

P.E.R.C. NO. 91-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY BOARD
OF CHOSEN FREEHOLDERS,

Petitioner,

-and-

Docket Nos. SN-91-73
ID-91-4

SOMERSET COUNTY CORRECTIONS
OFFICERS' P.B.A. LOCAL NO. 177,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that these contract proposals in dispute between the Somerset County Board of Chosen Freeholders and Somerset County Corrections Officers' P.B.A. Local No. 177 are non-economic: (1) in the event of a major non-job related disability an employee's position will be held open for a one-year period; (2) the County shall be required to provide an office for the sole and exclusive use by the PBA located in the Somerset County Jail Facility; (3) that the PBA president shall be placed on a steady day work obligation during his term in office.

The Commission finds these proposals to be not mandatorily negotiable: (1) there shall be regular meetings between the employer and the PBA for the purpose of resolving manning and staffing levels within the facility; (2) there shall be no sick leave checks at an officer's personal residence.

The Commission finds the proposal that the County be required to provide an office for the P.B.A. to be mandatorily negotiable.

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Appearances:

For the Petitioner, Shanley & Fisher, attorneys
(Daniel O'Connell, of counsel)

For the Respondent, Loccke & Correia, attorneys
(Richard D. Loccke, of counsel; Michael J. Rappa on the
brief)

DECISION AND ORDER

On March 27, 1991, the Somerset County Board of Chosen Freeholders petitioned for a scope of negotiations determination and an issue definition determination. The employer seeks a declaration that certain contract proposals of the Somerset County Corrections Officers' PBA Local No. 177 are not mandatorily negotiable and a declaration that certain contract proposals are non-economic.

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

The PBA represents all uniformed officers from the rank of officer to captain in the Department of Corrections and the Identification Bureau. The parties' most recent collective

negotiations agreement expired on December 31, 1990. The PBA requested the initiation of compulsory interest arbitration. The County then filed its two petitions.^{1/}

I. Scope of Negotiations Determinations

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1987), outlines the steps of a scope of negotiations analysis for contract provisions covering police officers or 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 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. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

^{1/} The PBA has withdrawn the disputed portions of its proposals concerning the grievance procedure and discharges, discipline, promotions, and departmental investigations.

Consistent with the policy articulated in Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981), we will determine only whether the PBA's proposals are mandatorily negotiable.

The PBA has proposed that "there be no sick leave checks at the officer's personal residence." We have held that a public employer has a managerial prerogative to establish a sick leave verification program which includes home visits. City of E. Orange, P.E.R.C. No. 84-68, 10 NJPER 25 (¶15015 1983); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). The PBA's proposal is not mandatorily negotiable under these cases.^{2/} An employee may grieve and arbitrate the application of a sick leave verification policy if particular home visits are made for purposes other than reasonable verification or egregiously and unjustifiably violate an employee's privacy. Piscataway.

The PBA has proposed that "there be regular meetings between the employer and the PBA for the purpose of resolving

^{2/} City of Passaic, P.E.R.C. No. 89-77, 15 NJPER 93 (¶20041 1979), aff'd App. Div. Dkt. No. A-2667-88T3 (11/27/89), held that a grievance contesting more burdensome reporting procedures for officers on sick leave was at least permissively negotiable. We noted that the case involved the "fine-tuning" of reporting procedures which did not affect the employer's basic goal of verifying sickness and stated that the employer's policy was "more akin to a 'home visitation' portion of a comprehensive policy at issue in [East Orange], which did not address permissive negotiability." 15 NJPER at 94, n. 4. Passaic does not make home visits mandatorily negotiable. In any event, we agree with the County that home visits in this case cannot be viewed as merely "fine-tuning" its sick leave verification policy. The contractual procedures on sick leave verification apply only to employees on extended sick leave.

manning and staffing levels within the facility." As worded, this proposal is not mandatorily negotiable. See, e.g., City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11194 1980), aff'd App. Div. Dkt. No. A-4851-79 (7/15/81), certif. den. 88 N.J. 476 (1981). In its brief, the PBA has apparently limited its proposal to require consultation when layoffs and job displacements are contemplated for fiscal reasons. The County agrees that such a modified proposal would be mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393, 409-410 (1982).

The PBA has proposed that the County be required "to provide an office for the sole and exclusive use by the P.B.A... located in the Somerset County Jail Facility." According to the County, a new jail facility is almost ready. That facility will have an all-purpose room and a conference room. The County will allow the PBA to use this room for its business, but not on a "sole and exclusive" basis.

The parties agree that office space for union purposes is a mandatorily negotiable subject, unless providing office space would require spending capital funds. Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1989); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); Kearny Tp., P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980). On its face, the PBA's proposal is mandatorily negotiable. The County may assert through the interest arbitration process that there is not enough space in the new facility for a separate PBA office.

II. Issue Definition Determinations^{3/}

Under the interest arbitration statute, parties must set forth their final offers in two separate parts: "(a) a single package containing all the economic issues in dispute and (b) the individual issues in dispute not included in the economic package, each set forth separately by issue." N.J.S.A. 34:13A-16(f)(1).

Economic issues:

include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees. [N.J.S.A. 34:13A-16(f)(2)]

The PBA has proposed that "in the event of a major non-job related disability that the employees' position will be held open for a one (1) year period." The County agrees with the PBA that this proposal for an unpaid leave of absence is mandatorily negotiable, but disagrees with the PBA's characterization of this proposal as economic. The County is correct. Branchburg Tp., P.E.R.C. No. 89-21, 14 NJPER 573 (¶19241 1988).

The County disagrees with the PBA's characterization of its office space proposal as economic. The County is correct. Essex Cty.

^{3/} The PBA's brief clarifies that its proposal for time off for union business is a proposal for paid time off. The parties agree that such a proposal is economic. Essex Cty., P.E.R.C. No. 86-45, 11 NJPER 678 (¶16233 1985).

The PBA has proposed that "the PBA president shall be placed on a steady day work obligation during his term of office." This proposal does not have "a direct relation to employee income" or "hours in relation to earnings." On this record, the PBA's contention that this provision may affect the application of other contract provisions on minimum call-in time, holidays, grand jury and court appearances, and holiday overtime pay is speculative. Little Ferry Bor., P.E.R.C. No. 91-14, 16 NJPER 450 (¶21195 1990); City of Plainfield, P.E.R.C. No. 81-42, 6 NJPER 490 (¶11249 1980). The proposal is non-economic.

ORDER

I. Scope of Negotiations Determinations

A. The following proposals are not mandatorily negotiable:

1. The PBA's proposal that "there be no sick leave checks at the officer's personal residence."

2. The PBA's proposal, as worded, that "there be regular meetings between the employer and the PBA for the purpose of resolving manning and staffing levels within the facility."

B. The following proposal is mandatorily negotiable:

1. The PBA's proposal that the County be required "to provide an office for the sole and exclusive use by the P.B.A... located in the Somerset County Jail Facility."

II. Issue Definition Determinations

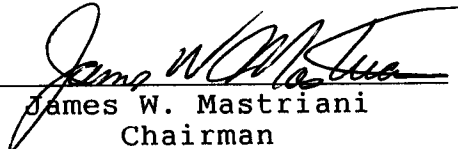
A. The following proposals are non-economic:

1. The PBA's proposal that "in the event of a major non-job related disability that the employee's position will be held open for a one (1) year period."

2. The PBA's proposal that the County be required "to provide an office for the sole and exclusive use by the P.B.A. located in the Somerset County Jail Facility."

3. The PBA's proposal that "the PBA president shall be placed on a steady day work obligation during his term in office."

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: June 20, 1991
Trenton, New Jersey
ISSUED: June 21, 1991