

P.E.R.C. NO. 96-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HAZLET,

Petitioner,

-and-

Docket No. SN-95-104

HAZLET TOWNSHIP PBA
LOCAL NO. 189,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Hazlet Township PBA Local No. 189 against the Township of Hazlet. The grievance seeks payment for vacation days unused in 1994. Nothing in N.J.A.C. 6:1-2(f) prohibits payment for unused vacation days not yet lost.

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, Ansell Zaro Bennett & Grimm, attorneys
(Richard J. Shaklee, of counsel)

For the Respondent, Klatsky & Klatsky, attorneys
(Michael A. Bukosky, of counsel)

DECISION AND ORDER

On June 5, 1995, the Township of Hazlet petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by a detective represented by Hazlet Township PBA Local No. 189. The grievance seeks payment for vacation days unused in 1994.^{1/}

The parties have filed briefs and exhibits. These facts appear.

The Township is a Civil Service community. Local No. 189 represents the employer's patrol officers, sergeants, lieutenants, and captains. The parties' grievance procedure ends in binding arbitration of contractual disputes.

^{1/} A related unfair practice charge has been held in abeyance until this decision issues.

Glenn Mason is a detective. On March 15, 1995, he filed a grievance. He asserted that the employer had prohibited him from carrying over vacation days unused in 1994 into 1995. He also asserted that another officer had been paid for vacation days unused in 1994. Mason asked to be paid for his unused time also.

On March 24, 1995, the Township committee denied this grievance. The committee asserted that the grievance had not specified any contractual violations; the committee had discretion to pay vacation time or approve carrying over unused vacation days; and no remedy existed since the officer had been able to carry over his days with no loss of time.

The Municipal Administration wrote a letter to the Department of Personnel asking if the employer could allow an employee to carry over unused vacation days or reimburse the employee for the unused days. A DOP personnel management analyst referred the Administrator to N.J.A.C. 4A:6-1.2(f) and (g). These subsections provide:

- (f) Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.
- (g) An employee who leaves State government service or service with a local jurisdiction shall be paid for unused vacation leave.

On April 11, 1995, the Administrator instructed the police chief to allow Mason to carry over three vacation days into 1995.

The Administrator added that Mason would have three months to use these vacation days.

On April 20, 1995, Local No. 189 demanded arbitration. The demand asserted that the employer had "[d]iscriminated against officers by allowing some employees to sell back vacation time at the end of the year while denying other officers such benefit." 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 this grievance or any contractual defenses the employer may have.

The number of vacation days and the possibility of payment for unused vacation days are mandatorily negotiable absent a preemptive statute or regulation. State of New Jersey (Dept. of Corrections) v. CWA, 240 N.J. Super. 26 (App. Div. 1990); State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 96-47, ___ NJPER ___

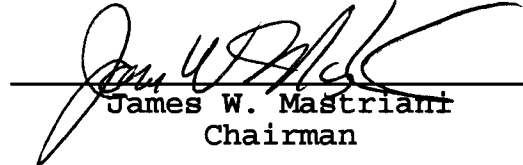
(¶ _____ 1995); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987). A statute or regulation will not preempt negotiations unless it specifically and expressly fixes an employment condition, thereby eliminating the employer's discretion to vary that condition. Bethlehem Tp. Bd. of Ed. v. Bethlehem 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 employer contends that N.J.A.C. 4A:6-1.2(f) preempts negotiations by requiring it to carry over unused vacation days into the next calendar year. We do not agree. N.J.A.C. 4A:6-1.2(f) addresses itself to the scheduling of vacation days and the loss of vacation days, not to possible payment for unused vacation days not yet lost. Contrast State of New Jersey (Dept. of Higher Ed.) (retired employee may not be paid for vacation days lost by operation of regulation). It entitles an employee to carry over vacation days unused because of business necessity into the next succeeding year, but does not expressly and specifically prohibit an employer from agreeing to give an employee the option of a cash payment for unused but still available vacation days instead. Other regulations require an employer to pay a retired employee or a deceased employee's estate for unused vacation days, but do not prohibit an employer from agreeing to pay a current employee for unused vacation days. N.J.A.C. 4A:6-1.2(g) and (i). Nothing in the letter from the personnel management analyst suggests that the cited regulations prohibit payment for unused vacation days not yet lost. We therefore decline to restrain arbitration.

ORDER

The request of the Township of Hazlet for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Boose voted against this decision.

DATED: January 19, 1996
Trenton, New Jersey
ISSUED: January 19, 1996