

¹ See *New York City Transit Auth. (Bordansky)*, 4 PERB ¶ 3031 (1971).

² *Id.*

¶38-4563

In the Matter of

COUNTY OF ULSTER AND ULSTER
COUNTY SHERIFF,

Charging Party,

and

ULSTER COUNTY DEPUTY SHERIFF'S
POLICE BENEVOLENT ASSOCIATION, INC.,

Respondent.

Case No. U-25870

Before DAVID P. QUINN, Administrative Law
Judge; September 21, 2005

INDEX NOS. 15.413, 24.132, 42.12, 43.131,
43.137, 43.168, 55.91

The police officers' union was directed to withdraw certain proposals from compulsory interest arbitration because the proposals were not directly related to compensation under § 209.4(g), and therefore were not arbitrable. Although the ALJ found that the PBA's proposals regarding union dues and agency fees were mandatorily negotiable, he concluded they were not arbitrable because they inured directly to the union's benefit. The ALJ noted that the proposals were distinguishable from those that require an employer to make payments "to or on behalf of an employee," because they merely sought to convert statutory duties into contractual obligations and did not establish "substantive enforceable rights or benefits that belonged to employees themselves." The ALJ was also constrained to find that the proposal regarding sick leave was not arbitrable because the Board previously determined that such

leave was not arbitrable under § 209.4(e). In contrast, the union's proposals regarding medical insurance for employees and their dependents upon retirement, and optional retirement benefits were directly related to compensation, and therefore were mandatorily negotiable and arbitrable. Even though the benefits were to be provided at a future date the ALJ concluded the proposed benefits were compensation for services rendered because they were earned while unit members were employed.

Roemer Wallens & Mineaux LLP (William M. Wallens of counsel), for Charging Party

John M. Crotty, Esq., for Respondent

Decision of Administrative Law Judge

On April 18, 2005, the County of Ulster and Ulster County Sheriff (Employer) filed an improper practice charge alleging that the Ulster County Deputy Sheriff's Police Benevolent Association, Inc. (PBA) violated § 209-a.2(b) of the Public Employees' Fair Employment Act (Act) by submitting certain bargaining proposals for consideration at compulsory interest arbitration under § 209.4(g) of the Act. The PBA filed an answer admitting that it submitted the at issue proposals to interest arbitration but denying that its conduct violated the Act.

The parties submitted the matter for decision on a stipulated record of facts, and each has filed a brief.

Facts

The PBA and the Employer are parties to a collective bargaining agreement that expired on December 31, 2002. Negotiations for a successor reached impasse and, after mediation failed, the PBA filed a petition for interest arbitration pursuant to § 209.4(g) of the Act. In response, the Employer filed the instant improper practice charge claiming that certain of the PBA's proposals are not mandatorily negotiable and, alternatively, that they are not arbitrable under § 209.4(g).

The charge complains of five proposals:

Proposal 1—The Employer shall provide, each payroll period to the Union Treasurer, the names and addresses of each employee represented by the Union and dues deductions made to date. The Employer shall deduct from part time employees, any and all arrearages of dues owed from the payroll periods not worked. The Employer shall forward all dues deductions to the Union on the same day as the payroll is made.

Proposal 2—The Employer shall provide, each payroll period to the Union Treasurer, the names and addresses of each employee represented by the Union and Agency Shop Fee deductions made to date. The Employer shall deduct from part time employees, any and all arrearages of Agency Shop Fee deductions owed from the payroll periods not worked. The Employer shall forward all Agency Shop Fee deductions to the union on the same day as the payroll is made.

Proposal 3—Upon retirement, the Employer shall pay 100% of the premium or cost for full time employees and dependents health insurance coverage in effect at that time.

Proposal 4—The Employer shall adopt and implement the Special Retirement Plan for Sheriffs, Undersheriffs and Deputy Sheriffs (Article 14-B: Section 552, 20 Year Service Retirement and 553, the additional 1/60th benefit) for all service.

Proposal 5—All full time employees shall be credited with eight (8) hours (1 work day) of sick leave on the first (1st) day of each calendar month, without limitation to accumulation.

Discussion

The threshold issue is whether the demands are mandatorily negotiable. Demands that are not mandatory are, by definition, not arbitrable. The next issue is whether

the mandatory demands are arbitrable under § 209.4(g) of the Act.

As for the demands concerning union dues and agency fees (proposals 1 and 2), each requires the Employer to provide to the PBA the names and addresses of the unit employees and the amount of agency fees or dues that have been deducted to date. Such information is relevant and necessary for the PBA to administer its obligations under the Act concerning a variety of representational matters, including agency fee refund procedures and communications concerning negotiations and the administration of collective bargaining agreements. The PBA is entitled to that information under the Act.¹ The proposals also require the Employer to deduct agency fees and union dues from the employees' pay and to remit them to the PBA, including previously unpaid dues and fees. Again, the Act imposes those obligations on the Employer, upon the PBA's request.² Those aspects of the proposals essentially seek to convert statutory duties into contractual obligations; a conversion that the Board has held is mandatorily negotiable because it provides a contractual forum for enforcement of the statutory duties.³ Similarly, because the Act does not dictate when the names, addresses, dues and fees must be provided to the union, the aspects of the proposals that require them to be provided each payroll period are necessarily mandatorily negotiable.⁴

The PBA's demand that the Employer provide fully paid medical insurance for employees and their dependents upon retirement is mandatorily negotiable.⁵ Contrary to the Employer's argument, it is immaterial that the premiums are actually paid after the employees leave service. While retirees are not public employees under the Act, the obligation is negotiated and established, if at all, while they are employed. Simply put, the benefit is earned compensation to be paid at some future date. For the same reason, it is immaterial that the benefits are to be paid to the employees' dependents. To the extent an Administrative Law Judge may have once held that such benefits are negotiable only if fully paid during the

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life of the agreement,⁶ as emphasized by the Employer, I respectfully disagree. In any event, the Board has since clearly held that it is when the benefits are earned that is dispositive, not when they are to be paid.⁷

The PBA's demand for the optional 20-year retirement benefit under Article 14-B, § 552 of the NYS Retirement and Social Security Law is mandatorily negotiable, as is the optional 1/60th supplement available under § 553.⁸ The PBA seeks to have the Employer elect to participate in those pension plans and to make the necessary contributions. As with the medical insurance discussed above, the benefits are fundamentally economic and are earned while the employees are employed. Contrary to the Employer's argument, the demand does not seek benefits for the non-unit Sheriff and Undersheriff. While the demand references those titles, it does so only to identify the plans.⁹

Finally, the PBA's proposal concerning sick leave requires the Employer to credit each full time employee with one day of sick leave each month. As paid leave is mandatorily negotiable,¹⁰ so too is paid sick leave.¹¹

The question now is whether those mandatorily negotiable demands are arbitrable under § 209.4(g) of the Act, which provides:

With regard to members of any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service as certified by the county sheriff and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this section shall [fig 1] only apply to the terms of collective bargaining agreements directly relating to compensation, including, but not limited to, salary, stipends, location pay, insurance, medical and hospitalization benefits; and shall not apply to non-compensatory issues including, but not limited to, job security,

disciplinary procedures and actions, deployment or scheduling, or issues relating to eligibility for overtime compensation which shall be governed by other provisions proscribed by law. Provided, further, that with regard to any organized unit of deputy sheriffs who are engaged directly in criminal law enforcement activities that aggregate more than fifty per centum of their service and are police officers pursuant to subdivision thirty-four of section 1.20 of the criminal procedure law as certified by the municipal police training council, the provisions of this subdivision pertaining to interest arbitration shall only apply in the event that the collective bargaining agreement between the public employer and the public employee organization has been expired for a period of not less than twelve months and the parties have fully utilized all other impasse resolution procedures available under this subdivision.

The issue here is whether the PBA's mandatorily negotiable proposals are "directly related to compensation" within the meaning of § 209.4(g).

Although the issue is one of first impression under § 209.4(g), virtually the same language has been addressed by the Board in determining the arbitrability of certain bargaining proposals under § 209.4(e), concerning members of the New York State Division of State Police.¹² There, the Board held:¹³

If the sole, predominant or primary characteristic of the demand is compensation, then it is arbitrable because the demand to that extent *directly* relates to compensation. A demand has compensation as its sole, predominant or primary characteristic only when it seeks to effect some change in amount or level of compensation by either payment from the State to or on behalf of an employee or the modification of an employee's financial obligation arising from the employment relationship (e.g., a change in an insurance co-payment). If the effect

is otherwise, then the relationship of the demand to compensation becomes secondary and indirect and the subject is, therefore, excluded from the scope of compulsory arbitration under the language of § 209.4(e).

I find that the PBA's proposals regarding agency fee and dues deductions (proposals 1 and 2) are not arbitrable. As discussed above, all elements of both proposals concern existing statutory duties, save the precise times when the duties must be performed. To the extent they concern statutory duties, the demands are mandatorily negotiable only because they provide a contractual forum for the PBA to enforce them. Thus, the proposals inure directly to the PBA's benefit, and only indirectly to the employees whom it represents. Likewise, the temporal constraints that the proposals seek to impose on the Employer are designed to ensure that those statutory duties are fulfilled in a timely manner. In effect, all of the obligations that the PBA seeks to contractually impose on the Employer under proposals 1 and 2 are designed to create contractual obligations that enable the PBA to fulfill its statutory representational rights and duties. I find that they are not directly related to compensation and, thus, not arbitrable under § 209.4(g). In reaching that conclusion, I emphasize that the PBA's proposals are distinguishable from those that require an employer to make payments "to or on behalf of an employee, or the modification of an employee's financial obligation arising from the employment relationship (e.g., a change in an insurance co-payment)."¹⁴ The latter obligations concern payments for negotiated benefits that inure to the direct benefit of the employees and would be enforceable by them. While arising from the employment relationship, and requiring payments to be made to the PBA on behalf of the employees, the instant demands do not seek to establish substantive enforceable rights or benefits that belong to the employees themselves.

In contrast, the PBA's proposal concerning the payment of medical insurance to employees and their dependants upon retirement is

arbitrable. It is directly related to compensation.¹⁵ Indeed, medical insurance is among the items that the Legislature specifically listed as examples of arbitral subjects. That the benefits are to be provided at some future date, or that they are to be provided to the employees' dependents does not diminish the fact that the benefits are earned by the employees while they are employed; i.e., that they are compensation for services rendered.

The PBA's demands for the optional retirement benefits under §§ 552 and 553 of the Retirement and Social Security Law are clearly directly related to compensation and arbitrable under § 209.4(g) of the Act. Each requires the Employer to elect the options and to make the necessary contributions. Simply put, the plans are no different than negotiations for medical insurance to be paid upon retirement. In that regard, I note that the demands are distinguishable from the aforementioned proposals involving union dues and agency fees, which concern existing statutory obligations that inure directly to the PBA's benefit. In contrast, the retirement benefits at issue here are not statutory rights until, and unless, the Employer elects to participate in the plans, and once it does, the rights and benefits under the plans belong to, and are enforceable by, the employees.

Finally, although sick leave, as paid time off, is a form of compensation, the Board has held that it is not arbitrable under § 209.4(e) of the Act.¹⁶ As there is no material difference between arbitrability under § 209.4(e) and (g), I am constrained to conclude that the PBA's sick leave demand is not arbitrable.

By reason of the foregoing, the PBA is hereby ordered to withdraw from compulsory interest arbitration the proposals enumerated herein as proposal 1, proposal 2 and proposal 5.

¹ See, e.g., *City Sch. Dist. of the City of Albany*, 6 PERB ¶ 3012 (1973). See also, *County of Yates*, 27

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PERB ¶ 3080 (1994) (mindful of confidentiality of social security numbers, the Board held that they must be disclosed to a union for its confidential and exclusive use to administer its representational duties under the Act).

² See, Act, §§ 208.1(b) and 208.3(b).

³ See, *City of Cohoes*, 31 PERB ¶ 3020 (1998), confirmed sub nom. *Uniform Firefighters of Cohoes Local 2562 v. Cuevas*, 32 PERB ¶ 7061 (App. Ct. Albany County, 1999), aff'd 276 AD2d 184, 33 PERB ¶ 7019 (3d Dep't 2000), motion for leave to appeal denied, 96 NY2d 711, 34 PERB ¶ 7018 (2001). But see, *Schuyler-Chemung-Tioga BOCES*, 34 PERB ¶ 3019, reversing, 34 PERB ¶ 4521 (2001) (PERB held that it will not defer to the negotiated contractual forum concerning enforcement of rights conferred under the Act where the alleged violation is § 209-a.1[a]).

⁴ See, e.g., *City of Syracuse*, 32 PERB ¶ 3029 (1999) confirmed, 279 AD2d 98, 33 PERB ¶ 7022 (4th Dep't 2000), motion for leave to appeal denied, 34 PERB ¶ 7012 (4th Dep't) 96 NY2d 717, 34 PERB ¶ 7012, ¶ 7025 (2001) (procedures to implement statutory rights [there, GML §207-a] held mandatorily negotiable).

⁵ See, *Cohoes Police Benevolent and Protective Ass'n*, 27 PERB ¶ 3058 (1994).

⁶ See, *City of Buffalo*, 23 PERB ¶ 4561 (1990).

⁷ See *Cohoes Police Benevolent and Protective Ass'n*, supra, note 5.

⁸ Cf., *Fairport Police Billy Club*, 14 PERB ¶ 3078 (1981) and cited cases therein at n.3, conf'd 90 AD2d 293, 15 PERB ¶ 7033 (4th Dep't 1982), appeal dismissed, 58 NY2d 1112, 16 PERB ¶ 7013 (1983).

⁹ I agree with the Employer that if the demand were designed to obtain benefits for those non-unit titles, the demand, to that extent, would be non-mandatory.

¹⁰ See, *City of Albany*, 7 PERB ¶¶ 3078 and 3079 (1974), annulled, 89 LRRM 2914 (Sup. Ct. Albany County), rev'd, 48 AD2d 998, 8 PERB ¶ 7012 (3d Dep't 1975), aff'd, 38 NY2d 778, 9 PERB ¶ 7009 (1976).

¹¹ See, *Village of Spring Valley Policemen's Benevolent Assn.*, 14 PERB ¶ 3010 (1981); *Town of Haverstraw*, 12 PERB ¶ 3064, rev'd, 12 PERB ¶ 7015 (Sup. Ct. Rockland Co., 1979), reinstated and conf'd 75 AD 2d 874, 13 PERB ¶ 7006 (2d Dep't 1980).

¹² See, *New York State Police Investigators Ass'n*, 30 PERB ¶ 3013 conf'd sub nom. *New York State Police Investigators Ass'n v PERB*, 30 PERB ¶ 7011 (Sup. Ct. Albany County, 1997).

¹³ *Id.*, at 3028.

¹⁴ *Id.*, at 3028.

¹⁵ *Id.*

¹⁶ *New York State Police Investigators Ass'n*, supra note 12.