacation leave and sick leave may be carried over into the next year.

N.J.S.A. 11A:6-6 provides that State employees shall receive three working days per calendar year of administrative leave; unused administrative leave may not be carried over into the next year.

N.J.A.C. 4A:6-1.5 governs vacation and sick leave adjustments in State service. In 1989, section (f) was added.

N.J.A.C. 4A:6-1.5(f) provides:

In State service, when an employee's workweek changes while he or she is employed by an appointing authority which tracks and grants sick leave in hours, the employee's sick leave entitlement shall be recalculated in the following manner:

1. The number of hours of sick leave for the former workweek shall be converted into days by dividing by the number of hours in the former workweek workday; and
2. This number of days shall be converted into hours for the new workweek by multiplying by the number of hours in the new workweek workday.

An example of how this section operates is set forth in the text of the regulation:

EXAMPLE: Thomas Brown is in a 40 hour workweek title. On January 1, he had accumulated 230 sick leave hours from prior years and was credited with 120 sick leave hours for 1989 (15 days x 8 hours), or a total of 350 sick leave

hours. Effective May 1, he is appointed to a title with a 35 hour workweek. His new sick leave entitlement is computed by dividing 350 by eight, the number of hours in a 40 hour workweek workday, to yield the result of 43.75 days of sick leave. The 43.75 days are then multiplied by seven, the number of hours in a 35 hour workweek workday. Thus, Thomas Brown's converted sick leave hours are 306 (43.75 x 7 = 306.25, rounded to 306).

CWA concedes that N.J.A.C. 4A:6-1.5(f) preempts arbitration over the alleged reduction in sick leave time balances. We will restrain arbitration over that aspect of the grievances. However, no comparable regulation specifies a formula for recalculating administrative or vacation time balances in the event of workweek reductions so we will not restrain arbitration over those aspects of the grievances.^{1/} Our jurisdiction is limited to the preemption issue and thus we reiterate that we do not consider the parties' contractual positions nor do we consider the logical symmetry of the employer's administrative practice concerning the recalculation of various leave time balances.

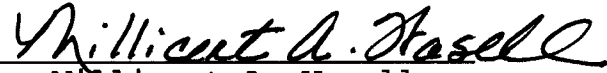
ORDER

The request of the State of New Jersey (Department of Environmental Protection) for a restraint of binding arbitration is granted to the extent the grievances contest the recalculation

^{1/} The Merit System Board has proposed to amend its regulations to provide for recalculations in those categories, 29 N.J.R. 3-4 (1/6/97), but a proposed regulation does not preempt negotiations. Nor does the pending appeal before the Merit System Board. See Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980).

of sick leave time balances. The request for a restraint of binding arbitration is otherwise denied.

BY ORDER OF THE COMMISSION



Mirlicent A. Wasell
Chair

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

DATED: February 26, 1998
Trenton, New Jersey
ISSUED: February 27, 1998