

P.E.R.C. No. 95-103

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF POMPTON LAKES,

Petitioner,

-and-

Docket No. SN-95-36

POMPTON LAKES PBA LOCAL 161,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a terminal leave clause in an expired collective negotiations agreement between Pompton Lakes PBA Local 161 and the Borough of Pompton Lakes is mandatorily negotiable. The Commission finds that the legality of the clause does not depend on whether the benefit is linked to some other form of unused leave.

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, Dorf & Dorf, P.C., attorneys (Gerald L. Dorf, of counsel; Gerald L. Dorf and Richard B. Robbins, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys (Joseph Licata, of counsel)

DECISION AND ORDER

On October 24, 1994, the Borough of Pompton Lakes petitioned for a scope of negotiations determination. The Borough seeks a determination that a terminal leave clause in an expired collective negotiations agreement with Pompton Lakes PBA Local 161 is an illegal subject of negotiations and may not be included in any successor agreement.

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

The PBA represents the Borough's police excluding the chief. The parties entered into a collective negotiations agreement effective from January 1, 1991 through December 31, 1993. They are engaged in interest arbitration proceedings over the terms of a

successor agreement. Article XIII of the expired agreement is entitled Sick Leave. Section 2 provides:

Employees will be granted sick leave in accordance with the Rules and Regulations issued pursuant to the Civil Service Act. In addition, all full-time employees, upon retirement, death or voluntary separation from the employ of the BOROUGH shall receive one (1) day of terminal leave for each two (2) days of sick leave accumulated since 1969.

Article X of the expired agreement is entitled "Terminal Leave." It provides:

Upon application for retirement and if qualified therefor an Employee shall receive ninety (90) calendar days Terminal Leave with full wages and benefits. Terminal Leave shall commence ninety (90) days prior to the effective date of his or her retirement, and the Employee shall not be required to report for or perform any duties during such period of Terminal Leave.

The PBA sought to retain these provisions in any successor contract. The Borough has responded that Article X is not mandatorily negotiable and it filed this petition.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.

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 policy making 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. [87 N.J. at 92-93; citations omitted]

Because an employer need not agree to submit a permissive subject to interest arbitration, we will determine only whether the terminal leave clause is mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981)

The Borough asserts that because the amount of terminal leave is uniform and is not geared to any other type of leave credit accumulated by the employee (e.g. unused sick leave) the benefit is an unconstitutional gift of public monies.<sup>1/</sup> It contrasts the agreement's sick leave article allowing employees to augment their terminal leave benefit with an additional 1/2 day for each day of unused accumulated sick leave. The PBA asserts that the Commission

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<sup>1/</sup> N.J.S.A. Const. (1947) Art. VIII, § III, ¶ 2 states "No county, city, borough, town, township or village shall hereinafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation...."

and the courts have rejected the employer's "public gift" argument and have consistently found terminal leave and other similar benefits to be mandatorily negotiable forms of compensation earned by employees.

The Commission and the courts have held terminal leave to be a mandatorily negotiable form of compensation. See Middlesex Cty. Prosecutor, P.E.R.C. No. 91-83, 17 NJPER 219 (¶22093 1991), aff'd NJPER Supp.2d 280 (¶227 App. Div. 1992). Regulations expressly mention terminal leave paid as a regular salary disbursement as a form of creditable salary for pension purposes. N.J.A.C. 17:3-4.1; N.J.A.C. 17:5-3.1(c); N.J.A.C. 17:6-2.1. Such benefits are not gifts of public monies. This benefit and other forms of terminal leave cannot be enjoyed by a public employee until he or she has worked enough years to qualify for retirement. In Maywood Ed. Ass'n, Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1974), the Court stated:

It is fair to say that our courts generally have adopted the view that compensation paid to public employees, whatever the label, is not a gift so long as it is included within the conditions of employment either by statutory direction or contract negotiation.

[Id. at 557, emphasis added]

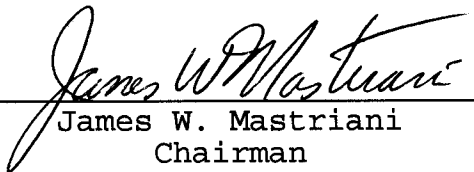
See also Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140, 149-150 (1987) (quoting Maywood and stating that reimbursement of health insurance premiums to long-standing employees was intended in part as compensation for extended tenure).

The legality of the clause does not depend on whether the benefit is linked to some other form of unused leave. In State of New Jersey (State Troopers), P.E.R.C. No. 92-3, 17 NJPER 374 (¶22175 1991), recon. den. P.E.R.C. No. 92-15, 17 NJPER 409 (¶22195 1991), aff'd NJPER Supp.2d 278 (¶225 1992), certif. den. 130 N.J. 596 (1992), the Court rejected the argument that a 30-day terminal leave benefit, uniformly granted to all retiring employees without regard to the amount of other unused leave, was illegal. We conclude that this terminal leave clause is mandatorily negotiable. We add that the interest arbitrator must fully consider the economic cost of this proposal in comparing the parties' economic packages.

ORDER

Article X is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
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 James W. Mastriani  
 Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: May 23, 1995  
 Trenton, New Jersey  
 ISSUED: May 24, 1995