

P.E.R.C. NO. 91-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LACEY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-60

LACEY TOWNSHIP P.B.A. LOCAL 238,

Respondent.

LACEY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-61

LACEY TOWNSHIP SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds mandatorily negotiable, work schedule proposals made by Lacey Township P.B.A. Local 238 and the Lacey Township Superior Officers Association in contract negotiations with Lacey Township. The proposal is consistent with previous cases which have held that shift selection by seniority is mandatorily negotiable given language preserving management's right to act unilaterally when necessary.

P.E.R.C. NO. 91-46

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LACEY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-60

LACEY TOWNSHIP P.B.A. LOCAL 238,

Respondent.

LACEY TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-61

LACEY TOWNSHIP SUPERIOR
OFFICERS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys (James L.
Plosia and Frank N. D'Ambra, on the brief)

For the Respondents, Ferg, Barron & Gillespie,
attorneys (Ralph H. Colflesh, of counsel)

DECISION AND ORDER

On March 22, 1990, Lacey Township filed two petitions for scope of negotiations determination. The Township asserts that identical work schedule proposals made by Lacey Township P.B.A. Local 238 and the Lacey Township Superior Officers Association are not mandatorily negotiable.

Both parties have filed briefs, affidavits and documents. These facts appear.

The PBA is the majority representative of the Township's non-supervisory police officers. The SOA represents the sergeants, lieutenants and captains. The Township has collective agreements with the PBA and the SOA effective January 1, 1989 through December 31, 1991. During negotiations leading to these agreements, a dispute arose over the negotiability of the following proposal:

The employee will have the right to select his tour-of-duty schedule for his designated job duty by seniority. However, the right to such selection by seniority shall not apply in cases of emergencies, extra-ordinary circumstances or where special qualifications (e.g., breathalyzer operator, radar operator, identification expertise, canine assignments) or any other circumstances wherein special qualifications are required. Tour of duty schedule selection by seniority shall be made by the officers between the dates of November 1 and November 30 of each year for the next calendar year, to take effect on or about January 5 of the next following calendar year.

The proposal remained in dispute after all other issues were resolved. This petition ensued.

Work schedules are in general mandatorily negotiable.

Local 195, IFPTE v. State, 88 N.J. 393 (1982); In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987); cf. N.J.S.A. 34:13A-16. In certain cases, however, management has proven a particularized need to act unilaterally. See, e.g., Town of Irvington v. Irvington PBA Local 29, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); Bor. of Atlantic Highlands v. Atlantic Highlands PBA

Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984).

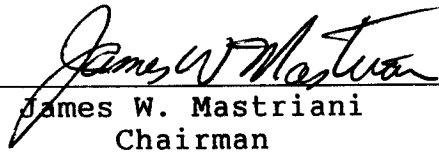
Previous cases have held that shift selection by seniority is mandatorily negotiable given language preserving management's right to act unilaterally when necessary. City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90); Pennsauken Tp. P.E.R.C. No. 88-126, 14 NJPER 408 (¶19162 1988); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985). This proposal is consistent with those cases. It plainly permits the Township to deviate from seniority-based shift selections where special qualifications are required or in cases of emergencies or extraordinary circumstances. The proposal's list of examples is not exclusive and does not significantly interfere with the employer's right to act unilaterally should circumstances necessitate. See Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981).^{1/}

^{1/} An earlier proposal was found not mandatorily negotiable because it did not permit permanent exceptions to the seniority-based shift selections. Lacey Tp., P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987). This proposal cures that defect.

ORDER

The PBA and SOA work schedule proposals are mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
October 26, 1990
ISSUED: October 26, 1990