

P.E.R.C. NO. 2023-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF ROBBINSVILLE,

Petitioner,

-and-

Docket No. SN-2022-026

PBA LOCAL 344,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Township's request for a restraint of binding arbitration of the PBA's grievance, which alleges the Township violated the "Sick Time Buy Back" provision of parties' CNA when it failed to "buy back" the sick leave of certain PBA members. The Commission finds that N.J.S.A. 40A:9-10.4 preempts the PBA's grievance because it is undisputed that the three officers were all hired by the Township after May 21, 2010 and their grievance seeks immediate payment of accumulated sick leave. The Commission further interprets the "political subdivision of the State" language in the statute to mean the Township, the grievants' current employer. The Commission concludes that the PBA's grievance is statutorily preempted, and thus, arbitration must be restrained.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, of counsel and on the brief; Christopher M. Kurek, on the brief)

For the Respondent, Crivelli, Barbati & DeRose, LLC, attorneys (Donald C. Barbati, of counsel and on the brief)

DECISION

On February 1, 2022, the Township of Robbinsville (Township) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by PBA Local 344 (PBA). The grievance asserts that the Township violated Article 6, Section A of the parties' collective negotiations agreement (CNA) by not adhering to the "Sick Time Buy Back" provision and failing to "buy back" the sick leave of certain PBA members.

The Township filed briefs, exhibits, and the certification of its counsel, Christopher M. Kurek. The PBA filed a brief, and the certifications of A.R., S.H., and E.V.^{1/} These facts appear.

The PBA represents all police officers below the rank of sergeant in the Division of Police of the Township of Robbinsville. The Township and PBA are parties to a CNA with a term of January 1, 2020 through December 31, 2022. The grievance procedure ends in binding arbitration.

The "Sick Time Buy Back" provision of Article 6, Section A of the parties' CNA, provides in pertinent part:

All employees having a balance of eighty (80) hours unused, earned sick hours of their allotted one hundred twenty (120) hours sick time for that calendar year, will have the option during the middle of December to "buy back" forty (40) hours of those hours for compensation from the Township. Those employees not electing to buy back their hours would then be permitted to accumulate sick hours.

Upon retirement of an Employee in accordance with applicable State statutes and Township regulations, said Employee shall be entitled to a lump sum cash payment in an amount derived by multiplying his regular straight time per diem rate upon the effective date by one hundred (100%) per cent of his number of accumulated sick leave time which the Employee has at the time of retirement, provided however, that said payment shall in no event exceed the sum of twenty thousand

^{1/} The PBA's March 15, 2022 response opposing the Township's scope of negotiations petition included a request for oral argument. The PBA's request for oral argument is denied given that the parties have fully briefed the issues raised.

(\$20,000) dollars (hereinafter "Accumulated Retirement Sick Leave Payment"), except however for (1) any Employee that is subject to the provisions of Public Law 2007, Chapter 92, C.40A:9-18.2 then the provisions of that law, if applicable, shall apply in regards to the amount of Accumulated Retirement Sick Leave that can be paid to said Employee; and (2) any employee hired on or after January 1, 2012 shall be limited to a total payment of fifteen thousand (\$15,000) dollars for accumulated sick leave at retirement as required by P.L. 2010, Ch.3 (N.J.S.A. 40A:9-10.4).

A.R. certifies that she initially obtained public employment with the Borough of Spotswood Emergency Medical Services Division in March 2010, where she was enrolled in the Public Employees' Retirement System (PERS). A.R. also certifies that she became employed as a Communications Officer with the Township Police Department in July 2017 and became a Township police officer on March 3, 2019. After graduating from the police academy, A.R. was transferred into the Police and Firemen's Retirement System (PFRS) as a Tier 1 member.

S.H. certifies that he initially obtained public employment when he became provisionally employed by the Burlington County Department of Corrections in June 2009, subsequently becoming a permanent employee and a PFRS member as of February 1, 2010. S.H. further certifies that he became employed by the Camden County Police Department in April 2016. S.H. also certifies that he was hired as a Township police officer on July 5, 2018 where he is a Tier 1 PFRS member.

E.V. certifies that he initially obtained public employment when he became employed by the Township of Chesterfield in May 2002 until June 2005. E.V. also certifies that he became employed by the Township of Lumberton before returning to the Township of Chesterfield in March 2010. E.V. further certifies that he remained employed with the Township of Chesterfield until he obtained employment as a Township police officer on June 13, 2013 where he is a Tier 1 PFRS member.

A.R., S.H., and E.V. assert that the Township stopped allowing them to buy back sick leave in violation of Article 6, Section A of the parties' CNA. The officers further assert that they were all public employees prior to the May 21, 2010 effective date of N.J.S.A. 40A:9-10.4 and that they are Tier 1 PFRS pension members. As such, the officers assert that they are permitted to obtain supplemental compensation for accumulated unused sick leave prior to retirement.

On November 26, 2021, the PBA filed a grievance challenging the Township's decision to not adhere to the sick time buy back provision of the parties' CNA. In response, the Township's Chief of Police requested the PBA bypass steps 1 and 2 of the grievance procedure and submit the grievance directly to the Township Administrator because he did not possess the ability to overturn the Township's decision regarding the sick leave buy back. On December 8, 2021, the PBA submitted the grievance directly to the

Township Administrator. On December 15, the Township Administrator denied the grievance. On December 21, 2021, the PBA filed a Request for Submission of a Panel of Arbitrators. 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.

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.

N.J.S.A. 40A:9-10.4 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 not 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.

[Emphasis added].

The Township argues that the PBA's grievance must be restrained because the sick leave buy back provision of the CNA is preempted by N.J.S.A. 40A:9-10.4, which allows employees hired after May 21, 2010, the effective date of the statute, to be paid supplemental compensation for accumulated sick leave only upon retirement. The Township asserts that all three employees were hired as Township police officers after May 21, 2010, and thus, N.J.S.A. 40A:9-10.4 bars the three officers from being paid

accumulated sick leave prior to retirement thereby statutorily preempting the PBA's grievance.

The PBA argues that N.J.S.A. 40A:9-10.4 does not statutorily preempt its grievance, and thus, it is mandatorily negotiable and legally arbitrable. The PBA argues that all three officers were public employees, albeit with a different public employer, prior to May 21, 2010; therefore, the prohibition on accumulated sick leave payments prior to retirement is inapplicable to them. The PBA interprets the language of the statute as applying to new public employees of any local government. In support of this interpretation, the PBA relies on the February 8, 2010 statement of the statutes's sponsors that identified one of the goals of the legislation was "bring[ing] supplemental compensation for accumulated unused sick leave in line with the current law and practice for State employees, thus standardizing the benefit for public employees serving at different levels of government in the State." The PBA further argues that the officers are Tier 1 PFRS members and that N.J.S.A. 40A:9-10.4 went into effect on the same date that Tier 2 PFRS membership was created, and thus, this demonstrates the Legislature's intent that any Tier 1 members of the pension system, no matter when they were hired by their

present employer, are not affected by the restrictions of N.J.S.A. 40A:9-10.4.^{2/}

In its reply brief, the Township responds that the PBA is seeking an exception to the clear language of N.J.S.A. 40A:9-10.4 for Tier 1 PFRS members when no such exception exists in the statute, and the Legislature could have presumably created one if it so intended. The Township also argues that the PBA's reliance on In re City of Atl. City, No. A-3817-14T2, 2017 N.J. Super. Unpub. LEXIS 2366 (App. Div. Sep. 20, 2017) is misplaced because, unlike the holding in that case, the CNA in the instant matter was not in effect at the time N.J.S.A. 40A:9-10.4 became effective. The Township further argues that the legislative history supports its interpretation of the plain language of the statute because it shows that the Legislature was seeking to reduce the costs of accumulated sick leave payments.

When interpreting a statute, "[o]ur duty is to determine what the Legislature intended. We must construe the [statute] as written and not according to some unexpressed intention." New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-74, 14 NJPER 169 (¶19070 1988), rev'd and rem'd on other grounds, 233 N.J. Super. 173 (App. Div. 1989), rev'd and rem'd, 125 N.J. 41 (1991).

^{2/} The PBA makes no claims regarding the applicability of the CNA in force on the statute's effective date.

The New Jersey Supreme Court has set forth the following principles of statutory interpretation:

The principal objective of statutory interpretation is to determine and give meaning to the Legislature's intent. To do so, as always, we must first look at the plain language of a statute. That is because the plain language is typically the best indicator of legislative intent. If the text of the law is clear, the court's task is complete.

To that end, we give words their generally accepted meaning. And we read them in context with related provisions so as to give sense to the legislation as a whole. Where a specific definition is absent, we must presume that the Legislature intended the words it chose and the plain and ordinary meaning ascribed to those words.

Only when a statute contains ambiguous language that leads to more than one plausible interpretation should courts turn to extrinsic evidence, including legislative history, committee reports, and contemporaneous construction.

[State v. Thompson, 250 N.J. 556 (2022) (internal citations and quotations omitted)].

The Commission has found that N.J.S.A. 40A:9-10.4 and its nearly identical counterpart N.J.S.A. 11A:6-19.2, which is applicable to Civil Service jurisdictions, applies to employees hired by the local government after May 21, 2010, and therefore, those statutes preempt grievances seeking immediate payment of accumulated sick leave prior to retirement. See Tp. of Little Falls, P.E.R.C. No. 2016-42, 42 NJPER 303 (¶87 2015) (holding

that N.J.S.A. 40A:9-10.4 preempts arbitrability of an accumulated sick leave payment clause to the extent the clause applies to employees who commenced service with the Township on or after the effective date of the law); Town of Hammonton, P.E.R.C. No. 2021-53, 48 NJPER 34 (¶8 2021). As in those cases, we find that N.J.S.A. 40A:9-10.4 preempts the PBA's grievance because it is undisputed that the three officers were all hired by the Township after May 21, 2010 and their grievance seeks immediate payment of accumulated sick leave under CNA's Article 6, Section A.

We are unpersuaded by the PBA's interpretation of N.J.S.A. 40A:9-10.4, namely that the grievants' previous public service with different public employers makes the statute's prohibition inapplicable to them. The plain language of the statute states, "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." (Emphasis added). We interpret "the political subdivision of the State" to be the Township, the grievants' current employer. If the Legislature intended for the statute to exempt employees hired by any political subdivision of the State, agency, authority, or instrumentality thereof, prior to May 21, 2010, it could have used language expressly stating so.

The legislative history states that the intent of the legislature was to reduce the costs of accumulated sick leave payments by local governments. The PBA's interpretation of the statute is inconsistent with that intent, as it would increase the Township's liability to pay accumulated sick leave prior to retirement for employees who were hired by other public employers prior to May 21, 2010. Moreover, we find no support in the record or the language of the statute for the PBA's argument regarding Tier 1 PFRS members being exempted from the statute's prohibitions because its enactment date coincides with the creation of Tier 2 PFRS members. Accordingly, we conclude that the PBA's grievance is statutorily preempted by N.J.S.A. 40A:9-10.4.

ORDER

The Township of Robbinsville'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. None opposed. Commissioner Papero recused himself.

ISSUED: October 27, 2022

Trenton, New Jersey