

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HAMMONTON,

Petitioner,

-and-

Docket No. SN-2021-032

PBA LOCAL 77,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants Hammonton's request for a restraint of binding arbitration of PBA Local 77's grievance alleging that Hammonton violated the parties' CNA when it failed to pay the Grievant his accumulated sick leave upon his voluntary resignation and transfer to another municipal police department. Hammonton argues that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance because it only allows for an accumulated sick leave payment upon an employee's retirement as opposed to a voluntary transfer. The PBA argues that the statute does not preempt its grievance because it does not preclude the Grievant from being paid his accumulated sick leave upon his retirement in the future, and sick leave is generally mandatorily negotiable. The Commission finds that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance seeking immediate enforcement of an accumulated sick leave payout clause. The Commission concludes that the Grievant was hired after the effective date of the statute, and thus, is statutorily ineligible to receive a sick leave payout until his retirement.

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.

P.E.R.C. NO. 2021-53

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PBA LOCAL 77,

Respondent.

Appearances:

For the Petitioner, Gruccio, Pepper, DeSanto & Ruth,
P.A., attorneys (Stephen D. Barse, of counsel and on
the brief)

For the Respondent, Alterman & Associates, LLC,
attorneys (Stuart J. Alterman, of counsel; Timothy J.
Prol, on the brief)

DECISION

On February 3, 2021, the Town of Hammonton (Town) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 77 (PBA). The grievance alleges that the Town violated the parties' collective negotiations agreement (CNA) when it failed to pay the Grievant his accumulated sick leave upon his voluntary resignation and transfer to another municipal police department.

The Town filed briefs, exhibits and the certification of its Business Administrator, Frank Zuber. The PBA filed a brief.^{1/} These facts appear.

The PBA represents police officers for the Town's police department. The Town and the PBA are parties to a CNA with a term of January 1, 2018 through December 31, 2021. The grievance procedure ends in binding arbitration.

Article XI of the parties CNA, entitled "Sick Leave," provides in pertinent part:

3. Pay Upon Termination

Upon an employee's retirement, death or honorable termination of employment, said employee shall be compensated for all accumulated sick leave at his per diem rate of pay at time of retirement, death or termination in the same manner as all other employees of the Town. The maximum payment for accumulated sick leave shall be \$12,000.

The Town is a civil service municipality. The Town hired the Grievant as a police officer on June 23, 2015. On August 22, 2019, the Grievant voluntarily resigned to transfer to the Monroe Township Police Department, beginning employment on September 15, 2019. Following the Grievant's resignation and transfer, he sought payment for his accumulated, unpaid sick leave, totaling 222.5 hours. The Town denied the Grievant's request, and on

^{1/} PBA Local 77 did not file a certification. N.J.A.C. 19:13-3.6(f) requires that all pertinent facts be supported by certifications based upon personal knowledge.

September 30, 2019, the PBA filed a grievance seeking the following remedy:

The PBA respectfully requests that the Township adhere to the relevant contractual provisions and pay [the Grievant] for his accumulated unused sick time that he is contractually entitled to.

The parties participated in an arbitration hearing on November 23, 2020. At the conclusion of the hearing, the parties agreed that the arbitrator would refrain from issuing a decision until the Town filed and obtained a ruling on a scope of negotiations petition seeking to restrain arbitration. 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.

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

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 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.

Arbitration is permitted if the subject of the grievance 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). Thus, if a grievance is either mandatorily or permissively negotiable, then an arbitrator

can determine whether the grievance should be sustained or dismissed. Where a statute or regulation addresses a term and condition of employment, negotiations are preempted only if it speaks in the imperative and fixes a term and condition of employment expressly, specifically and comprehensively.

Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

The Town contends that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance because it prohibits payment for accumulated unused sick leave to employees hired on or after May 21, 2010 except upon their retirement. N.J.S.A. 11A:6-19.2 provides:

Notwithstanding any law, rule or regulation to the contrary, a political subdivision of the State, or an agency, authority or instrumentality thereof, that has adopted the provisions of Title 11A of the New Jersey Statutes, shall not pay supplemental compensation to any officer or employee for accumulated unused sick leave in an amount in excess of \$15,000. Supplemental compensation shall be payable only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited on the date of retirement. This provision shall apply only to officers and employees who commence service with the political subdivision of the State, or the agency, authority or instrumentality thereof, on or after the

effective date [May 21, 2010] of P.L.2010, c.3. This section shall not be construed to affect the terms in any collective negotiations agreement with a relevant provision in force on that effective date.

The Town argues that the Grievant, who was hired after May 21, 2010, has not retired, but rather voluntarily transferred to another municipal police department, and thus, he is not eligible to be paid his unused sick leave by statute. The Town relies on Tp. of Little Falls, P.E.R.C. No. 2016-42, 42 NJPER 303 (¶87 2015), where the Commission held that N.J.S.A. 40A:9-10.4, which is identical to N.J.S.A. 11A:6-19.2 except that it applies to non-civil service municipalities, preempted arbitration of a grievance seeking to enforce an accumulated sick leave payment clause to the extent the clause applied to employees who commenced employment on or after the effective date of the law.

The PBA argues that its grievance is legally arbitrable because disputes over sick leave and sick leave payouts are generally mandatorily negotiable, unless preempted by statute or regulation. The PBA argues that N.J.S.A. 11A:6-19.2 does not preempt arbitration of its grievance because it does not preclude the Grievant from being paid his accumulated sick leave from the Town upon his retirement in the future. Moreover, the PBA argues that even if the statute prohibits the Grievant from receiving his payout now, it does not invalidate the remainder of the CNA's Article XI, Section 3 provisions, which remain mandatorily

negotiable. The PBA further argues that Little Falls is factually distinguishable from the instant matter because that case prohibited the employees from receiving any sick leave payout prior to retirement.

Here, we find, as we did with the nearly identical statute in Little Falls, that N.J.S.A. 11A:6-19.2 statutorily preempts the PBA's grievance seeking immediate enforcement of an accumulated sick leave payout clause. The PBA's grievance specifically seeks that the Town pay the Grievant's accumulated sick leave as a result of his transfer to another municipal police department on September 15, 2019. The plain language of N.J.S.A. 11A:6-19.2 provides that employees hired after May 21, 2010, the effective date of the statutes, may receive a sick leave payout "only at the time of retirement from a State-administered or locally-administered retirement system..." The Grievant, who was hired by the Town after May 21, 2010, has clearly not retired, but rather has continued his employment with another police department. Thus, the PBA's grievance seeking immediate payout of the Grievant's accumulated sick leave is statutorily preempted, and we restrain arbitration accordingly.

Regarding the PBA's contention that the Grievant would still be eligible for an accumulated sick leave payout from the Town upon his future retirement, we find that issue is not ripe for determination and would be akin to the Commission rendering an

advisory opinion. We have long held that our authority under N.J.S.A. 34:13A-5.4(d) does not extend to issuing advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy. Town of West New York, P.E.R.C. No. 2006-42, 31 NJPER 395 (¶156 2005).

Here, the factual record reflects that the Town denied the Grievant payment of his accumulated sick leave at the time of his transfer to another police department, which prompted the instant grievance seeking immediate payment and adherence to the relevant contractual provisions. The Town has not yet denied the Grievant any accumulated sick leave payments upon his retirement because that event has not occurred. We decline to issue an advisory opinion over the arbitrability of any grievance seeking future enforcement of the CNA's Article XI, Section 3, upon the Grievant's retirement because such a grievance is speculative and only a potential controversy.

ORDER

The Town of Hammonton's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford and Voos voted in favor of this decision. Commissioners Jones and Papero voted against this decision.

ISSUED: June 24, 2021

Trenton, New Jersey