

P.E.R.C. NO. 89-131

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and-

Docket No. SN-89-46

WEST NEW YORK IAFF, LOCAL NO. 620,  
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the West New York IAFF, Local No. 620, AFL-CIO against the Town of West New York. The grievance alleges that the Town violated the parties' collective negotiations agreement when it required some firefighters to take vacations before June 1, 1988, required some other firefighters to take vacations after October 1, 1988, and limited vacations to no more than three consecutive days. The Commission finds that once an employer has determined its staffing requirements, the method of allocating available vacation time among employees is mandatorily negotiable. Also, the portion of the grievance seeking cash or compensatory time for unused vacation is mandatorily negotiable.

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Appearances:

For the Petitioner, Krieger & Ferrara, Esqs.  
(Henry W. Heunemann, of counsel)

For the Respondent, Loccke & Correia, Esqs.  
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On January 6, 1989, the Town of West New York ("Town") filed a Petition for Scope of Negotiations Determination. The Town seeks a restraint of binding arbitration of a grievance which West New York IAFF, Local No. 620, AFL-CIO ("IAFF") has filed. The grievance alleges that the Town violated the parties' collective negotiations agreement when it required some firefighters to take vacations before June 1, 1988, required some other firefighters to take vacations after October 1, 1988, and limited vacations to no more than three consecutive days.

On March 14, 1989, the parties appeared before Commission designee Alan R. Howe and presented testimony, exhibits, arguments and briefs. On March 27, the designee issued an interlocutory

decision and order partially restraining arbitration during the pendency of the case. I.R. No. 89-14, 15 NJPER 199 (¶20084 1989). The designee made findings of fact which we have reviewed and now adopt.<sup>1/</sup> We add these findings.

The agreement grants each firefighter between two and eleven days of paid vacation per year, depending on length of service. Article 8, Section 4 provides that the employer shall assign vacations between June 1 and October 15 and such assignments shall be rotated annually.

On May 2, 3, 4, and 5, 1988, the fire chief issued vacation schedules requiring some firefighters to take vacations before June 1 and other firefighters to take them after October 15. He also limited vacations to blocks of three consecutive days. The IAFF then filed a grievance seeking compensation for firefighters losing summer vacations and also protesting the chief's three-day limit.<sup>2/</sup> The City denied the grievance and the IAFF demanded arbitration. This petition ensued.

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<sup>1/</sup> Finding no. 1 is corrected to reflect that this dispute arose under a collective negotiations agreement which expired December 31, 1988 (C-2).

<sup>2/</sup> On April 9, 1988, the IAFF's executive board had issued a memo to all IAFF members instructing them to confine their requests for vacation time to between June 1 and October 15. The memo states that the action was being taken in response to the "situation the town has created concerning the use of seventy-two hour vacation time in reserve." The memo provided further that any IAFF member who did not follow the directive would be charged with violating union rules and subject to a \$100 fine.

The Town asserts that Article 8, Section 4 significantly interferes with its staffing requirements. The IAFF disputes that assertion and adds that the article does not deprive the fire chief of the ability to deny some vacation requests. The IAFF argues that firefighters who are denied vacation time within the contractual period have the right to be compensated for unused vacation leave and that such compensation is mandatorily negotiable.

The boundaries of our scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court stated:

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. [Id. at 154]

Accordingly we do not determine the parties' contractual rights.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), the Supreme Court outlined 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 fire fighters, 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 fire fighters, 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]

The scheduling of time off is mandatorily negotiable so long as the agreed-upon system does not prevent the employer from fulfilling its staffing requirements. City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd App. Div. Dkt. No. A-4636-81T3 (3/23/84); see also City of Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1988); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). The fire chief testified without contradiction that granting all vacations as requested would have reduced staffing on certain shifts to half of the normal complement. Although the Chief admitted that the Town had never promulgated any minimum staffing requirements, he stated that granting two firefighters assigned to the same company and shift the same vacation would have produced unacceptable staffing levels.<sup>3/</sup> Therefore the Town is

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3/ The Chief testified that some companies have three firefighters and one captain as a normal shift complement.

correct that a grievance that sought a determination that all firefighters should have been granted vacations between June 1 and October 15, 1988 would substantially limit the Town's ability to implement a minimum staffing policy and would not be arbitrable.

However, the IAFF does not dispute the chief's right to reject vacation leave requests. It argues only that the contract prohibits involuntary assignments outside the contractually-set period and authorizes compensation for employees unable to take vacations at requested times.

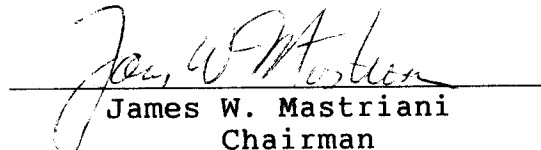
Once an employer has determined its staffing requirements, the method of allocating available vacation time among employees is mandatorily negotiable. Elizabeth. The length of vacation time is also mandatorily negotiable. Thus the portion of the grievance which challenges the chief's decision to require that vacations be taken in three-day blocks is arbitrable.

Also the portion of the grievance seeking cash or compensatory time for unused vacation is mandatorily negotiable.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
June 23, 1989  
ISSUED: June 26, 1989