

P.E.R.C. NO. 94-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-94-13

DISTRICT 1199J, NUHHCE, AFSCME,
AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by an employee represented by District 1199J, NUHHCE, AFSCME, AFL-CIO against the County of Hudson. The grievance asserts that the employer violated the parties' collective negotiations agreement when it did not permit the employee to carry over her vacation leave from 1992 to 1993. The parties apparently agree that an arbitrator may determine whether the employee, regardless of the contract, is entitled to accrue vacation leave under Civil Service regulations. The Commission thus need make no formal ruling on the negotiability of a contractual vacation provision since it is apparently immaterial to the dispute that will be arbitrated.

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Appearances:

For the Petitioner, Genova Burns, attorneys
(Joseph Licata, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

DECISION AND ORDER

On August 8, 1993, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a restraint of binding arbitration of a grievance filed by an employee represented by District 1199J, NUHHCE, AFSCME, AFL-CIO. That grievance asserts that the employer violated the parties' collective negotiations agreement when it did not permit the employee to carry over her vacation leave from 1992 to 1993.

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

The County is a Civil Service employer. District 1199J represents County employees in certain classifications. The parties

entered into a collective negotiations agreement effective from July 1, 1992 to June 30, 1994. Article XVI is entitled Vacations.

Section 9 provides:

No part of an Employee's scheduled vacation may be charged to sick leave. Vacations shall be taken each year and may not be accrued for year to year. However, vacation time not granted or not taken because of unavoidable circumstances shall accumulate for the next succeeding year only.

The grievance procedure ends in binding arbitration.

On March 19, 1993, Barbara Nesbitt, an attendant at Meadowbrook Hospital, filed a grievance. She asserted that the employer violated Article XVI, Section 9 when it did not allow her to carry over 10 unused vacation days to 1993. Nesbitt had been absent from July 1, 1992 to the end of the year because she was on workers' compensation; the employer's workers' compensation policy mandates that employees on workers' compensation may not carry over unused vacation leave. Nesbitt requested that she be made whole for lost vacation time.

On April 22, 1993, the County's Director of Personnel denied the grievance. He concluded that Civil Service law prohibited the carrying over of an employee's vacation leave absent a "business necessity."

District 1199J demanded binding arbitration. 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 the grievance or any contractual defenses the County may have.

In a previous case involving these parties, Hudson Cty., P.E.R.C. No. 90-6, 15 NJPER 495 (¶20203 1989), we considered whether Article XVI, Section 9 was preempted by N.J.S.A. 11A:6-3(e) and N.J.A.C. 4A:6-1.2(f). These regulations respectively provide:

Vacation not taken in a given year because of business demands shall accumulate and be granted during the next succeeding year only.

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Appointing authorities may establish procedures for the scheduling of vacation leave. Vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only and shall be scheduled to avoid loss of leave.

We held that these regulations preempted arbitration of a grievance asserting that the County violated Article XVI, Section 9 when it discontinued its previous practice of allowing employees to accumulate vacation days indefinitely.

The County asserts that the regulations and Hudson Cty. preclude District 1199J from relying on Article XVI, Section 9 to support this grievance since the regulations assertedly set a standard for accrual -- "business necessity" -- narrower than the contractual standard -- "unavoidable circumstances."^{1/} District 1199J argues that the validity of Article XVI, Section 9 is irrelevant since the Civil Service regulations are incorporated by reference into the parties' contract and the arbitrator may thus properly determine whether there was a "business necessity" permitting the employee to carry over vacation leave. The County accepts District 1199J's position and asserts that it seeks only an abstract determination that Article XVI, Section 9 is unenforceable.

Given the posture of this case, we decline to restrain binding arbitration. The parties apparently agree that Civil Service regulations preempt Article XVI to the extent they are inconsistent; but they also agree that an arbitrator may determine whether the employee, regardless of the contract, is entitled to accrue vacation leave under these regulations. We thus need make no formal ruling on the negotiability of Article XVI, Section 9 since it is apparently immaterial to the dispute that will be arbitrated.^{2/}


^{1/} No workers' compensation statutes or regulations have been cited to us that would preempt arbitration of this dispute.

^{2/} Should this assumption prove incorrect, the County may file another petition after an arbitrator's decision issues.

ORDER

The request of the County of Hudson for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: December 14, 1993
Trenton, New Jersey
ISSUED: December 15, 1993