

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SADDLE BROOK,

Petitioner,

-and-

Docket No. SN-78-18

PBA LOCAL #102, SADDLE BROOK,

Respondent.

SYNOPSIS

The Commission issues a Decision and Order in a scope of negotiations proceeding. The Township filed a Scope of Negotiations Petition in response to the filing of a Petition to Initiate Compulsory Arbitration by the PBA. The Township contended that certain of the issues listed by the PBA as being in dispute were not required subjects for collective negotiations and could not be submitted to compulsory interest arbitration, unless otherwise agreed to by the Township of Saddle Brook.

With respect to the disputed contractual demands, the Commission finds the following to be required subjects for collective negotiations which may be submitted to compulsory interest arbitration in accordance with Chapter 85, Laws of 1977 and the Commission's Rules: a demand that an officer be compensated when required to attend a hearing conducted by the New Jersey Division of Motor Vehicles on an officer's day off; a demand for compensation for work performed during off-duty hours; advance notification of changes in work schedules; the demand that equipment utilized by the police officers in the performance of their duties be maintained and that unsafe equipment be repaired or replaced; legal representation of an officer's own choosing in actions which arise from job related incidents; notice of the Township's intention to make changes in rules governing the operation of the Police Department and a request that the Township honor all claims under health and medical insurance coverage in the event such coverage lapses or is cancelled.

The Commission further determined that the request of the PBA that police officers of equal rank, position or title be able to voluntarily exchange work assignments relates to a permissive subject for collective negotiations. The PBA was therefore ordered by the Commission to refrain from insisting to the point of impasse upon the inclusion of such a proposal in a collectively negotiated

agreement with the Township. Such proposal could not be submitted to compulsory interest arbitration, unless otherwise agreed to by the Township.

The Commission further determined that the PBA demand that particular language contained within certain retirement statutes affecting police officers be incorporated within the parties' negotiations agreement related to an illegal subject for collective negotiations. The Commission ordered that such a proposal may not be the subject of collective negotiations between the parties nor may such a proposal be submitted to compulsory interest arbitration.

P.E.R.C. NO. 78-72

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Appearances:

For the Petitioner, William D. Gorgone, Esquire

For the Respondent, Michael B. Ryan, Esquire

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on February 8, 1978 by the Township of Saddle Brook (the "Township") seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act"). The Township's Petition, when filed, listed 10 items alleged to be in dispute during negotiations between the Township and PBA Local #102 (the "PBA") for a collective agreement to succeed the one which expired on December 31, 1977. The items contained on the Petition corresponded to 10 of the items contained on a Petition to Initiate Compulsory Interest Arbitration which was filed by the PBA on December 2, 1977 (Docket No. IA-78-51). As a result of the PBA having requested withdrawal of two of the items in IA-78-51 which

are contained in the instant Petition, the Township requested withdrawal of the two corresponding items in SN-78-18. These withdrawal requests were approved on April 4, 1978. Thus, eight items on the instant Petition remain for our determination, based upon the Petition, the briefs filed by the Township (on February 22, 1978) and the PBA (on March 20, 1978) and the Petition in Docket No. IA-78-51 which was submitted as an attachment to the PBA's brief.^{1/} Neither party has requested oral argument in this case.

A request for an evidentiary hearing, pursuant to N.J.A.C. 19:13-3.6, was made by the PBA with respect to the first five issues which remain in dispute. The basis for the request was that factual disputes exist with respect to past practices between the parties with respect to certain of the issues in dispute. The issue of the parties prior treatment of a disputed topic is not relevant to the question as to whether that topic is a mandatory, permissive or illegal topic for negotiations. The fact that provisions concerning some of the issues in dispute have been included in prior contracts has no bearing on our ultimate determination in a Scope of Negotiations Proceeding. The issues presented by the Scope of Negotiations Petition (and the corresponding items in the Interest

^{1/} Subsequent to the filing of briefs, the PBA requested permission to supplement its position. Specifically, it sought to support its apparent position that the Township must negotiate issues essential to the taking of annual vacation leave. However, we do not read that as being within or among the issues set forth in the Township's scope petition. If there is a dispute regarding the negotiability of this matter, an appropriate petition may be filed. Disagreements between the parties regarding the meaning of the Interest Arbitration Petition cannot be resolved by us in a scope proceeding.

Arbitration Petition) are sufficiently defined to allow us to render a determination thereon. There are no substantial and material disputed factual issues. We thus deny the PBA's request for an evidentiary hearing.

The first issue in dispute concerns the PBA's demand that an officer be compensated when required to attend a hearing conducted by the New Jersey Division of Motor Vehicles on an officer's day off. The Township argues that the demand is non-negotiable, basing its position on the existence of N.J.S.A. 40A:14-135 which provides that a municipality may authorize such compensation for day-off appearances in municipal, county, Superior and Supreme Court and Grand Jury proceedings, except in civil actions.^{2/} The Township takes the position that the list in the statute is intended to be exclusive and that compensation for proceedings other than those listed in the statute would be illegal.

The PBA urges that the statute not be read to limit such compensation to the appearances enumerated in the statute. It cites New Jersey Civil Service Ass'n v. Mayor, Camden, 135 N.J. Super 308 (Law Div., 1975) wherein the Court determined that the absence of reference to a dental service plan in a statute authorizing employee health benefits did not preclude the City of Camden from

^{2/} N.J.S.A. 40A-14-135 reads as follows: "The governing body of any municipality may, by ordinance, provide that whenever any member of the police department or force shall be required to appear before any grand jury or at any municipal, County, Superior or Supreme Court proceeding, except in a civil action, the time during which he is so engaged shall be considered a time of assignment to, and performance of duty. When such appearance occurs during the member's assigned duty hours, he shall suffer no loss in compensation. When such appearance occurs outside his assigned duty hours, he shall receive either compensatory time off from his regular duty hours or additional compensation."

contracting for such health coverage as a result of collective negotiations on dental services. While the PBA notes that a prior version of N.J.S.A. 40A:14-135 (which made no reference to municipal court appearances) was relied on by the courts to invalidate an ordinance which provided such compensation to officers^{3/} the PBA questions the applicability of that case to the instant proceeding since the statute was quickly amended to counteract the court's holding, no collective negotiations aspects were involved in that case, and that decision preceded the Supreme Court's holding in Bd. of Ed. of Englewood v. Englewood Teachers, 64 N.J. 1, 7 (1973) that, inter alia, working hours and compensation were mandatorily negotiable terms and conditions of employment.

Consistent with our recent determination in In re Franklin Lakes PBA, supra, at footnote 3, we find the PBA's demand for compensation for day-off appearances at Division of Motor Vehicle hearings to be a required topic of negotiations. We do not believe that N.J.S.A. 40A:14-135 deprives the Township of authority to negotiate and reach agreement with the PBA on this particular demand.^{4/} While the phrase "except in a civil action" in the statute

^{3/} Kayne v. Mayor and Tp. Councilmen of E. Paterson, 121 N.J. Super. 296 (Law Div., 1972). The court's holding and the legislative history of N.J.S.A. 40A:14-135 is discussed in In re Franklin Lakes PBA Local 150, P.E.R.C. No. 78-36, 4 NJPER 30 (Para. 4016 1977).

^{4/} The Commission's view of the types of statutes governing terms and conditions of employment which can deprive public employers of authority to negotiate on such otherwise required subjects is set forth in the following decisions: In re Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), Appeal pending, App. Div. No. A-3809-76, In re State Supervisor Employees Association, CSA/SEA, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), Appeal pending, App. Div. Docket No. A-4019-76, In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER 303 (1977) and In re Rockaway Township Education Association, P.E.R.C. No. 78-12, 3 NJPER 325 (1977), Appeal pending, App. Div. Docket No. A-687-77.

might be read to preclude negotiations for similar compensation for police witnesses in such cases we are not faced with that problem herein as Division of Motor Vehicle hearings have been held to be quasi-criminal proceedings. See N.J.S.A. 39:5-1, 5-2, 5-3 and State v. Wenzel, 113 N. J. Super. 215 (App. Div. 1971). We thus believe that the absence of Division of Motor Vehicle hearings from the list contained in N.J.S.A. 40A:14-135 is similar to the lack of reference to dental insurance in N.J.S.A. 40A:9-14, construed in New Jersey Civil Service Ass'n, supra. Neither omission should be read to deprive public employers of authority to negotiate over what are obviously terms and conditions of employment.

The second item in dispute also involves a demand for compensation for work performed during off-duty hours. The PBA requests such compensation for in-service training programs when training sessions are scheduled on a day off. The Township, in framing the issue, urges that the decision as to whether an employee attends training on a scheduled working day or a day off is to be determined by the Township. The PBA does not appear to contest this proposition in its proposal or its brief. The Township, in its Scope Petition, states that if an employee must attend such training on a day off he will be compensated as provided by an agreement between the Township and the PBA. The Township appears to retreat from this position in its brief arguing that such compensation is not authorized by statute and would thus be illegal.

We find this demand to be substantially similar to the

PBA's demand concerning Motor Vehicle hearings. Compensation for increased workload is clearly a mandatory topic for negotiations. We have previously held that negotiations on such matters are illegal only where specific statutes exist which deprive the employer of authority to act with respect to that specific topic.^{5/} N.J.S.A. 40A:14-118, cited by the Township, that concerns the ability of a municipality to establish a police department is not such a statute.

The next item in dispute relates to the PBA's demand that the Township establish a retirement policy for employees after 25 years service and for employees who retire as a result of a job-related disability. There are numerous statutes covering the subject of retirement and pension benefits for police employees. See e.g. N.J.S.A. 40A:14-136, 137.1, 154, 156 and N.J.S.A. 43:16-1 et seq., establishing the Police and Firemen's Retirement System. The PBA states in its brief that it does not seek to negotiate provisions which are at odds with the statutes, but rather to incorporate the language identical to certain retirement statutes into the parties' agreement.

We have previously held that negotiations demands which purport to incorporate statutory language concerning terms and conditions of employment into collectively negotiated agreements are mandatorily negotiable, recognizing that the effect of such action would be to allow disputes concerning such procedures to be resolved through contractual grievance arbitration procedures

^{5/} See cases cited in footnote 4, supra.

rather than statutory forums which exist for the resolution of such disputes and controversies. See N.J.S.A. 34:13A-5.3^{6/} and In re Cinnaminson Board of Education, P.E.R.C. No. 78-46, 4 NJPER 79 (Para. 4039 1978), Appeal pending Docket No. A-2682-77.

While we continue to endorse this concept we find it cannot be applied in the instant case by virtue of the language of N.J.S.A. 34:13A-8.1 which provides that no provision of the New Jersey Employer-Employee Relations Act shall "annul or modify any pension statute or statutes of this State." (emphasis added) The Police and Firemen's Retirement System is administered by a Board of Trustees established pursuant to N.J.S.A. 43:16A-13 and the Division of Pensions in the Department of the Treasury, N.J.S.A. 52:18A-95 et seq. These agencies resolve disputes concerning eligibility of members of the system for retirement or disability benefits. See e.g. Fattore v. Police and Firemen's Retirement System, 80 N.J. Super. 541 (App. Div. 1963). The effect of allowing pension disputes to be resolvable outside the pension system (i.e., through contractual grievance arbitration procedures) would be contrary to the intent of N.J.S.A. 34:13A-8.1 that negotiations may not annul or modify pension laws even though the modification would be procedural (i.e., establishing a different forum for pension disputes) rather than substantive. Thus, we hold

^{6/} N.J.S.A. 34:13A-5.3 provides in relevant part: Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement.

that the PBA's proposal to incorporate the text of certain pension statutes into a collective negotiations agreement to be an illegal topic for collective negotiations.

Two other issues in dispute concern the PBA's request for notification of changes in work schedules and a proposal that police officers of equal rank, position or title be able to voluntarily exchange work assignments.

The subject of working hours is clearly a mandatory topic for negotiations. Changes in hours, even where the total number of hours worked is unaffected is similarly part of such mandatory negotiations obligation. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Educational Secretaries, 149 N.J. Super. 346 (App. Div.), certif. granted 75 N.J. 29 (1977). A request that employees be given some specified advance notice when a change in their working hours is necessary (absent instances of genuine emergency) is similarly a mandatory topic for negotiations.

The request for a policy on the voluntary exchange of assigned duties between coequal officers, however, falls into the realm of managerial prerogatives as such a provision would limit the Township's ability to determine which particular officers are best suited to perform the diverse aspects of police work. The proposal involves the police department's ability to deploy personnel and this is similar to minimum manning proposals which we have

previously found to be permissive topics of negotiations.^{7/}

The next issue in dispute is a demand by the PBA that a policy be established so that equipment which is utilized in the officers' performance of their duties may be maintained and unsafe equipment repaired or replaced. We find this demand to be analogous to that made in In re PBA Local 99, Roselle Police P.E.R.C. No. 77-66, 3 NJPER 166 (1977) concerning the maintenance of police vehicles and find the PBA's proposal herein to be mandatorily negotiable. See also In re Township of Hillside, P.E.R.C. No. 78-59, 4 NJPER ____ (Para. ____ 1978).

Legal representation of an officer's own choosing in actions which arise from job related incidents is the next proposal we must consider. The Township is obligated, pursuant to N.J.S.A. 40A:14-155, to provide officers with legal representation (except in disciplinary proceedings) in such cases.

The extent to which an officer may request an attorney of his own choosing under the statute was addressed by the Appellate Division in Township of Edison v. Mezzacca, 147 N.J. Super. 9 (1977). In its decision the court held that absent prior agreement a municipality has no obligation to pay an attorney chosen by the officer if the officer declines to be represented by the attorney selected by the Township. What the PBA seeks in its demand is in effect an agreement from the municipality to allow officers to choose their own attorneys. We see no conflict between the instant

^{7/} See e.g. In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976), In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977).

demand and the statute as construed by the Court. The defense of legal proceedings arising from the course of an employee's job bears directly on terms and conditions of employment and is thus a mandatory subject for negotiations. Of course, the Township has no obligation to agree to this particular proposal if it feels its interests are better served by furnishing the officers legal counsel of the Township's choosing. It may counter-propose a provision which might give the Township the power to have some say in the fees that it might have to bear under such an arrangement, or may decline the demand if it is satisfied with the status quo provided by the statute (i.e., an officer bears the cost of outside counsel if the Township's choice of attorney is unacceptable to him).

The PBA also seeks notice of the Township's intent to make changes in rules which govern the police department. The Township alleges that this request is non-negotiable. While all rule changes in the police department may not affect an employee's terms and conditions of employment, the New Jersey Employer-Employee Relations Act enunciates specific negotiations obligations concerning rules governing working conditions, as follows:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.
N.J.S.A. 34:13A-5.3.

The Township therefore does not have an unlimited right to amend police department rules. Notice to the PBA of proposed changes in work rules is part and parcel of the Township's above-cited

obligation to negotiate "proposed new rules or modifications of existing rules." This particular proposal is therefore a mandatory subject for collective negotiations.

The final item in dispute is a proposal by the PBA that the Township honor all claims under health and medical insurance coverage in the event such coverage lapses or is cancelled. The Township argues that this proposal would require it to become a self-insurer and claims that it does not have the authority to act in such capacity as N.J.S.A. 49A:9-13 and 9-14 authorizes a Town to enter into contracts for health benefits with insurance companies. The Township would construe this to mean that it cannot be responsible for employee health benefit claims.

The statutes cited by the Township were construed in New Jersey Civil Service Ass'n., supra., in which it was held that such health benefits are a form of compensation which a municipality was authorized to pay its employees pursuant to N.J.S.A. 40:69A-29. We do not read the statute in the negative fashion urged by the Township (i.e., precluding an employer from providing health benefits except by contract with an insurance company), but view it as an authorization to provide health benefits indirectly through an insurer, rather than directly by the Township.

While we thus hold the proposal relates to a required subject for negotiations we would point out with respect to this proposal and the other matters we have determined to be required subjects, that the obligation to negotiate is not tantamount to an obligation to agree to a particular proposal advanced in negotiations.

See Byram Tp. Bd. of Ed. v. Byram Ed. Assn., 152 N.J. Super. 12, 30, (App. Div. 1977).

Finally, we note that the filing of a Petition to Initiate Compulsory Arbitration by the PBA is what prompted the filing of the instant Petition by the Township. Accordingly, we will frame our order in the instant case with the knowledge that the PBA is seeking to present the issues in dispute herein in the interest arbitration proceedings.^{8/}

ORDER

1. With respect to the proposals we have determined to relate to required subjects of negotiations the Township of Saddle Brook is ordered, upon demand of PBA Local 102, to negotiate in good faith with PBA Local 102. These proposals may be submitted to compulsory arbitration in accordance with the procedures and requirements of N.J.S.A. 34:13A-14 et seq. (L. 1977, c. 85) and N.J.A.C. 19:16-1.1 et seq.

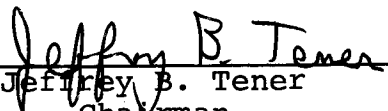
2. With respect to the proposal we have determined to relate to a permissive subject for negotiation, PBA Local 102 is ordered to refrain from insisting to the point of impasse upon inclusion of such proposal in a collectively negotiated agreement with the Township of Saddle Brook. Such proposal may not be

^{8/} We also note that a Petition for Issue Definition Determination (Docket No. ID-78-2) has been filed by the Township seeking a resolution as to whether various issues the PBA seeks to present in interest arbitration are economic or non-economic. That Petition will be resolved by the Chairman in a separate decision in accordance with N.J.A.C. 19:16-6.2(e).

submitted to compulsory interest arbitration, unless otherwise agreed by the Township of Saddle Brook.

3. With respect to the proposal we have determined to relate to an illegal subject for negotiations, we order that such proposal may not be the subject of collective negotiations between the Township of Saddle Brook and PBA Local 102, nor may such proposals be submitted to compulsory interest arbitration.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp and Parcels voted for this decision. Commissioner Schwartz voted against this decision.

DATED: Trenton, New Jersey
April 20, 1978
ISSUED: April 25, 1978