

P.E.R.C. NO. 2006-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OXFORD,

Petitioner,

-and-

Docket No. SN-2006-002

P.B.A. LOCAL 280,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by P.B.A. Local 280 during negotiations for a successor collective negotiations agreement with the Township of Oxford. That proposal seeks to make Easter Sunday a paid holiday for all negotiations unit employees. The Commission concludes that the proposed addition to the list of holidays is not limited to religious employees. The Commission concludes that the proposal is mandatorily negotiable. An interest arbitrator may determine whether the increase in the value of the holiday pay provision is warranted by the evidence.

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, Benbrook & Benbrook, attorneys  
(Kate L.Y. Monagle, on the brief)

For the Respondent, Mets & Schiro, LLP, attorneys  
(Roosevelt Porter, on the brief)

DECISION

On July 7, 2005, the Township of Oxford petitioned for a scope of negotiations determination. The Township asserts that a successor contract proposal made by P.B.A. Local 280 is not mandatorily negotiable. That proposal seeks to make Easter Sunday a paid holiday for all negotiations unit employees.<sup>1/</sup>

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

The PBA represents all permanent, full-time police officers. The parties' most recent agreement expired on December 31, 2004

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<sup>1/</sup> The PBA's brief stipulates that two other proposals are not negotiable. We do not consider them.

and the parties are now engaged in interest arbitration. Article 10 of the just-expired contract lists 11 paid holidays: New Year's Day, Washington's Birthday, Lincoln's Birthday, Good Friday, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Eve. Employees who work on a holiday receive holiday pay and overtime pay while employees who are off-duty receive holiday pay. Holiday pay under Article 10 is available to all negotiations unit employees, not just union members.

The PBA proposed adding Easter Sunday and Election Day to the list of holidays. The employer responded that adding Easter would violate the Establishment Clause of the First Amendment to the United States Constitution. This petition ensued.

Our jurisdiction is narrow. We do not consider the wisdom of the proposal, only its negotiability. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The parties agree that paid holidays are mandatorily negotiable unless a statute, regulation or constitutional provision preempts negotiations over a particular proposal. But they dispute whether the First Amendment as interpreted in Hunterdon Central H.S. Bd. of Ed. v. Hunterdon Central H.S. Teachers Ass'n, P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43

(1981), makes it unconstitutional to add Easter to the holiday list. We hold that the PBA's proposal is constitutional and negotiable.

In Hunterdon, the majority representative sought paid leave to enable employees to participate in religious observances; religious employees thus would have received extra paid leave days not available to all negotiation unit employees, religious or not. Both the Commission and the Court held that such a discriminatory benefit favored religious employees and thus violated the Establishment Clause. See also Ramapo-Indian Hills Reg. H.S. Bd. of Ed., P.E.R.C. No. 90-104, 16 NJPER 313 (¶21129 1990), aff'd NJPER Supp.2d 250 (¶209 App. Div. 1991); Hoboken Bd. of Ed., P.E.R.C. No. 82-17, 7 NJPER 497 (¶12219 1981). Hunterdon, however, distinguished paid leaves extended to all negotiations unit employees on a neutral basis, even if a designated leave fell on a religious holiday. See California School Employees Ass'n v. Sequoia v. Union H.S., 67 Cal. App. 3d 157, 136 Cal. Rptr. 594 (Dist. Ct. App. 1977) (constitutional for contract to designate Good Friday as a paid holiday for all employees as part of their negotiated wages and fringe benefits); see also Bridenbaugh v. O'Bannon, 185 F.3d 796 (7th Cir. 1989), cert. den. 529 U.S. 1003 (2000) (constitutional for State employees to receive Good Friday as one of 14 paid holidays). Drawing the same distinction, our cases have upheld the

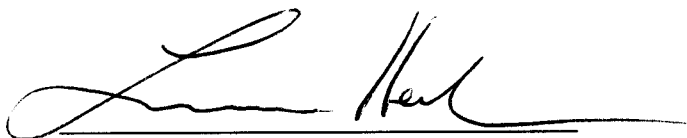
constitutionality of granting paid holiday leave to all negotiations unit employees as part of their negotiated compensation package. See Franklin Lakes Bd. of Ed. P.E.R.C. No. 95-24, 20 NJPER 395 (¶25198 1994), aff'd 21 NJPER 362 (¶26224 App. Div. 1995) and cases cited therein.

The PBA's proposed addition to the list of holidays is not limited to religious employees. Instead, the proposed addition would simply increase the value of the holiday pay provision for all employees as part of the overall compensation arrangements. An interest arbitrator may determine whether that form of increased compensation is warranted by the evidence presented in that proceeding.

ORDER

The proposal of PBA Local 280 to include Easter Sunday as one of the listed paid holidays in Article 10 is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read 'L Henderson', written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: October 27, 2005  
Trenton, New Jersey  
ISSUED: October 27, 2005