

P.E.R.C. NO. 2011-74

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket No. SN-2011-015

PBA LOCAL 250,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal that the PBA Local 250 seeks to submit to binding interest arbitration for a successor agreement with the Union County Prosecutor's Office. The proposal provides that Detectives and Investigators will only be laid off in inverse departmental seniority order. The Commission holds that a public employer may not negotiate an agreement to layoff strictly by seniority when other factors such as special skills may be relevant.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Bauch, Zucker, Hatfield, LLC,  
attorneys (Kathryn V. Hatfield, of counsel)

For the Respondent, Mets, Schiro & McGovern, LLP,  
attorneys (James M. Mets, of counsel)

DECISION

On September 2, 2010, the Union County Prosecutor's Office petitioned for a scope of negotiations determination. The Prosecutor asserts that a layoff by seniority proposal that PBA Local 250 has made during collective negotiations is not mandatorily negotiable and may not be submitted to compulsory interest arbitration.<sup>1/</sup> As presently written, we find that the proposal is not mandatorily negotiable and may not be submitted to the interest arbitrator for inclusion in a successor collective negotiations agreement.

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<sup>1/</sup> The Prosecutor also contested the negotiability of a proposal regarding outside jobs. The PBA has withdrawn that proposal.

The parties have filed briefs and exhibits. The PBA has filed the certification of its President, Detective Stephen E. McGuire. These facts appear.

The PBA represents the titles detective, investigator and investigator accountant, not holding a superior officer's rank.<sup>2/</sup> The parties' collective negotiations agreement is effective from January 1, 2005 through December 31, 2009.

On August 16, 2010, the PBA filed a petition to initiate compulsory interest arbitration together with an attachment setting forth the text of new sections it seeks to add. The Prosecutor asserts that the PBA's proposal on layoffs by seniority is not mandatorily negotiable.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for police officers 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

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<sup>2/</sup> Detective McGuire certifies that no person holds the position "investigator accountant" and that Detectives and Investigators are used interchangeably.

the work and welfare of police and firefighters, 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.

Although public safety employers and the representatives of police or firefighters may make legally enforceable agreements on permissive subjects of negotiations, a public employer may limit interest arbitration to mandatorily negotiable subjects only. See N.J.S.A. 34:13A-16f(4); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981). Accordingly, in order to be eligible for interest arbitration, the PBA's proposal must be mandatorily negotiable.

The PBA has submitted this proposal to amend Section 2 of Article XXXIV of the existing agreement.

Detectives and Investigators shall be laid off in inverse departmental seniority order. Laid off Detectives and Investigators shall be placed on a special re-employment list and recalled in departmental seniority order. They shall have first right of refusal to be recalled to any opening in the position of Detective and Investigator. Recall rights shall last for 5 years from the date of layoff. If re-training is necessary, the recalled Detective or Investigator shall be given the opportunity to complete said training.

The Prosecutor asserts that the PBA's claim that the order of layoffs should be by seniority is inconsistent with the variety of departments and functions of his office and would interfere with his ability to manage and operate his office.

The PBA responds that all detectives and investigators are interchangeable and that the issue of whether some officers may possess special skills would not arise in an economic layoff.

Initially, we observe that even if detectives and investigators have been used interchangeably, as we noted in Essex County Prosecutor's Office, P.E.R.C. No. 2004-19, 29 NJPER 473 (¶148 2003), N.J.S.A. 2A:157-2 and N.J.S.A. 2A:157-10 view detectives and investigators as distinct positions. Thus, we held that a negotiations proposal to change the job titles of investigators to County detectives was preempted by those laws and could not be submitted to interest arbitration for inclusion in a successor agreement. 29 NJPER at 475-476.

A public employer, even where it decides to reduce staff for budgetary reasons, has the managerial prerogative to determine that a less senior employee with particular skills should be retained. Council of N.J. State Coll. Locals, NJSFT-AFT/ AFL-CIO v. State Bd. of Higher Ed., 181 N.J. Super. 179, 187 (App. Div.), mod. on other grounds, 91 N.J. 18 (1982) held:

We are inclined to agree with the position advanced by the Board that the decision to reduce work staffs at the various colleges in the event of fiscal exigency requires sensitive academic judgments which are clearly managerial in nature. Such decisions entail considerations which are at the very heart of education policy and cannot be shared with groups representing private interest.

[Ibid]

In State v. State Supervisory Employees Ass'n, 78 N.J. 54, 89 - 90 (1978), the Court held that a public employer cannot negotiate an agreement binding it to make layoffs strictly by seniority when other factors such as special skills may be relevant. See also Lyndhurst Bd. of Ed., P.E.R.C. No. 87-111, 13 NJPER 271 (¶18112 1987), aff'd NJPER Supp.2d 194 (¶171 App. Div. 1988); South Orange-Maplewood Bd. of Ed., P.E.R.C. No. 97-54, 22 NJPER 411, 413 (¶27225 1996).

Passaic County Prosecutor's Office, P.E.R.C. No. 2009-34, 34 NJPER 444 (¶139 2008), held that a grievance asserting that the Prosecutor could agree to use seniority to determine the order of economic layoffs was not preempted by statute and was legally arbitrable. However, Passaic County Prosecutor is distinguishable from the facts herein. The language in Passaic County Prosecutor differs from the PBA's proposal here. In Passaic County Prosecutor, Section VI of the Prosecutor's Employee Manual, "Reduction of Staff/Layoffs," provided: (1) that layoffs could be made for "purposes of efficiency or economy or other valid reason;" (2) that unsatisfactory performance would be a factor in determining which employee(s) within a given category would be laid off; and (3) that layoffs of permanent employees would be made by seniority in classification. Here, the PBA's proposal is limited to the Prosecutor making layoffs strictly by seniority. The proposal does not account for other factors that

may be relevant such as a special skill set or unsatisfactory performance. Moreover, because Passaic County Prosecutor involved grievance arbitration, our task was limited to deciding whether the grievance involved a permissive subject of negotiation. Paterson, 87 N.J. at 95-96. Since this case arises in the context of interest arbitration, the PBA can only submit its proposal to the interest arbitrator if it is mandatorily negotiable. As this proposal would significantly interfere with the exercise of the Prosecutor's managerial prerogative, it is not mandatorily negotiable.

ORDER

The PBA's proposal to amend ARTICLE XXXIV, Section 2 is not mandatorily negotiable and may not be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners, Bonanni, Eaton, Krengel and Voos voted in favor of this decision. None opposed. Commissioner Colligan recused himself. Commissioner Eskilson was not present.

ISSUED: April 28, 2011

Trenton, New Jersey