

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

NORTH HUDSON REGIONAL FIRE AND RESCUE

"Public Employer,"

- and -

NORTH HUDSON FIRE FIGHTERS ASSOCIATION

"Union."

Docket No. IA-2000-53

**DECISION
ON
CLARIFICATION**

NORTH HUDSON REGIONAL FIRE AND RESCUE

"Public Employer,"

- and -

NORTH HUDSON FIRE OFFICERS ASSOCIATION

"Association."

Docket No. IA-2000-36

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Employer:

Robert E. Murray, Esq.
The Murray Law Firm

For the Union:

Bruce D. Leder, Esq.
Cohen, Leder, Montalbano & Grossman

For the Association:

Richard D. Loccke, Esq.
Loccke & Correia, P.A.

On September 25, 2003, the Public Employment Relations Commission ["PERC"] considered appeals filed by the North Hudson Regional Fire and Rescue District [the "Regional"], the North Hudson Firefighters Association [the "Union"] and North Hudson Fire Officers Association [the "Association"] from interest arbitration awards issued on September 30, 2002. PERC entered the following Order:

The award is remanded to the arbitrator for the limited purpose of clarifying whether or not he intended firefighters from Union City and Weehawken to have any accumulated sick leave that carries over into the new agreement for sick leave use and, if appropriate, modifying any aspects of the award accordingly. The arbitrator shall provide a written statement to the Commission and the parties so that, absent extraordinary circumstances, we can decide the appeals at our October 30 meeting. The parties shall have five days from the receipt of the statement to comment. We retain jurisdiction.

At hearings, a myriad of issues were in dispute including the amount of sick leave to be awarded and the usage of sick leave including procedures, verification and incentives for non or partial use of sick days. These portions of the Awards were made effective January 1, 2003 and provided the following terms.

**FIREFIGHTERS
SICK LEAVE**

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave

with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an annual allotment 120 hours during a firefighters first five years of service. Thereafter, I set the following schedule based upon years of service and prior employment. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, firefighters shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Evidence in the form of a physician's certificate shall be required as proof of illness for any sick leave paid for an absence of more than one tour of duty. Evidence in the form of a physician's certificate may be required whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, and if appropriate, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities.

The Employer reserves the right to send an employee, at the Regional's expense, for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Employees on extended medical leave shall contact the office of the Chief on a weekly basis.

Sick Leave Use Incentive

Effective January 1, 2003, an employee who has taken no sick days during the calendar year shall receive a stipend of \$500.00 to be paid on or before February 1st of the following year.

During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient, from the attending physician and/or a Department medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.

If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

FIRE OFFICERS SICK LEAVE & TERMINAL LEAVE

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an additional 120 hours during a Fire Officer's first five years of service. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, Fire Officers shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

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If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

Terminal Leave

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulated in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days as provided in the municipalities' collective bargaining agreements at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day up to a maximum benefit of \$15,000. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

In the proceeding involving rank and file firefighters issues concerning terminal leave, unlike the fire officers, were addressed in separate portions of the Award although the terms were identical. That portion of the Award stated:

TERMINAL LEAVE

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for eligible days as provided in the municipalities' collective bargaining agreements which employed that employee at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day up to a maximum benefit of \$15,000. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

Though not articulated at length, the thrust of the PERC Order is directed towards the impact of the Awards' decisions to have a uniform sick leave program [the "program"] for all firefighters and fire officers in the bargaining unit effective January 1, 2003. The implementation of the program provided a range

of paid time based upon seniority setting forth a maximum sick leave bank of 240 hours or ten (10) full 24 hour tours of duty or thirty (30) eight hour days. Hours or days could be taken in no less than 8 hour blocks. The Award was silent on whether I intended firefighters or fire officers previously employed by Union City or Weehawken to have accumulated sick leave that carries over after the new terms on sick leave are implemented.

For firefighters and fire officers previously employed by West New York and North Bergen, this scheme of having a sick leave bank, and an accumulation of sick leave hours, was consistent with the program they previously enjoyed. To the extent that any question exists as to whether the sick leave awarded can be accumulated if unused, the Award is clarified to allow for such accumulation. For firefighters and fire officers previously employed by Union City and Weehawken, the awarded scheme was not entirely consistent with what was previously enjoyed. These firefighters and fire officers received a program commonly referred to as "unlimited sick leave," although neither Agreement expressly uses the term "unlimited." Weehawken's agreements contained no provision for accumulated sick leave under the sick leave articles. PERC's Order is directed solely at the impact of conversion from "unlimited" to a specific allotment of sick leave bank for these employees and, in particular, whether there was an intention to provide for accumulated sick leave for the firefighters previously employed by these municipalities. The Order also granted me with the authority to, if appropriate, modify any aspects of the Award accordingly.

I first address the effective date of the implementation of the Award with respect to sick leave. Because sick leave usage is not susceptible to retroactive application, I modify the effective date for implementation of the sick leave provisions from January 1, 2003 to January 1, 2004.

After review of the entire record of the proceeding and the terms of the Award on this issue, I conclude that certain clarifications are appropriate. The issue of sick leave accumulation, if any, for Union City and Weehawken firefighters and fire officers was not expressly addressed by me although conversion to a specific sick leave allotment and a sick leave bank makes it reasonable to address this issue. This issue was also not expressly addressed by the parties because they could not anticipate how the issue of sick leave would be finalized and could not have been expected to offer any contentions on a speculative basis.

Before addressing the issues I note that a large number of unit employees are unaffected by this clarification. Employees hired after the date of regionalization on January 1, 1999 were hired as employees of the Regional District and were never employed by either Union City or Weehawken. These employees have been awarded an annual sick leave bank and have or will accumulate unused sick leave on an annual basis. Firefighters previously employed by North Bergen and West New York did not receive "unlimited" sick

leave and instead received a specific allotment of paid sick time which they were able to accumulate if unused. These accumulated sick days will be carried forward after implementation of the new sick leave provision which also provides for a specific allotment of paid sick time which, if unused, will also be accumulated in addition to what had already accumulated. Further, any firefighters previously employed by Union City or Weehawken who have retired or will retire prior to January 1, 2004 are unaffected because the new sick leave provision is not retroactive.

It is my view that firefighters and fire officers who have enjoyed "unlimited" sick leave and who have lengthy service should continue to have this benefit applied to them pursuant to the previous provisions in the prior agreements. I define this category of employees as those who have twenty (20) or more years of service as of January 1, 2004, the effective date of the implementation of the new sick leave provisions. This aspect of my clarification is applicable to firefighters and fire officers previously employed by Weehawken and Union City.

Although not expressly stated, PERC's inquiry concerning the conversion of some employees from "unlimited" sick leave to a specific allotment of paid sick leave is whether those employees would have access to an accumulated sick leave bank, the type of which other firefighters might have accrued by virtue of having had a specific allotment, a portion of which may have been unused and therefore accumulated. If not, that employee might not have access to

accumulated sick leave to apply to a non-work connected injury or illness which would force that employee to exceed his newly awarded annual allotment and therefore be put in an unpaid status. It was not my intention to allow such situation to exist as a result of the conversion.

Initially I address firefighters and fire officers previously employed by Weehawken. The prior agreements for firefighters and fire officers are identically phrased to state:

Weehawken Fire Officers and Firefighters

Article XXVIII – Sick Leave

A. Sick leave is hereby defined to mean absence of an employee from post or duty because of illness, accident or exposure to contagious disease.

B. When an employee does not report for duty for a period of one (1) workday because of sickness, he shall show proof of his inability to work by submitting to the Department Head a certificate, signed by a reputable physician in attendance, to the effect that the said employee was not, on the date or dates a leave is requested, physically able to perform his job. If requested, the employee shall submit to an examination by a physician appointed by the Township to substantiate such illness at Employer expense.

C. During the protracted periods of illness or disability of an employee, the Department Heads may require interim reports on the condition of the patient at weekly or biweekly periods from the attending physician and/or a Township medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.

D. If an employee is absent from work for reasons that entitle him to such leave, the Department Head or his designated representative shall be notified as early as possible, but no later

than one (1) hour prior to the start of the scheduled work shift from which he is absent, except in emergency circumstances. Failure to so notify the Department Head or his designated representative may be cause for denial of the use of sick leave for that absence.

E. Any employee who does not utilize any sick leave for the period between May 1 and October 31 of a calendar year shall receive \$300 payable on December 1. For the period November 1 through April 30, an employee who does not utilize any sick leave shall receive \$200 payable on June 1. Nothing contained in this paragraph shall be construed to permit pro-rata payment of such bonus for partial year perfect attendance.

F. The sick leave bonus shall be paid in the same manner as clothing allowance.

The Weehawken Agreements contain no reference to a sick leave bank or accumulation of unused sick days. I am clarifying the Award to create a sick leave bank for sick leave use for the Weehawken firefighters and fire officers who did not have a contractual right to accumulate sick leave under the prior unlimited sick leave program. This clarification is effective only for the period of time prior to their receipt of a specific sick leave allotment which is effective January 1, 2004. At that time, each firefighter and fire officer will begin to accumulate unused sick leave pursuant to the scheme which was awarded. Prior to that date, I award each firefighter and fire officer previously employed by Weehawken with less than twenty (20) years of service effective January 1, 2004, an annual sick leave bank of 72 hours for sick leave use without regard to any prior sick leave usage. This allotment of accumulated sick leave shall be based upon an accrual of 72 hours for each full year of service earned prior to January 1, 2004. The usage of these accumulated sick days shall be subject to the verification provisions and procedures already contained in the awarded sick leave provision.

I next address firefighters and fire officers previously employed by Union City. The prior agreement for fire officers stated:

Union City Fire Officers

Article VII – Sick Leave

A. Sick leave policy for all Fire Superiors covered by this Agreement shall continue to be administered as in the past, i.e., sick leave to a maximum of one year regardless of the nature of the illness or non-job related injury.

H. For the purpose of terminal leave, and that purpose only, a sick leave bank shall be established in the amount of 120 hours per annum for each calendar year of employment with the City, which bank shall only be reduced on an hour-for-hour basis by reason of sick leave and during the employee's tenure with the City for absences as a result of non-work connected injury or illness. Upon retirement or death, the employee or his estate shall be paid a terminal leave benefit in the amount equivalent to one-half of the remaining accumulated sick leave (1 hour for every two).

I. 1. (a). Work connected injury or illness will not be cause for deduction of any benefits from the employee's accumulated sick leave.

I. 2. Non-work connected injury or illness shall be treated in the manner as ordinary sick leave that is charged to a maximum of 120 hours per year in accordance with Subsection H above.

The prior agreement for firefighters previously employed by Union City stated:

Union City Firefighters

Article V – Sick Leave and Terminal Leave

A. Sick leave policy for all employees covered by this Agreement shall continue as in the past, i.e., sick leave (to a

maximum of one year) regardless of the nature of the illness or injury.

H. 1. For the purposes of terminal leave, however, and that purpose only, a sick leave bank shall be created consisting of one hundred twenty (120) hours per year for each calendar year of employment with the City, which bank shall only be reduced by reason of sick leave used during the employee's tenure with the City for absences as a result of non-work connected injury or illness.

2. Upon the employee's retirement he shall be paid a terminal leave benefit in no event less than seven hundred twenty (720) hours pay or on the basis of one-half of the remaining accumulated sick leave (one hour for every two), whichever benefit is greater. Terminal Leave shall be payable in either lump sum upon retirement or in three (3) equal installments, the manner of payment to be made at the option of the employee. In the event the employee shall select the installment method of payment, the employee shall receive one-third of the terminal leave upon retirement and one-third of the terminal leave upon the anniversary date of retirement of each of the next two (2) immediately succeeding years. It is understood that payment shall be made at the end of the ensuing regular pay period following the retirement and/or anniversary date(s).

3. Sick time shall be deducted on an hour-for-hour basis for regularly scheduled work time which is missed due to non-work related injury or illness.

I. 1. Work connected injury or illness will not be cause for deduction of any benefits from the member's accumulated sick leave.

2. Non-work connected injury or illness shall be treated in the same manner as ordinary sick leave; that is, charged to a maximum of one hundred twenty (120) hours per year.

In Union City, unlike Weehawken, the prior agreements by their express terms, both clearly provide for an annual "sick leave bank" and for "accumulated sick leave." The sick leave bank consists of 120 hours per year for each calendar year of employment with the City. The bank could only be reduced "by

reason of sick leave used ... as a result of non-work connected injury or illness.” Each agreement also states that “work connected injury or illness” will not be cause for deduction of any benefits from the member’s accumulated sick leave. The accumulated sick leave may also be credited towards terminal leave payment. In addition to the agreements’ reference to sick leave banks and accumulated sick leave for non-work connected injury or illness, the Agreements also provide for sick leave “to a maximum of one year.”

Given the existence of an annual sick leave bank for non-work related injury or illness and the ability to accumulate unused sick leave for sick leave use in the prior agreements, there is no need to clarify whether firefighters or fire officers from Union City have any accumulated sick leave time which they can carry over into the new agreement after the effective of the conversion for sick leave use. Whatever accumulated sick leave time has been earned as of January 1, 2004 shall be carried forward into each employee’s sick leave bank. Any additional accumulated sick leave time earned after that date pursuant to the newly awarded sick leave allotments shall be added to the accumulated sick leave or sick leave bank which accrued prior to that date. Further, although the awarded sick leave allotment provides for a minimum of 120 hours and a maximum of 240 hours, the awarded sick leave provision is not intended to affect the contractual right of the Union City firefighters or fire officers to continue to annually credit up to 120 hours of this annual sick leave bank towards their terminal leave program.

CLARIFICATION OF AWARD

The interest arbitration awards issued on September 30, 2002 are clarified to reflect the following:

1. The effective date for implementation of the Sick Leave provisions shall be modified from January 1, 2003 to January 1, 2004.

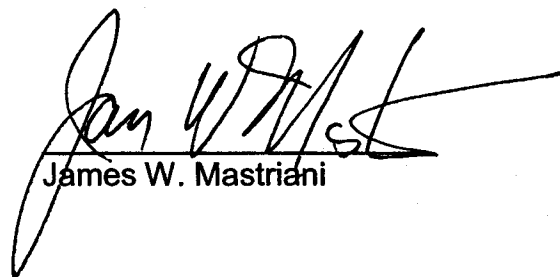
2. The Sick Leave program effective January 1, 2004 shall allow for the annual accumulation of any sick leave unused and the carry forward of any previous accumulated sick leave earned under prior provisions which contain an annual allotment of paid sick time.

3. Firefighters and Fire Officers previously employed by Union City and Weehawken and who have twenty (20) or more years of service as of January 1, 2004 shall continue to have the previous provisions concerning Sick Leave in their prior agreements applied to them.

4. Firefighters and Fire Officers previously employed by Weehawken and who have less than twenty (20) years of service as of January 1, 2004 shall be granted an annual sick leave bank of 72 hours for sick leave use without regard to any prior sick leave usage. This allotment shall be based upon an accrual of 72 hours for each full year of service earned prior to January 1, 2004. The use of these accumulated sick days shall be subject to the verification provisions already award in the Sick Leave provision. Thereafter, this accumulated sick leave shall be carried forward and any additional accumulated sick leave time earned and unused after January 1, 2004 pursuant to the newly awarded Sick Leave allotments shall be added to the accumulated sick leave time awarded prior to that date.

5. Firefighters and Fire Officers previously employed by Union City and who have less than twenty (20) years of service as of January 1, 2004 shall carry forward their accumulated sick leave and sick leave bank earned prior to that date for sick leave use and any additional accumulated sick leave time earned after that date pursuant to the newly awarded sick leave allotments shall be added to the accumulated sick leave accrued prior that date. This clarification is not intended to affect the contractual right of the Union City firefighters or fire officers to continue to annually credit up to 120 hours of this annual sick leave bank towards their terminal leave program.

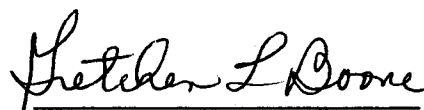
Dated: October 10, 2003
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 10th day of October, 2003, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008