

P.E.R.C. NO. 2014-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-2014-016

NEW JERSEY LAW ENFORCEMENT
SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

An expedited scope of negotiations ruling is issued finding that Sick Leave Injury (SLI) benefits are no longer available for State employees holding classified, unclassified and senior executive service positions. The State of New Jersey filed a scope of negotiations petition and a request for expedited resolution, asserting that the SLI benefits article in the most recent agreement between it and the New Jersey State Law Enforcement Supervisors Association is preempted by changes in a state statute, as is a proposal by the Association to add new language to the article. The decision holds that employees in the collective negotiations unit represented by the Association, may no longer use paid SLI benefits. The order provides that the Association may not propose to the interest arbitrator that the SLI language in the expired agreement, and its proposed new language be incorporated into a successor contract.

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, Jackson Lewis, LLP, attorneys
(Jeffrey J. Corradino, of counsel)

For the Respondent, Pellettieri, Rabstein & Altman,
attorneys

DECISION

On September 23, 2013, the State of New Jersey petitioned for a scope of negotiations determination. It asserts that a statutorily authorized Sick Leave Injury (SLI) program contained in its most recent contract with the New Jersey Law Enforcement Supervisors Association and the Association's proposed new contract language modifying SLI benefits have been preempted by recent amendments to the law that terminated SLI benefits for State employees effective May 21, 2010 or on the expiration of a collective negotiations agreement in force on that date. The State's petition asserts that the existing language and the Association proposal cannot be submitted to compulsory interest

arbitration for inclusion in a successor contract. The State's request to have the issue decided under a pilot program adopted to resolve negotiability disputes at the start of interest arbitration has been granted.^{1/}

The State has filed a brief. The Association has not submitted legal argument. These facts appear.

The State and the Association are parties to a CNA that expired on June 30, 2011. Article XXI, "Leave of Absence Due to Injury," provides:

An employee covered by this agreement who is disabled because of a job-related injury or disease may, if it is approved, be granted a leave of absence with pay . . . [S]uch approved leave may be granted with full pay, with reduced pay, or with full pay for a certain period and reduced pay thereafter.

Article XXI also specifies:

- Disability leave payments shall be reduced by the amount of a Workers' Compensation award;
- Leave will be granted for up to a year;
- Proof of the illness, injury or continuing disability shall be provided;

^{1/} N.J.A.C. 19:16-5.7(i), as amended September 7, 2012, gives interest arbitrators jurisdiction to make negotiability determinations on disputed proposals in their awards, "[u]nless the Commission Chair directs otherwise." The rule allows expeditious resolution of negotiability disputes arising during collective negotiations involving police and fire employees, that are unresolved at the commencement of interest arbitration, under a pilot program described at: http://www.perc.state.nj.us/perc/Pilot_Program_Notice.pdf

- The State may require an employee to visit a specific physician and shall reimburse the employee for travel expenses; and
- Civil Service Commission rules will govern the administration of the program.

During negotiations for a successor agreement, the Association proposed new language to be added to Article XXI:

Job-related Injury, Illness, or Disease
Through Direct Contact with Inmates

An employee covered by this Agreement who is disabled because of direct contact with an inmate shall be granted a leave of absence with full pay. Specifically, the State shall pay the difference between the amount of worker's compensation insurance received and the officer's regular biweekly salary. The provisions of this subsection shall only apply in cases in which the injury, illness or disease occurred while the employee was performing his/her duties during the course of his/her employment.

On September 16, 2013, the Association filed a petition to initiate interest arbitration. This petition ensued.^{2/}

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), describes the scope of negotiations analysis for police officers and firefighters:

^{2/} The State also filed a Petition for Issue Definition Determination seeking a ruling whether negotiations proposals are either economic or non-economic. N.J.A.C. 19:16-6.1., provides that such petitions will not be processed until after interest arbitration and only if needed to resolve an interest arbitration appeal.

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. 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 fire fighters, 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.

In cases involving collective negotiations and/or interest arbitration, we consider only whether contract language or contract proposals are mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

As amended by P.L. 2010, c. 3, N.J.S.A. 11A:6-8 provides:

a. Sick leave injury in State service. Leaves of absence for career, senior executive and unclassified employees in State service due to injury or illness directly caused by and arising from State employment shall be governed by rules of the Civil Service Commission. . . Any sick leave with pay shall be reduced by the amount of workers' compensation or disability benefits,

if any, received for the same injury or illness.

b. The rules promulgated by the [CSC] to govern leaves of absence under this section shall not apply, nor shall a leave of absence . . . be available, to any career, senior executive or unclassified employee in State service who sustains an injury or illness on or after [May 21, 2010], or the expiration of a [CNA] with a relevant provision in effect on that effective date, directly caused by and arising from State employment. This subsection shall not . . . [impair] the obligations set forth in any [CNA] between the State and its employees in effect on [May 21, 2010].

The State asserts that, after the CNA expired, N.J.S.A. 11A:6-8 preempted Article XXI and the proposed new language.^{3/}

Paid leaves for illness and injury are mandatorily negotiable subjects unless a statute or regulation preempts negotiations over a particular proposal. Piscataway Tp. Bd. of

^{3/} Effective December 5, 2011, the CSC amended N.J.A.C. 4A:6-1.6 to set "sunset" dates for (SLI) benefits for State employees. That rule provides in relevant part:

(a) In accordance with P.L. 2010, c. 3, the sick leave injury (SLI) program expires for injuries or illnesses sustained by State employees pursuant to the following schedule:

* * *

3. On or after July 1, 2011 for those State employees who were members of a collective negotiations unit and whose collective negotiations agreement included a provision regarding SLI benefits as of the Act's effective date, but whose agreement expires on June 30, 2011. . . .

Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Hoboken Bd. of Ed. and Hoboken Teachers Ass'n, P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), app. dism. 93 N.J. 263 (1983). Preemption will not occur unless a statute or regulation expressly, specifically, and comprehensively fixes an employment condition, thereby eliminating any discretion to vary it. 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).

The language of the amendments to N.J.S.A. 11A:6-8 is clear. The law provides that SLI benefits for classified, unclassified, and senior executive service, State employees are no longer available after May 21, 2010 or after the expiration date of any CNA still in effect on that date. And, the Association's proposal is encompassed by the end of the SLI program as it states on its face that the cause of the illness, injury or disability must be job-related. Thus, both Article XXI and the Association's proposal are preempted and may not be submitted to interest arbitration for inclusion in a successor agreement.^{4/}

^{4/} This decision holds only that SLI benefits are now preempted for State employees. No issue is raised about an employee's use of annual or accumulated paid sick leave to remain on salary while injured. See N.J.S.A. 11A:6-5. Nor does this ruling involve restoring regular sick leave used while awaiting a successful workers' compensation claim.

ORDER

Article XXI of the expired contract and the Association's proposed addition to Article XXI are illegal subjects for negotiations and may not be included in a successor collective negotiations agreement.^{5/}

P. Kelly Hatfield
Chair

ISSUED: October 7, 2013

Trenton, New Jersey

5/ Paragraphs G and H of the pilot program description read:

G. Any contract language or proposals that are determined to be not mandatorily negotiable shall not be considered by the interest arbitrator. If time permits, and in accordance with the rules governing interest arbitration proceedings, the interest arbitrator may allow the parties to amend their final offers to take into account the negotiability determination.

H. A decision issued by the Commission or Chair pursuant to this process shall be a final Agency decision. Any appeal must be made to the Superior Court, Appellate Division.