

P.E.R.C. NO. 90-50

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF GARWOOD,

Petitioner,

-and-

Docket No. SN-90-6

GARWOOD P.B.A. LOCAL 117,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Garwood P.B.A. Local 117 against the Borough of Garwood. The grievance contests the police chief's disapproval of an officer's request to take a holiday on April 15, 1989. The Commission finds that the grievance simply contests the reasonableness of a particular refusal to grant a holiday and does not contest the employer's staffing levels.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF GARWOOD,

Petitioner,

-and-

Docket No. SN-90-6

GARWOOD P.B.A. LOCAL 117,

Respondent.

Appearances:

For the Petitioner, Palumbo and Renaud, Esqs. (Robert F. Renaud, of counsel)

For the Respondent, Lewis Burton Coe, Esq.

DECISION AND ORDER

On July 27, 1989, the Borough of Garwood petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by a police officer represented by Garwood P.B.A. Local 117. The grievance contests the police chief's disapproval of an officer's request to take a holiday on April 15, 1989.

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

The P.B.A. is the majority representative of police department employees, excluding the chief. The Borough and the P.B.A. entered into a collective negotiations agreement effective from January 1, 1988 through December 31, 1989. Article V, Section 2 provides that police officers shall receive 15 holidays (in addition to vacation days and personal days under the contract), to

be taken at the employee's discretion with the chief's approval. The Borough buys back holidays not taken by the end of the year.

On April 7, 1989, Officer Michael Lueddeke submitted a written request to take a paid holiday on April 15. The chief denied this request because the annual dog census had been scheduled for that day; another officer had been given that day off, and the chief did not want to pay the overtime rate to replace both that officer and Lueddeke.

Lueddeke worked on April 15, 1989. He then filed a grievance asserting that the denial of the requested holiday violated Article V, Section 2. The Mayor and Council denied the grievance. They ruled that the chief had not abused his contractual discretion.

The P.B.A. demanded binding arbitration. It asserted that absent an emergency, it is an abuse of discretion to deny an officer a paid holiday where the officer has requested the holiday in a clear and timely manner, police protection will not be impaired, and another officer is available to cover the opening. As a corollary, the demand asserted that no officer shall be denied a holiday because the employer does not want to pay overtime.^{1/}

The Borough then filed this petition.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16

^{1/} The P.B.A. further asserts that the opening for a shift was not posted, thus preventing a volunteer from relieving Lueddeke.

provides for a permissive as well as mandatory category of negotiations. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters:

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

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13905 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

We have just decided a case which guides the resolution of this case. In Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER ____

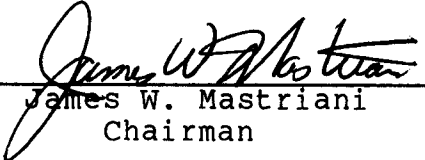
(¶ _____ 1989), a P.B.A. affiliate asserted that the employer had to grant any timely personal leave request, even if granting a leave would prevent the employer from meeting its staffing level for that shift. We restrained arbitration over that claim, but permitted arbitration over a claim that a particular request for leave was unreasonably denied given the staffing level.

This dispute is legally arbitrable under Livingston. The grievance does not contest the employer's staffing levels. It simply contests the reasonableness of a particular refusal to grant a holiday. The employer asserts that it would have been too expensive to grant the request, but that additional labor cost does not make this dispute non-negotiable. Compare Woodstown-Pilesgrove Reg. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J 582, 594 (1980). We decide only the abstract negotiability of the grievance and express no opinion on whether the employer has contractually committed itself to grant this holiday or to pay overtime if necessary to grant holidays. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J 144, 154 (1978).

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson, Reid, Bertolino, Ruggiero and Smith voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
November 20, 1989
ISSUED: November 21, 1989