

P.E.R.C. NO. 98-132

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GALLOWAY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-98-14

MAINLAND PBA LOCAL #77 (SOA),

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of Galloway Township for a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77 (SOA). The grievance asserts that the Township violated the parties' collective negotiations agreement by miscalculating a retiring officer's terminal leave payments. The Commission finds that this dispute concerns the hourly rate to be used to calculate the amount of lump sum payments for unused leave and is mandatorily negotiable and not preempted by the cited pension statute or regulation.

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, Genova, Burns & Vernoia, attorneys
(Sandro Polledri, on the brief)

For the Respondent, Schaffer, Plotkin & Waldman,
consultants (Myron Plotkin, on the brief)

DECISION

On August 11, 1997, Galloway Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Mainland PBA Local #77 (SOA). The grievance asserts that the Township violated the parties' collective negotiations agreement by miscalculating a retiring officer's terminal leave payments.

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

The Township and the SOA are parties to a collective negotiations agreement effective from January 1, 1994 through December 31, 1996. The parties are involved in successor contract negotiations and have filed for interest arbitration. The SOA

represents all police personnel with the rank of sergeant and above, excluding the chief. The grievance procedure ends in binding arbitration.

Article XVII is entitled "Terminal Leave/Pay." Section C provides:

1. Upon an eligible employee's declaration of his intent to retire, the employee shall select one of the two following options:

a. Option One - Terminal Pay

(1) An employee may select to actively work until the effective date of separation and receive a lump sum payment for all unused days of leave and compensatory time accrued to the date of separation.

(2) An employee's base salary from the date of notification of intent through the date of separation shall consist of his base salary, longevity and college allowances and include wage increases granted him under the provisions of this Agreement.

b. Option Two - Terminal Leave

(1) An employee on terminal leave is not considered to be retired until the effective date of retirement which completely severs his employment relationship with the Township. Until that time, the employee on terminal leave is entitled to all rights and benefits afforded to all employees under this Agreement or any future Agreements subject to any limitations as specifically provided for in this section (Option Two - Terminal Leave).

(2) An employee may select to utilize all of his accrued leave and compensatory time earned up to the date that the Terminal Leave actually commences. No additional days of leave shall be earned by an employee during the period of such Terminal Leave.

(3) Such Terminal Leave may not exceed 365 calendar days. Any employee having more than 365 days of accrued leave shall be paid for the remaining days at the employee's per diem rate at the time the Terminal Leave commenced.

(4) An employee on Terminal Leave shall not be eligible to receive holiday pay, clothing/maintenance allowance nor shall he be eligible for any salary increases effective after the date that his Terminal Leave commenced.

Article XVII is entitled "Longevity." Section D provides:

Upon receipt of an employee's notice of intent to retire, regardless of which Terminal Option he selects, said employee shall receive ten percent (10%) longevity effective beginning the employee's twenty-fifth (25th) year and such longevity shall be included in the employee's base salary from the time of receipt of the notice of intent [to retire] to the Township until the date of separation. It is understood that this 10% longevity is only given to employees who commenced their 25th year of service and furnishing notice of intent to retire to the Township.

On January 2, 1996, Sergeant Phillip Uecker notified the Township of his intent to retire effective June 1, 1997. He selected Option One. Thus, he would continue to work up to the date of retirement and then be paid a lump sum for all accumulated sick leave and compensatory time.

Andrew Katz, the Township's business administrator, informed Uecker that he had accrued a total of 2,442 compensable hours. Katz calculated that Uecker would receive \$69,012.14 based on his hourly salary of \$28.2605. Uecker responded that the per diem rate of the calculation should have included longevity

payments and college allowances rather than solely base salary. Katz responded in turn that the hourly rate used to arrive at the payout was to be based on an employee's base salary, exclusive of longevity payments and college allowances.

The SOA filed a grievance alleging that the Township violated the contracts' terminal leave and terminal pay provisions. The Township denied the grievance and the SOA demanded arbitration. This petition ensued.

The Township argues that a statute and a regulation governing the Police and Firemen's Retirement System preempt Article XVII, Sections C and D. The cited statute and regulation concern calculations of employee pensions. N.J.S.A. 43:16A-1(26) provides:

"Compensation" shall mean the base salary, for services as a member as defined in this act, which is in accordance with established salary policies of the member's employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member's retirement or additional remuneration for performing temporary duties beyond the regular workday.

N.J.A.C. 17:4-4.1 provides:

(a) Only a member's base salary shall be subject to pension contributions and creditable for retirement and death benefits in the system.

(b) The board shall reserve the right to question any salary to determine its creditability where it is evident from the record that a salary reported for benefits includes extra compensation.

(c) Such extra compensation shall not be considered creditable for benefits and all contributions made thereon shall be returned.

(d) Some of the forms of compensation that have been defined as extra compensation include overtime; bonuses; longevity lump sum payments; individual retroactive salary adjustments or individual adjustments to place a member at the maximum of his or her salary range in the final year of service; increments granted for retirement credit or in recognition of the member's forthcoming retirement or in recognition of the member's years of service in the community.

(e) All claims involving an increase in compensation of more than 15 percent over that of the previous year, as reported to the retirement system, shall be investigated. Those cases where a violation of the statute is suspect shall be referred to the board.

The SOA asserts that the amount of the sergeant's base pay he is entitled to rely upon for pension purposes is severable from any dispute over the amount of base pay he is entitled to rely upon for terminal pay or leave purposes. It asserts, without conceding, that even if such payments would not be includable in the officer's pension base, a dispute over the amount of his compensation for accrued leave is still mandatorily negotiable, is not preempted by any statute or regulation, and is therefore legally arbitrable.

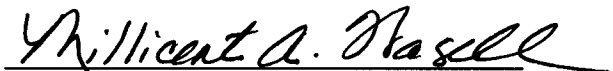
Paying employees for unused leave allowances is a mandatorily negotiable subject. See State of New Jersey (State Troopers), P.E.R.C. No. 92-3, 17 NJPER 374 (¶22175 1991), recon. den. P.E.R.C. No. 92-5, 17 NJPER 409 (¶22195 1991), aff'd NJPER Supp.2d 278 (¶225 App. Div. 1992), certif. den. 130 N.J. 596

(1992); Middlesex Cty. Prosecutor, P.E.R.C. No. 91-83, 17 NJPER 219 (¶22093 1991), aff'd NJPER Supp.2d 280 (¶227 App. Div. 1992); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); River Vale Tp., P.E.R.C. No. 86-82, 12 NJPER 95 (¶17036 1985); Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984); City of Newark, P.E.R.C. No. 83-143, 9 NJPER 296 (¶14137 1983); Somers Point, P.E.R.C. No. 77-48, 3 NJPER 99 (1977). The SOA's demand for arbitration and the business administrator's May 29, 1997 memorandum evidence the parties' dispute over the hourly rate to be used to calculate the amount of the lump sum payments for unused leave. That dispute is mandatorily negotiable and is not preempted by the cited statute or regulation since they deal solely with pension entitlements rather than terminal leave payments.

ORDER

The request of Galloway Township 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: April 30, 1998
Trenton, New Jersey
ISSUED: April 30, 1998