

P.E.R.C. NO. 2023-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LITTLE EGG HARBOR,

Petitioner.

-and-

Docket No. SN-2023-020

USWU LOCAL 255,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies Little Egg Harbor Township's scope of negotiations petition requesting the exclusion of a contractual provision from ongoing negotiations submitted by United Service Workers Union Local 255, which provided, in part, for the limited conversion of unused sick leave to vacation leave. Finding that paid leave is generally mandatorily negotiable and that N.J.S.A. 11A:6-19.2 does not specifically preempt negotiation over the issue of the conversion of sick leave to other forms of leave, the Commission denies the petition and finds that the contract provision 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, Rothstein, Mandell, Strohm, Halm &  
Cipriani, attorneys (Andrea E. Wyatt, of counsel)

For the Respondent, USWU (Connor Shaw, Business Agent)

DECISION

On November 18, 2022, the Township of Little Egg Harbor (Township) filed a scope of negotiations petition seeking a determination of whether section M of Article VII of its expired collective negotiations agreement (CNA) with USWU Local 255 (Local 255) entitled "Sick Leave" must be removed because the conversion of sick leave to vacation leave is prohibited by N.J.S.A. 11A:6-19.2.

The Township filed a brief, exhibits and the certification of its Business Administrator and Chief Financial Officer, Rodney Haines. Local 255 did not file a brief. These facts appear.

Local 255 represents all permanently appointed full-time and permanently appointed part-time building sub code

officials/inspectors, plumbing sub code officials/inspectors, fire protection sub code officials/inspectors, electrical sub code officials/inspectors and housing inspectors, as well as similar trainee positions. The Township and Local 255 were parties to a CNA in effect from January 1, 2017 through December 31, 2021. Article VII of the CNA is entitled "Sick Leave" and provides subsection "M" as follows:

- M. An Employee may convert up to ten (10) sick leave days annually into not more than ten (10) vacation days in accordance with the following conditions.
  - 1. The request may be approved or disapproved in the discretion of the Employee's Department Head.
  - 2. Employee shall utilize the sick days that have been converted into vacation days and shall not carry the converted vacation leave time into the next calendar year. Any unused converted time is lost. It is expressly agreed and understood that the Employee shall not be compensated for any unused converted time. It is further agreed and expressly understood that the employee shall not be compensated for any unused converted time at the time of retirement.
  - 3. Requests to use approved converted vacation leave time shall be made in the same manner as regular vacation leave time.
  - 4. Approval for the conversion shall not be granted unless the Employee's sick leave bank contains at least thirty (30) days after deducting the number of days proposed for conversion.

5. The conversion shall not be granted unless the Employee first uses all of his or her regular vacation time.

[Emphasis added.]

Haines certifies that the parties have been engaged in negotiations over a successor contract since November 2021. On June 7, 2022, the Township filed a Notice of Impasse. In July 2022, the Office of State Comptroller (OSC) issued a report entitled "A Review of Sick Leave and Vacation Leave Policies in New Jersey Municipalities."

The report is an analysis of municipal compliance with the 2007 and 2010 reforms to vacation and sick leave in Civil Service jurisdictions. Prior to these reforms, "the Legislature formed the Joint Legislative Committee [on Public Employee Benefits Reform] to identify proposals that would address abuses of the pension systems and control the costs of providing public employee retirement, healthcare and other benefits." After the Joint Committee released its final report in 2006, the Legislature adopted some of the recommendations as part of P.L. 2010, c. 3, §§ 4-5, which included reforms to public employee leave benefits. The reforms reduced certain sick and vacation leave benefits of municipal employees in order to accomplish "the goal of reducing how much taxpayers pay for public employee benefits." Id. at 3. The OSC concluded that most of the surveyed municipalities "failed to comply with the laws, leading

to both actual waste and abuse of public funds, as well as substantial future liabilities." Ibid.

The OSC summarized the requirements of N.J.S.A. 11:6-19.1 to -19.2, which controls how employees of covered municipalities can receive payment for unused sick leave, into three main elements. Those include (1) whether the statutory limitations apply, which only affect employees hired after May 21, 2010, (2) the timing of a sick leave payment, which can only occur at the time of retirement, and (3) the maximum payable to a covered employee, which is \$15,000. Id. at 7. The OSC investigation found that municipalities "permit payments that exceed the \$15,000 sick leave cap," while others provide "payments for sick leave at times other than retirement" among other related local deviations from the statute. Id. at 12.

Relevant to the instant matter, the OSC found that some municipalities utilized "bonuses and incentive programs to compensate employees for not using sick leave" which included "additional personal or compensatory day[s], or a lottery to win a nominal amount" and "more significant bonuses, providing up to \$2,000 annually, or up to an extra five vacation days based on the number of sick days taken during the year." Id. at 14. The OSC "contends that such [bonuses and incentives] constitute 'supplemental compensation' that is prohibited by law" but notes that "[n]o court or other adjudicative entity has ruled on

whether something less than a financial payment...constitutes supplemental compensation that would violate" state law. Id. at 14-15, n. 33.

Relying on the OSC's interpretation of the 2010 Sick Leave Reforms as it applies to the instant CNA, the Township proposed that the parties remove section M from Article VII of the CNA. Local 255 rejected the proposal and this scope of negotiations petition, filed by the Township, followed.

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.

We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977). The Supreme Court of New Jersey articulated the standards for determining whether a subject is mandatorily negotiable in Local 195, IFPTE v. State, 88 N.J. 393, 404-405 (1982):

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

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). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public employer." *State v. State Supervisory Employees Ass'n*, 78 N.J. 54, 80-82 (1978).

Generally, vacation and sick leave are mandatorily negotiable subjects unless a statute or regulation preempts negotiations. *Howell Twp. Bd. of Ed.*, P.E.R.C. No. 2015-58, 41 NJPER ¶ 131 (2015), see also, e.g., *Burlington Cty. College Faculty Ass'n v. Bd. of Trustees*, 64 N.J. 10 (1973); *State v. Comm. Workers of Am.*, 240 N.J. Super. 26 (App. Div. 1990);

Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Maintenance & Custodial Ass'n, 152 N.J. Super. 235 (App. Div. 1977); Barneгат Tp. Bd. of Ed., P.E.R.C. NO. 84-123, 10 NJPER 269 (§15133 1984).

The Township contends that the 2010 Sick Leave Reform statute prohibits the Township from agreeing to convert sick leave to vacation leave as a benefit of employment. Specifically, the Township cites to N.J.S.A. 11A:6-19.2 and relies on and adopts the position of the OSC in a report on municipal compliance with that law. The OSC characterizes the ability to convert unused sick leave to vacation leave as a "bonus" that amounted to "supplemental compensation" paid at a time other than at retirement in contravention of N.J.S.A. 11A:6-19.2.

Further, the Township maintains that, in addition to limiting the financial burden on taxpayers for cash payments of sick leave, an intent of the legislature in enacting the 2010 Sick Leave Reform was to "standardize state and local benefits so that employees of municipalities and school districts received the sick leave payments on the same terms as state employees." Ibid. The Township further argues that since "[n]o policies or regulations that apply to state employees permit bonuses and incentives tied to sick leave" the "Legislature did not intend to allow bonuses and incentives tied to sick leave and that such compensation is inconsistent with the reforms." Ibid.

The question of whether Article VII(M) contravenes the 2010 Sick Leave Reform statute turns on whether the legislature “expressly, explicitly, and comprehensively” included benefits other than a financial payment within the meaning of “supplemental compensation.” 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 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.]

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).

In order to “give meaning to the Legislature’s intent,” we “first look at the plain language of the statute.” State v. Thompson, 250 N.J. 556, 572 (2022). Moving beyond the statute to determine legislative intent is only necessary “when a statute contains ambiguous language that leads to more than one plausible interpretation.” Ibid.

Neither the Civil Service Act (N.J.S.A. 11A:1-1 to 12-6) nor the regulations of the Civil Service Commission define the term “supplemental compensation” or the word “compensation.” N.J.A.C. 4A:1-1.1 to 10-3.2. However, the plain language of the Civil Service Act treats “compensation” and “leave” as two separate concepts. This is opposed to the Township’s expansive interpretation which avers that “compensation” encapsulates emoluments of employment beyond direct financial payments.<sup>1/</sup>

We find that the Legislature only “expressly, specifically and comprehensively” preempted collective negotiations on the conversion or exchange of sick leave to financial remuneration, (i.e., the payment of supplemental compensation.) Thus, a municipality such as the Township is not preempted from negotiating a contractual provision allowing for the conversion

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<sup>1/</sup> We note that Article VII(M)2 expressly prohibits compensation for any unused converted time and also expressly provides that the employee shall not be compensated for any unused converted time at the time of retirement.

of sick leave to some other form of leave, including vacation leave.

Since the issues of vacation leave and sick leave are mandatorily negotiable unless preempted (see Howell Twp. Bd. of Ed., supra.), we conclude that Article VII, section M is mandatorily negotiable.

ORDER

The Township of Little Egg Harbor's petition to exclude proposed Article VII, section M from the scope of negotiations is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: April 27, 2023

Trenton, New Jersey