

P.E.R.C. NO. 96-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OFFICE OF THE BERGEN
COUNTY PROSECUTOR,

Petitioner,

-and-

Docket No. SN-96-79

PBA LOCAL NO. 221,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains interest arbitration with respect to proposals of PBA Local No. 221 concerning just cause for removal and accumulated compensatory time off. State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), rules out negotiations or binding arbitration of disciplinary disputes involving police officers. Federal law prohibits the number of accumulated compensatory time off hours from exceeding 480 hours. A proposal on union business leave and office space is mandatorily negotiable and may be submitted to interest arbitration.

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, Richard S. Muti, Assistant Prosecutor

For the Respondent, Loccke & Correia, attorneys
(Joseph Licata, of counsel)

DECISION AND ORDER

On February 1, 1996, the Office of the Bergen County Prosecutor petitioned for a scope of negotiations determination. The Prosecutor seeks a determination that four successor contract proposals submitted by PBA Local No. 221 are not mandatorily negotiable. The proposals concern a just cause standard for removing investigators, accumulated compensatory time off, and PBA business leave and office space.^{1/}

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

^{1/} The petition also asserted that a salary indexing proposal was not mandatorily negotiable. Local No. 221 has withdrawn that proposal so the negotiability issue is moot. We decline to consider it.

Local No. 221 represents County investigators employed by the Prosecutor. It also represents investigative personnel in the rank of County detective, but there are no such employees and no plans to appoint such employees. The parties entered into a collective negotiations agreement effective from January 1, 1993 to December 31, 1995. The Prosecutor who negotiated that contract has left office. The parties have engaged in successor contract negotiations and an interest arbitration petition is pending. Local No. 221 has made proposals which the current Prosecutor contends are not mandatorily negotiable and cannot be submitted to interest arbitration.

Our jurisdiction is narrow. We consider only the abstract negotiability, not the wisdom, of Local No. 221's contract proposals. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson 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 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]

Because this dispute involves contract proposals and the employer need not negotiate over a permissive subject, we need only decide whether the proposals are mandatorily negotiable. Paterson; Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Just Cause For Removal

The predecessor contract contained a provision entitled Rights of Tenure. This provision stated:

Senior Investigators and Sergeant of Investigators, shall be granted the same rights of tenure and protection against removal without cause as are afforded by N.J.S.A. 11A:8-1 (or N.J.S.A. 11A:12-2) to a County Detective serving in the classified service.

During successor contract negotiations, Local No. 221 proposed an article entitled Employee Rights that would permit removal or termination of employment only upon a finding of just cause. The

Prosecutor contends that N.J.S.A. 2A:157-10 preempts negotiations over the proposal because that statute provides that County Investigators serve at the Prosecutor's pleasure, subject to removal by him or her. Local No. 221 responds that N.J.S.A. 2A:157-10 does not speak in the imperative and the discipline amendment to N.J.S.A. 34:13A-5.3 authorizes negotiations over just cause for removing employees who do not have statutory tenure or statutory appeal procedures. The Prosecutor responds that under State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993), the discipline amendment does not permit negotiations or arbitration over a disciplinary disputes involving police officers.

County investigators are police employees entitled to invoke interest arbitration procedures. N.J.S.A. 34:13A-15. State Troopers rules out negotiations or binding arbitration of disciplinary disputes involving police officers. See also Union Cty, P.E.R.C. No. 95-43, 21 NJPER 64 (¶26046 1995), app. pending App. Div. Dkt. No. A-3416-94T1. We will accordingly restrain interest arbitration over the PBA's proposal that just cause be required for removal of investigators.

Compensatory Time Off

Article VII of the parties' predecessor contract is entitled Overtime Compensation. Section J provides:

An employee, in the discretion of the employer, may elect to take compensatory time (1 1/2 hours for each hour worked) in lieu of paid overtime. However, in no case may an employee be required to take compensatory time in lieu of overtime.

Local No. 221 has proposed modifying this section to provide that the employee shall decide whether to take overtime compensation in paid compensation or compensatory time off ("CTO") to be scheduled at the employee's discretion, subject to the employer's prior approval. The Prosecutor has counterproposed modifying Section J to permit employees to accumulate and take up to 80 CTO hours at the employer's discretion.

The Prosecutor contends that granting Local No. 221's proposal would be too expensive and would interfere with his ability to determine work schedules to meet operational needs. Local No. 221 responds that compensatory time off is mandatorily negotiable under our precedents and authorized under the Fair Labor Standards Act, 29 U.S.C. §207 et seq.

Compensatory time off is, in general, a mandatorily negotiable subject. See, e.g., Essex Cty., P.E.R.C. No. 88-123, 14 NJPER 403 (¶19159 1988); State of New Jersey, P.E.R.C. No. 84-77, 10 NJPER 42 (¶15024 1983), aff'd 11 NJPER 333 (¶16119 App. Div. 1985). Pursuant to 29 U.S.C. §207(o)(3)(A), public agencies and majority representatives may agree to permit law enforcement employees to accrue up to 480 CTO hours, but any extra overtime hours must be paid. An employee who asks to use accumulated CTO shall be allowed to do so within a reasonable period if compensatory time off would not unduly disrupt the agency's operations. 29 U.S.C. §207(o)(4).

Under the proposal, the employer retains the right to approve a CTO request and thus may deny any request that would

unduly disrupt its operations. In addition, any concerns the Prosecutor may have about the cost of a CTO proposal may be presented to an interest arbitrator. However, Local No. 221's proposal cannot be submitted to interest arbitration as presently worded because it does not state that the number of accumulated CTO hours may not exceed 480 hours.

Union Business Leave and Office Space

Local No. 221 has proposed an article entitled PBA Business. Its proposal states:

The PBA shall be entitled to fifteen (15) eight (8) hour tours per year for attendance at PBA business. The use of said time off shall be conditioned only on prior notification by the PBA President, or his designee, to the appropriate tour commander(s). Said use of time off shall be denied only in the event of a clear and present danger confronting the Department.

Said PBA business time shall not be diminished by time spent at meetings which are scheduled by the employer.

The employer shall provide an office for the sole and exclusive use by the PBA. Said office shall be of reasonable size and condition and shall be located in the Prosecutor's office facility.

The Prosecutor has withdrawn a counterproposal permitting Local No. 221 to use 10 work tours of 6.5 hours each for union business.

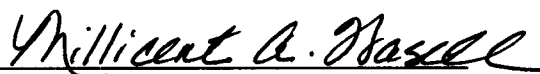
The Prosecutor does not object to allowing union business leaves; he objects only to paying for such leave. The Prosecutor also states that while he may try to find some unused space for Local No. 221 to use, he has sole discretion to decide how to use his limited space. Local No. 221 responds that the proposed article is mandatorily negotiable under our precedents.

Union leave, paid or unpaid, is mandatorily negotiable. See, e.g., City of Newark, P.E.R.C. No. 90-122, 16 NJPER 394 (¶21164 1990) and cases cited therein. The Prosecutor may present his concerns about the cost of paid leave to the interest arbitrator. It is also well-established that proposals to grant office space to a majority representative for representational activities are mandatorily negotiable, so long as they would not require a capital improvement involving a major budgetary expense. Byram; City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980). The Prosecutor may present his limited space concerns to the interest arbitrator. Accordingly, we decline to restrain interest arbitration over this article.

ORDER

The request of the Office of the Bergen County Prosecutor for a restraint of interest arbitration is granted with respect to the proposals of PBA Local No. 221 concerning just cause for removal and accumulated compensatory time off. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: June 20, 1996
Trenton, New Jersey
ISSUED: June 21, 1996