

P.E.R.C. NO. 85-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-84-83

WEST ORANGE PBA LOCAL 25,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a request of the Township of West Orange to restrain binding arbitration of a grievance that the West Orange PBA Local 25 filed against the Township. The grievance alleged that the Township's institution of a vacation leave policy prohibiting the accumulation of unused vacation time to the next calendar year violated the parties' collective negotiations agreement. The Commission holds that the grievance may be submitted to binding arbitration because the granting and scheduling of time off are mandatorily negotiable, and therefore, arbitrable.

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Appearances:

For the Petitioner, Marvin Corwick, Business
Administrator

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(David Solomon, of Counsel)

DECISION AND ORDER

On April 2, 1984, the Township of West Orange ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township seeks a restraint of binding arbitration of a grievance which PBA Local 25 ("PBA") has filed. The grievance alleges that the Township's institution of a vacation leave policy prohibiting the "carryover" of unused vacation time to the next calendar year violated the parties' collective negotiations agreement.

The following facts are not in dispute. The PBA is the majority representative of all the Township's police officers below the rank of sergeant. The Borough and the PBA are parties to a collective negotiations agreement effective from January 1, 1983 to December 31, 1984. The agreement's grievance procedure culminates in binding arbitration.

On January 25, 1984, the Borough police chief posted the following notice:

All vacation picks for 1984 shall be submitted to this office by February 9, 1984.

All members shall be required to pick their allotted vacation time; however, if a member must change his/her vacation due to unforeseen circumstances, i.e. emergencies, etc., he/she shall submit a request in writing to the proper Divisional Commander requesting said change.

All time shall be accounted for in order that proper deployment of personnel can meet the demands of this department.

Civilian secretarial vacation picks shall be submitted to my office on the above date.

On February 8, 1984, the PBA filed the following grievance:

This grievance is in regard to the unfair and anti-contractual vacation leave policy and procedure that has occurred on 2/8/84. On this date and also in a memo issued 1/25/84, issued by Dep. Chief DeRosa, the members of this Local were informed that each officer will select (4) four weeks vacation time. I was informed by Capt. Fahey that if I did not pick four weeks the balance of the four weeks would be assigned to me, and I would not be allowed to accumulate and "carry over" more then the remaining time after I selected four weeks. I believe that this policy is in conflict with existing town ordinance and the existing contract between the Local #25 and the Township of W.O., as follows:

Town Ord. 4-13.5 states that the consent of the appointing authority is only required when accumulating vacation time beyond that earned in a (2) year period.

This grievance was denied. The PBA requested binding arbitration and the instant petition ensued.

The Township contends that to allow officers to carry over vacation days in excess of one year "will result in extreme problems with distribution of manpower in following periods."

At the outset of an analysis, we emphasize the narrow boundaries of our scope of negotiations jurisdiction. As we stated in Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975):

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.

See also Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). Thus, we do not consider the merits of this grievance or any contractual defense.

In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson"), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters. The Court stated:

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.

(Id at 92-93, citations omitted)

We hold that the instant grievance is mandatorily negotiable. In a case involving the same employer, Township of West Orange, P.E.R.C. No. 84-141, 10 NJPER 358 (Para.15166 1984), we held that carryover of personal days from year to year is a mandatory subject of negotiations. We stated:

The parties certainly could have agreed to allow employees to carry-over unused personal leave days from year to year until such time as they could use them without interfering with the employer's minimum manning requirements. Whether or not they so agreed and whether or not the grievant had an adequate opportunity to enjoy his personal leave days are questions for the arbitrator, not us. Accordingly, we will not restrain arbitration over this grievance. [Id. at 359].

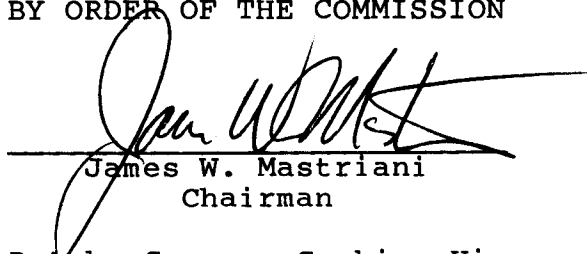
This finding is consistent with our well-established case law that the granting and scheduling of time off are clearly negotiable so long as the agreed-upon system does not cause manpower levels to fall below an employer's manning requirements. Township of Edison, P.E.R.C.No. 84-89, 10 NJPER 121, 124 (Para. 15063 1984); City of

Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303, 305 (Para. 13134 1982); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456, 458 (Para. 12202 1981); City of Orange, P.E.R.C. No. 79-10, 4 NJPER 420, 421 (1978). As we have recognized, the public employer has the right to establish manpower requirements and the vacation scheduling system must be negotiated within that framework. Hudson County, P.E.R.C. No. 80-161, 6 NJPER 352 (Para. 11177 1980). Indeed, if the City finds in some future situation that it cannot grant a particular vacation request and still provide government services efficiently, it has the power to deny that leave of absence. However, a blanket denial of the employees' alleged right to carryover accumulated vacation time cannot be permitted to displace the general presumption that proposals pertaining to vacation scheduling are negotiable.^{1/}

ORDER

The Township of West Orange's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Suskin, Hipp and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
March 15, 1985
ISSUED: March 18, 1985

^{1/} We also believe that the Township's governmental powers would remain essentially unfettered even if the PBA's interpretation of the contract is sustained.