

P.E.R.C. NO. 94-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF RIVER EDGE,

Petitioner,

-and-

Docket No. SN-94-8

RIVER EDGE SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.  
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BOROUGH OF RIVER EDGE,

Petitioner,

-and-

Docket No. SN-94-9

RIVER EDGE PBA LOCAL NO. 201,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds mandatorily negotiable successor contract proposals submitted by the River Edge Superior Officers Association and River Edge PBA Local No. 201. The proposals seek to have the employer define its light duty policy and have that policy incorporated into the collective negotiations agreements as a notice to employees of what the employer's policy is and how it will be applied.

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Appearances:

For the Petitioner, Zisa and Hitscherich, attorneys  
(Robert J. Hitscherich, of counsel)

For the Respondents, Loccke & Correia, attorneys  
(Richard D. Loccke, of counsel; Charles E. Schlager, Jr.,  
on the brief)

DECISION AND ORDER

On July 26, 1993, the Borough of River Edge petitioned for two scope of negotiations determinations. The Borough seeks a declaration that successor contract proposals submitted by the River Edge Superior Officers Association and River Edge PBA Local No. 201 are not mandatorily negotiable. Those proposals concern light duty assignments.

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

The Association represents the Borough's sergeants, lieutenants, and captains and the PBA represents the Borough's patrol officers. The Borough entered into separate contracts with the Association and the PBA effective from January 1, 1990 through December 31, 1992. These contracts do not specifically address light duty assignments. However, Section I(c) of the police department's General Order #1 provides:

"After being absent for an illness, operation or injury, no member will be permitted to return to work on his shift or in the detective bureau on any form of limited duty basis. A Physician's release must state that the member is able to return to full duty status for the member to return to his scheduled tour of duty and normal tour work duties.

The above will not prevent a duty assignment for work that the member can perform, in or out of uniform which is not performed as part of a tour assignment.

Members working on a limited duty basis are considered to be on modified sick leave and are not to directly involve themselves in any hazardous or dangerous situation...."

During successor contract negotiations, the Association and the PBA requested that the successor contracts provide "a definition of the 'light duty' policy" and a setting forth of "the rights, duties, obligations and responsibilities of such status." The Association and the PBA demanded interest arbitration. These petitions ensued.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters.<sup>1/</sup> The Court stated:

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]

We consider only whether the proposals are mandatorily negotiable. We do not decide whether contract proposals are

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<sup>1/</sup> The scope of negotiations for police and fire employees 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. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

permissively negotiable since the employer has no duty to negotiate over such proposals or consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (12265 1981).

The Association and the PBA do not contest (Respondents' brief at 6) the employer's assertion that "the medical status of the officer is controlled by a physician's statement and assessment of his status of health" and "once that determination is made by the medical expert, the assignment of the officer to specific duties within the department falls to management and constitutes a 'managerial prerogative'" (Petitioner's brief at 5). Nor are they seeking to negotiate over the employer's definition of its light duty policy. They assert instead that they are seeking to have the employer define its light duty policy and have that policy incorporated into their collective negotiations agreements as a notice to employees of what the employer's policy is and how it will be applied.

This limited notice proposal is mandatorily negotiable. Under these facts, it simply notifies employees of the employer's light duty policy and does not interfere with any governmental policy decisions. Compare State of New Jersey, Department of Law and Public Safety, Div. of State Police v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981) (notice of promotional criteria is mandatorily negotiable); Borough of Rutherford, P.E.R.C. No.

89-31, 14 NJPER 642 (¶19269 1988) (notice of job descriptions is mandatorily negotiable).

ORDER

The proposals in question are mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

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

DATED: December 14, 1993  
Trenton, New Jersey  
ISSUED: December 15, 1993