

P.E.R.C. NO. 2004-77

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY  
(DEPARTMENT OF CORRECTIONS),

Petitioner,

-and-

Docket No. SN-2004-43

STATE LAW ENFORCEMENT CONFERENCE,  
P.B.A. LOCAL 105,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the State of New Jersey (Department of Corrections) for a restraint of binding arbitration of a grievance filed by the State Law Enforcement Conference, P.B.A. Local 105. The grievance asserts that the employer violated the parties' collective negotiations agreement when it denied the vacation day requests of six corrections officers even though granting the requests would not have contravened the employer's minimum staffing requirements. The Commission concludes that the employer has not specified or shown a basis for concluding that upholding the grievance would jeopardize its minimum staffing requirements and the grievance may therefore 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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Respondent.

Appearances:

For the Petitioner, Peter C. Harvey, Attorney  
General of New Jersey (Karen M. Selby, Deputy  
Attorney General, on the brief)

For the Respondent, Zazzali, Fagella, Nowak,  
Kleinbaum & Friedman, P.C., attorneys (Robert A.  
Fagella, of counsel; Colin M. Lynch, on the brief)

DECISION

On February 10, 2004, the State of New Jersey (Department  
of Corrections) petitioned for a scope of negotiations  
determination. The employer seeks a restraint of binding  
arbitration of a grievance filed by the State Law Enforcement  
Conference, P.B.A. Local 105. The grievance asserts that the  
employer violated the parties' collective negotiations agreement  
when it denied the vacation day requests of six corrections  
officers even though granting the requests would not have  
contravened the employer's minimum staffing requirements.

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

The PBA represents corrections officers. The parties' collective negotiations agreement is effective from July 1, 1999 through June 30, 2003. The grievance procedure ends in binding arbitration.

Article XV is entitled Vacations. Section A sets forth vacation allowances according to years of service. Section B addresses vacation schedules. It provides, in part:

1. It is understood that the current program to schedule vacation time at each institution will be continued and that such program will include a procedure for advance schedule of vacation time. Such advance scheduling procedures shall allow employees to reserve some portion of their annual vacation allotment to be used as individual days off upon request through the proper procedure established for that purpose. The allowance for the above described practice shall not be less than five (5) days for all employees. Conflicts concerning dates of vacation for those weeks that are scheduled in the advance scheduling period will be resolved within the work unit on the basis of State seniority. Use of the days that are reserved for individual use will be honored on a first come, first served basis. Requests for the use of individual days of vacation that are made at least 48 hours in advance will not be denied on the basis of timeliness. Nothing herein shall preclude an appointing authority from establishing a shorter advance notice practice.

2. Whenever limitations are imposed on the scheduling of vacations because of operational requirements in a work unit, the agency involved will clearly establish and

publish the rules and regulations. For all employees except the Corrections Group, the total number of weeks of available vacation for each work unit during each of the periods outlined below shall be determined by the agency and the regulations as to scheduling such vacation shall not violate the following criteria of a. to f. inclusive. . . .

Human Resources Bulletin 95-03 (HRB) is entitled Custody Vacation and Administrative Leave Selection Policy. As amended on November 2, 2001, this HRB it sets forth the procedures for selecting vacation and administrative leave and a formula for determining the number of individuals who may take leave during any period. The HRB formula calculates the total number of vacation weeks accrued in a year for all custody personnel on a list and then divides that number by 52 and rounds the quotient to the next highest number. Section 3a. provides:

Whole weeks that are not selected shall be available for use as "odd" vacation days or AL days. When scheduling odd vacation days or AL days, the number of individuals scheduled for vacation time on any given day may not exceed the maximum limit referred to above unless authorized by the Director of Custody Operations.

Pursuant to the HRB formula, a total of 19 officers are permitted to use vacation and administrative leave on a given day. The employer maintains that its HRB formula must be followed even when staffing levels on a given day are expected to exceed its minimum requirements.

On August 29, 2003, six corrections officers asked to take single vacation days. Those requests were denied.

On September 26, 2003, the PBA filed a grievance asserting that the denial of the vacation requests violated Article XV, Paragraph B. The grievance asserted that the officers had followed the contractual guidelines and that their requests to schedule "odd" vacation time should have been allowed since the posted schedule listed several extra officers on duty.

On October 20, 2003, a hearing officer denied the grievance. He found that management had complied with the contract by denying the vacation day requests on the basis of the HRB formula rather than on the basis of timeliness.

The grievance was moved to the next level and a hearing was held on November 14, 2003. On December 18, a hearing officer issued a report denying the grievance. The report noted the PBA's assertion that the posted schedule had listed nine extra officers as being on duty the next day and its belief that the HRB formula was not originally intended to include AL days; it also noted management's response that it had properly calculated the number of officers off pursuant to the HRB formula and had properly included eight officers granted AL days. It also noted that the HRB bulletin established the applicable formula even if it was silent with regard to staffing above the minimum level required to operate a facility. The report concluded that the PBA had not met its burden of showing a contractual violation because Section B required only that it clearly establish and publish the rules and regulations governing the operational

limits on scheduling vacations and the HRB bulletin and formula complied with that requirement.

Although no demand for arbitration has been submitted to us, the PBA's brief states that it seeks to arbitrate the denial of vacation leave. No arbitration date has been set.

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 this grievance or any contractual defenses the employer may have.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters.<sup>1/</sup> The Court stated:

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

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<sup>1/</sup> 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, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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]

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). Paterson bars arbitration only if the alleged agreement is preempted or would substantially limit government's policymaking powers. No preemption issue is presented.

Several cases set forth the principles guiding us in considering this negotiability dispute. They are articulated in Galloway Tp., P.E.R.C. No. 2003-65, 29 NJPER 114 (¶35 2003), with citations to multiple supporting cases for each principle. The principles are these: (1) scheduling of vacation leave or other

time off is mandatorily negotiable, provided the employer can meet its staffing requirements; (2) the employer may deny a requested leave day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take leave even though doing so would require it to pay overtime compensation to a replacement employee; and (3) an employer does not have an inherent prerogative to unilaterally limit the number of employees on leave or the amount of leave time absent a showing that minimum staffing requirements would be jeopardized.

Every negotiability dispute must be determined on the basis of the particular facts and arguments presented in that case. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998). Applying the cited principles to the facts and arguments in this case, we hold that the grievance involves a negotiable subject and may be submitted to binding arbitration. The PBA concedes that the arbitrator may not interfere with DOC's determination of the minimum number of officers needed to staff the institution (Brief at 2) and the grievance is not challenging the HRB formula in situations where the employer's minimum staffing levels would be unmet if requests were granted. Nor has the employer specified or shown a basis for concluding that upholding the grievance would otherwise jeopardize its minimum staffing requirements. We will therefore decline the employer's invitation to characterize this grievance as one challenging its

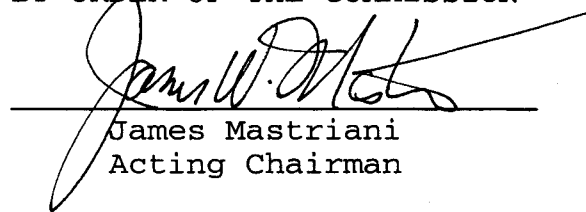


minimum staffing levels and we deny its request to restrain arbitration. Contrast Hunterdon Cty., P.E.R.C. No. 88-103, 14 NJPER 331 (§19123 1988) (employer had prerogative to determine that it needed only one employee on each snowplow). We repeat that we express no opinion on the contractual merits.

ORDER

The request of the State of New Jersey (Department of Corrections) for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James Mastriani  
Acting Chairman

Acting Chairman Mastriani, Commissioners Buchanan, DiNardo and Sandman voted in favor of this decision. Commissioner Katz was not present. Chairman Henderson abstained from consideration. None opposed.

DATED: May 27, 2004  
Trenton, New Jersey  
ISSUED: May 28, 2004