

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF SOMERS POINT,

Petitioner,

-and-

Docket No. SN-77-22

MAINLAND P.B.A., LOCAL 77,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the City, the Commission rules on the negotiability of a contractual provision providing for retroactive payment for accumulated sick leave without limitation. P.B.A. Local 77 filed a grievance, pursuant to the contractual agreement between the parties, that alleged that the City had violated the contract in not complying with a contractual provision relating to accumulated sick leave. The City sought to restrain arbitration on the ground that in the absence of a specific legislative grant of the authority to negotiate retroactive payment for accumulated sick leave without limitation, negotiations for such a provision were ultra vires. The Commission determines, in accord with judicial precedent, that the retroactive payment for accumulated sick leave without limitation is a form of compensation which is a required subject of negotiations. The Commission rules that the instant matter may be submitted to arbitration if otherwise arbitrable under the terms of the parties' collective negotiations agreement.

P.E.R.C. No. 77-48

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Appearances:

For the Petitioner, Mark Biel, Esq., City Solicitor

For the Respondent, Gibson, Previti & Todd, Esqs.
(Charles R. Previti, of Counsel)

DECISION AND ORDER

On January 21, 1977 the City of Somers Point (the "City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the City and the Mainland P.B.A., Local 77 ("Local 77") is within the scope of collective negotiations.^{1/}

The facts are not in dispute. On January 11, 1974 the City and Local 77 entered into an employment agreement, and a successor

^{1/} N.J.S.A. 34:13A-5.4(d) provides: "The Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiation. The Commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the Commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

agreement was executed on November 14, 1974. Said agreements provided that upon retirement, death or honorable termination of employment, an employee would be compensated for each day of accumulated sick leave.^{2/} Retired police dispatcher Charles Lawrence applied for payment for 34 days sick leave accumulated during his term of employment, most of which pre-dates the January 1, 1974 commencement date of contract agreement. The City objected to paying for sick leave accumulated prior to January 1, 1974. A grievance was filed pursuant to the contractual agreement between the parties alleging a breach of the contract, and an arbitrator was appointed. The City's petition opposes arbitration on the ground that the City lacks authority to negotiate retroactive payment, without limitation, for accumulated sick leave and that therefore the issue in question is outside the scope of collective negotiations.

It is the City's contention that in the absence of a specific legislative grant of the authority to negotiate retroactive payment of sick leave, without limitation, negotiations for such a provision are ultra vires. The City further maintains that the whole matter is a legal question for the courts and is not subject to the grievance procedure. In response Local 77 argues that this is merely a question of contract interpretation and thereby is clearly arbitrable.

^{2/} The contract provision reads as follows:

"3) Pay upon termination - Upon an employee's retirement, death or honorable termination of employment, such employee shall be compensated for his accumulated sick leave computed on his daily rate of pay for the year immediately preceding said termination, and shall receive a full day's pay for each day of accumulated sick leave..."

The issue of whether a municipality may negotiate payment for accumulated sick leave absent an express grant of authority by the Legislature was decided in City of Camden v. Juanita Dicks, 135 N.J. Super. 559 (Law Div. 1975). The City of Camden made the same ultra vires argument presented herein, and it was rejected by the Court. N.J.S.A. 40:69A-29 gives municipalities authority to fix the compensation of their employees, and payment for unused sick leave was held to be a form of compensation. Accord, Maywood Ed. Assn. v. Maywood Bd of Ed, 131 N.J. Super. 551 (Ch. Div. 1974).

In the Dicks case the City also argued that as the Legislature had expressly provided for payment for unused sick leave for State employees but not municipal employees, the doctrine of expressio unius est exclusio alterius required a holding that the Legislature intended to withhold such payment for municipal employees. The Court rejected this, noting that it made more sense to assume the Legislature intended to let municipalities make their own decision. As was stated by the Court in New Jersey Civil Service Assoc. Camden Council No. 10 v. Mayor and City Council of the City of Camden, 135 N.J. Super. 308 (Law Div. 1975): "Were it otherwise a municipality would not be able to bargain collectively and to make agreements concerning terms of employment with its employees unless specific statutory authority for each provision of the agreement existed."^{3/}

The same analysis applies herein. If authority exists to negotiate payment for accumulated sick leave in the absence of

^{3/} See In re Plumbers and Steamfitters Local No. 270, P.E.R.C. No. 77- , 3 NJPER ____ (1977) decided this day.

express legislation, then the right to negotiate such payment without limitation follows logically. By paying for sick leave, the City is doing no more than paying a higher rate of compensation.^{4/}

Payment for accumulated sick leave having been held to be a form of compensation, it is therefore a term and condition of employment^{5/} which is mandatorily negotiable.^{6/} The City's further contention that this matter should properly be before the courts may be disposed of by reference to N.J.S.A. 34:13A-5.4(d) granting the Commission power to decide if a matter is within the scope of negotiations which the City has implicitly recognized by filing the petition herein.

Having determined that payment for accumulated sick leave is a mandatory subject of negotiations, the arbitrability of this subject is established. The New Jersey Employer-Employee Relations Act (the "Act") N.J.S.A. 34:13A-1 et seq. as originally enacted^{7/} was interpreted by the New Jersey Supreme Court in Dunellen Bd of Ed v. Dunellen Educ. Assoc. of N.J., 64 N.J. 17 (1973) to allow arbitration of mandatory subjects of negotiations. Chapter 123 of the Public Laws of 1974 amended the Act, and the Commission has ruled that its effect was to allow arbitration of both mandatory and

^{4/} The City's petition makes reference to Assembly Bill No. 2049 introduced in 1976. As the court in Dicks, *supra*, points out, a bill which has not been passed will not influence its decision as the reasons it has not been passed have not been specified.

^{5/} Englewood Bd of Ed v. Englewood Teachers, 64 N.J. 1 (1973).

^{6/} N.J.S.A. 34:13A-5.3.

^{7/} Chapter 303, Laws of 1968.

permissive subjects of negotiations.^{8/} Therefore the dispute herein which has been found to be a mandatory subject of negotiations is arbitrable if otherwise arbitrable under the agreement between the parties, and the City's reference in its petition to the fact that the agreement was entered into prior to the adoption of Chapter 123 is irrelevant.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the above discussion, the Public Employment Relations Commission determines that retro-active payment for accumulated sick leave without limitation is a form of compensation which is a mandatory subject of negotiations, and a dispute concerning such a subject may be submitted to arbitration if otherwise arbitrable under the collective negotiations agreement between the parties entered into on November 14, 1974.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

8/ In re Bridgewater-Raritan Regional Bd of Ed., P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

Chairman Tener, Commissioners Forst, Hartnett and Parcells voted for this decision.
Commissioner Hurwitz voted against this decision.
Commissioner Hipp was not present.

DATED: Trenton, New Jersey
March 16, 1977
ISSUED: March 17, 1977