

P.E.R.C. NO. 2013-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HUDSON REGIONAL  
FIRE & RESCUE,

Petitioner,

-and-

Docket No. SN-2012-007

NORTH HUDSON FIRE FIGHTERS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the North Hudson Regional Fire and Rescue for a restraint of binding arbitration of a grievance filed by the North Hudson Fire Fighters Association. The grievance involves a dispute over the amount of sick time that should be credited to a fire fighter who served in a municipal fire department that became part of the Regional. The Commission holds that the grievance is arbitrable as credit for service with a prior public employer is mandatorily negotiable.

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, Scarinci Hollenbeck, attorneys  
(Ramon E. Rivera, of counsel and on the brief;  
Christine M. Michelson, on the brief)

For the Respondent, Cohen, Leder, Montalbano &  
Grossman, attorneys (Bruce D. Leder, of counsel)

DECISION

On August 22, 2011, the North Hudson Regional Fire and Rescue petitioned for a scope of negotiations determination. The Regional seeks a restraint of binding arbitration of a grievance filed by the North Hudson Firefighters' Association. The grievance involves a dispute over the amount of sick time that should have been credited to a firefighter while serving in a municipal fire department that became part of the Regional. As the grievance relates to a mandatorily negotiable term and condition of employment and has not been preempted by any statute

or regulation, we deny the request for a restraint of binding arbitration.

The parties have filed briefs. The Regional has filed exhibits and the certification of Jeffrey Welz, its Executive Director of Administration and Acting Chief Financial Officer. These facts appear.

The Association represents all firefighters employed by the Regional. The most recent agreement between the parties has a term of January 1, 2004 through December 31, 2009.<sup>1/</sup> The parties' grievance procedure ends in binding arbitration.

Since 1993, the grievant worked as a firefighter in Guttenberg until that department joined the Regional.

According to Welz, after the Regional was created, firefighters' terms and conditions of employment, as set by collective negotiations agreements covering the municipalities they had previously worked for, remained in effect until those agreements expired. Welz asserts that, at the time the Regional was created, there was no current collective negotiations

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<sup>1/</sup> In various articles the agreement refers to benefits (e.g. seniority and longevity) earned by firefighters in some or all of the municipal departments that formed the Regional and discusses the extent to which those benefits will be preserved. In addition, in No. Hudson Regional Fire and Rescue and No. Hudson Firefighters Ass'n, P.E.R.C. No. 2004-17, 29 NJPER 428 (¶146 2003), we reviewed the interest arbitration award establishing the initial contract between the Regional and the Association. That discussion reviews provisions relating to retention of various benefits earned by firefighters during their pre-Regional employment.

agreement governing Guttenberg firefighters and the terms of the agreement for West New York firefighters were applied to them.

With regard to sick leave records Welz asserts:

The grievant did not provide the Regional with any sick leave records pertaining to his time as a Guttenberg fire fighter.

Despite making requests to Guttenberg for such information, the Regional does not have any record of sick leave accumulated while the grievant was a Guttenberg firefighter.<sup>2/</sup>

Since its formation, the Regional has maintained sick leave records for every firefighter.

Each year those records are reviewed and each firefighter can contest any alleged inaccuracy.<sup>3/</sup>

Each firefighter annual signs his/her attendance record.

The grievant has signed his attendance record each of the 11 years he has been a fire fighter for the regional.

In 2011, the grievant was out on sick leave. Although he believed that he had adequate sick leave, he was told by the Regional that his sick time had been used up.

On May 22, 2011 the grievant sent a letter to the chief:

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2/ Welz asserts that the grievant and three other firefighters are the only ones from Guttenberg still employed by the Regional.

3/ The Regional's Exhibit F is composed of copies of the grievant's leave records for 1999 through 2009. Next to the Line "Sick Bank" on the sheets for 2008 and 2009 are handwritten notations indicating the amount of banked sick leave available to the grievant is in question.

Due to the fact that the [Regional] has been unable to provide any work records from January 7, 1993 to the start of regionalization, my sick leave bank total is incorrect. I am requesting to use vacation time to cover any absence caused by my illness and hope that [the Regional] will expedite the production of these personnel records to eliminate any further stress caused by this issue.

The grievant used vacation leave to continue to receive compensation until he returned to work.

On May 24, 2011, the Association filed a grievance disputing that the firefighter had exhausted his sick leave. seeking that the Regional produce the firefighter's sick leave records from Guttenberg and properly calculate his current available sick time. On June 8 the Association demanded arbitration (Docket No. AR-2011-987). 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 the grievance or any contractual defenses the employer may have. We specifically do not address the Regional's claim that the issue is moot, that the discussion of sick leave issues in the interest arbitration award that established the first agreement between the Regional and the Association is determinative or whether the grievance is untimely. Those assertions do not raise scope of negotiations issues.

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:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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. [Id. 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). In this case, preemption is not an issue so Paterson bars arbitration only if arbitration of the grievance would substantially limit government's policymaking powers.

The Regional acknowledges that sick leave is a mandatorily negotiable term and condition of employment. It asserts that because the grievance seeks credit for sick time accumulated while with a different public employer, it is not arbitrable.<sup>4/</sup>

The Association asserts that the Regional does not address Paterson's negotiability standards. It observes that: no preemption claim is raised; there is no dispute that sick leave entitlement directly affects the firefighter's personal welfare; and there is no demonstration as to how arbitration would substantially limit government's policymaking powers.

The fact that the grievance asserts that some of the firefighter's sick leave was accrued during his Guttenberg

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<sup>4/</sup> The Regional's arguments concerning its right to verify sick leave use is not pertinent as there is no assertion that the grievant was not ill.

employment does not render the grievance non-arbitrable. The appellate courts have affirmed our determinations that credit for service with a prior public employer is mandatorily negotiable in cases involving salary placement and other benefits such as longevity payments, vacation days and sick leaves. See, respectively, Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000) and Middlesex Cty. Prosecutor and Prosecutor's Detectives and Investigators and PBA Local 214, P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992). Accordingly, the subject of the grievance is mandatorily negotiable and may be submitted to binding grievance arbitration.

ORDER

The request of the North Hudson Regional Fire and Rescue for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: September 6, 2012

Trenton, New Jersey