

P.E.R.C. NO. 78-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. SN-78-22

P.B.A. LOCAL #44,

Respondent.

SYNOPSIS

In a Scope of Negotiations proceeding initiated by the Township of Maplewood, the Commission determines that the P.B.A.'s contract proposals relating to an employee complaint procedure are mandatory subjects of collective negotiations, to the extent that they are consistent with the applicable statutes and Court rules. The Township therefore is ordered to negotiate in good faith with the P.B.A. regarding these particular proposals, and to submit any unresolved issues relating thereto to compulsory interest arbitration pursuant to Public Laws of 1977, Ch. 85. The Commission also concludes that a mandatory roll call provision at issue between the parties relates to the number of employees to be on duty at certain times, and is therefore a permissive subject of collective negotiations, not a required subject for collective negotiations. The Commission notes in its decision that the existence of prior agreements on this issue does not elevate this subject to a mandatory subject of collective negotiations. Concerning the mandatory roll call provision, the Commission concludes that in reference to this issue, the P.B.A. may not insist on negotiating this issue to the point of impasse, nor may it be submitted to compulsory interest arbitration absent mutual agreement of the parties.

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Appearances

For the Petitioner, Grotta, Glassman & Hoffman, Esqs.
(Mr. Desmond Massey and Mr. Thomas Savage, Of Counsel)

For the Respondent, Zazzali, Zazzali & Whipple, Esqs.
(Mr. Lawrence A. Whipple, Of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Township of Maplewood (hereinafter the "Township") with the Public Employment Relations Commission on January 31, 1978 disputing the negotiability of several matters which P.B.A. Local #44 (hereinafter the "P.B.A.") was seeking to negotiate.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The Township filed its statement of position simultaneously with its filing of the instant petition. On June 13, 1978, the P.B.A. submitted its brief with attached exhibits.^{1/} The P.B.A.'s brief alleged that certain issues covered by the petition had been

^{1/} The delay is due to the fact that the parties attempted to resolve these issues during negotiations.

withdrawn as P.B.A. negotiations demands and contended that only the issue of the negotiability of several points of the employee complaint procedure remained ripe for a decision by the Commission.

In an effort to clarify the exact nature of the issues still in dispute between the parties, the Commission solicited further submissions from the parties on an expedited basis. The Township responded to this request on June 19, 1978 by submitting a statement of position, a sworn affidavit, and supporting exhibits. The Township, in agreement with the position of the P.B.A., averred that the issues which had been withdrawn from negotiations by the P.B.A. were no longer in dispute between the parties, and should therefore not be subject to a Commission determination herein. It was also stated, again in agreement with the P.B.A.'s position, that the issues concerning employee complaint procedure continued to be disputed matters and were properly before the Commission for a decision. However, while conceding that the P.B.A. had withdrawn its proposals relating to mandatory roll call (i.e., an agreed upon number of police officers on each shift) from negotiations, the Township contends that this issue remains a live dispute owing to the fact that the P.B.A. has and continues to contend that the issue of a minimum manning agreement is covered by the "Retention of Benefits" clause in the recently expired and prior collective negotiations agreements between the parties. In support of its contention, the Township has submitted the sworn affidavit of its Labor Counsel, along with a copy of a

letter of understanding between the parties which settled certain grievances and acknowledged the existence of an agreement on minimum manning. The P.B.A. elected not to file additional material.

In view of the Township's uncontroverted affidavit and exhibits, we hereby find and determine that the negotiability of a mandatory roll call provision remains a matter in dispute between the parties and is appropriately before the Commission for a determination.^{2/}

The first issue in dispute in this matter concerns certain P.B.A. proposals for inclusion in an employee complaints procedure to be included in the collective negotiations agreement between the parties. The specific language of these proposals is set forth below:

"(1) When an employee is "booked" (as term is understood in the Department), he shall be notified of the booking immediately. He shall be advised of the rule or regulation or order which he allegedly violated.

(2) The employee shall be furnished with copies of any and all documents relating to the offense as charged, within 24 hours of notification of booking and prior to any hearing on the matter. This shall include but not be limited to the identification of the booking car, Departmental reports, and any and all other materials relating to the booking.

(3) The employee shall have the same right to discovery as any defendant in a civil or criminal matter.

(4) The complainant must be present as well as all witnesses at any hearing conducted following the booking."

In support of its thesis that the above listed demands

are mandatory subjects of negotiations, the P.B.A. cites various opinions of the National Labor Relations Board and the Federal courts for the proposition that, when an employee is disciplined for an alleged violation of a company rule or policy, the employee and his or her collective bargaining representative are entitled to sufficient information, upon demand, to enable them to adequately determine whether to initiate or process a grievance.^{3/} The P.B.A. also states that the employer's production of the records called for in the second of its above proposals is "obviously" a mandatory subject of negotiations, as is the fourth proposal dealing with the presence of the complainant and witnesses at a disciplinary hearing. With regard to a third above listed proposal, the P.B.A. contends that it seeks only those discovery devices which are available under the rules of the New Jersey courts.

The Township's position on the proposed employee complaints provision is that the first item relates to the procedural aspects of discipline and as such is a mandatory subject of negotiations. It argues that the second and third proposals impinge upon the merits or substance of the disciplinary process, exceed the bounds of discovery allowable under the New Jersey Court Rules, and may result in the compromising of certain confidential departmental procedures which would inure to the benefit of the criminal

^{3/} The Courts of this State have recognized that the experience and adjudications under the copied NLRA are to be used as a guide in administering the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. Lullo v. Int'l Assn. of Fire Fighters, Local 1066, 55 N.J. 409 (1970).

element in the community. The Township takes no specific position on the proposal regarding the presence of the complainant and all witnesses at hearing.

We have carefully considered the assertions of the parties regarding the procedures for complaints against employees. This procedure relates to the disciplining of employees who have been "booked". The process by which an employee grieves or challenges discipline is a mandatorily negotiable term and condition of employment.^{4/} This P.B.A.'s proposal clearly falls within the scope of the statutorily mandated grievance procedure:

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them..."
N.J.S.A. 34:13A-5.3^{5/}

The Town acknowledges that the first point of the proposal is mandatorily negotiable. We are satisfied that the other points are mandatorily negotiable as well. They relate to the procedural aspects of the disciplinary process: notice of charges;

^{4/} In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975), In re Glassboro Board of Education, P.E.R.C. No. 77-12, 2 NJPER 355 (1976). See also Clifton Bd. of Ed. v. Clifton Teachers Ass'n, 154 N.J. Super. 500 (App. Div. 1977); Bd. of Ed. of Camden Vocational School v. Hanes, et al; App. Div. Docket No. A-4930-76 (decided March 30, 1978).

^{5/} See In re P.B.A. Local #130, P.E.R.C. No. 77-59, 3 NJPER 124 (1977), certif. granted N.J. (1978), appeal pending Supreme Court Docket No. 14,547 and Red Bank Regional Ed. Assn. v. Red Bank Reg. H.S. Bd. of Ed., 151 N.J. Super. 435 (1977), pet. for certif. granted 75 N.J. 529 (1977).

discovery of information relating to disciplinary charges; the production of documents relating to disciplinary charges; and the right to face one's accusers and the witnesses against him or her. The arguments made by the Town really set forth reasons why it may choose not to agree to the proposals. They do not contest the position that these proposals directly and intimately relate to the work and welfare of the police officers as employees. Our holding is only that these proposals by the P.B.A. are mandatorily negotiable, not that the Town must agree to them.

Moreover, we have examined N.J.S.A. 40A:14-147 through 40A:14-151 and the judicial precedent decided thereon and, contrary to the Town's position, find nothing in our decision which may be construed as inconsistent with the statutes or precedent. The statutes in question provide for a "just cause" hearing to be conducted by the "proper authorities" before removal or discipline of a permanent member of the police force, for a "notice of designated hearing", and the service upon the charged officer of a "complaint".^{6/} Additional provisions of the statute provide that the "authority" empowered to hear and determine the charges against a police officer shall have the power to subpoena witnesses and documentary evidence.^{7/} Additionally, the judicial decisions interpreting these statutes and the common law of this State state that disciplinary procedures which are instituted must comport with the requirements of due process, fundamental fairness, provide adequate

^{6/} N.J.S.A. 40A:14-147.

^{7/} N.J.S.A. 40A:14-148.

procedural safeguards including the right of the accused to know the charges against him/her and the identity of the witness against him/her.^{8/} A fair and impartial hearing is also required by the Courts.^{9/} The within proposals clearly relate to basic due process rights including, in some aspects, issues already decided by the Courts to be basic procedural safeguards. Further, the parties or the Courts may provide, in accordance with law, in any disputed case, adequate safeguards against public disclosure of sensitive or confidential data which may become part of the record in any disciplinary procedure conducted against a police officer.

Thus, although we will not pass upon these matters at this time beyond stating that all negotiations must take place within the framework of constitutional and statutory bounds,^{10/} we note that certain aspects of the procedure relating to complaints against employees is governed by statute and judicial decisions. These laws and decisions set forth certain minimum protections which must be afforded police officers, as well as other municipal employees, to meet the requirements of procedural due process. Others establish the authority of a municipality to regulate the conduct of its police officers. None of these prohibit the P.B.A. from proposing additional or expanded

^{8/} See: Sabia v. City of Elizabeth, 132 N.J. Super. 6 (App. Div. 1974) and Ferrari v. City of Camden, et al, 134 N.J. Super. 583 (App. Div. 1975).

^{9/} City of Camden, *supra*

^{10/} In re State of New Jersey, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), direct certif. granted ___ N.J. ___ (1978), appeal pending Supreme Court Motion No. M-511.

protection, assuming these go beyond those required, for its members designed to facilitate their ability to correct allegations of misconduct which lead to discipline.

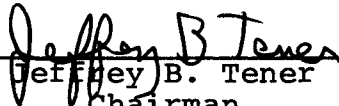
The remaining issue in dispute, a mandatory roll call provision, relates to the number of employees to be on duty at certain times. We find that this proposal is indistinguishable from the mandatory roll call proposal which we have interpreted in our decision today in a companion case involving fire fighters of the Township, In re Township of Maplewood, P.E.R.C. No. 78-___, 4 NJPER ___ (Para. ___ 1978). For the reasons stated in that decision, we find that this proposal relates to minimum manning and as such is a permissive subject of collective negotiations, and that the existence of prior agreements on this issue does not elevate this subject to a mandatory subject of collective negotiation.

ORDER

Based upon our above discussion, it is hereby determined that the P.B.A.'s contract proposals relating to an employee complaints procedure are mandatory subjects of collective negotiations, to the extent that they are consistent with the applicable statutes and court rules. The Township, therefore, is ordered to negotiate in good faith with the P.B.A. regarding these proposals and to submit any unresolved issues relating thereto to compulsory interest arbitration pursuant to Public Laws of 1977, Chapter 85. The proposal relating to a mandatory roll call provision is a permissive subject of collective negotiations which may not be insisted

upon to the point of impasse nor may it be submitted to compulsory interest arbitration absent mutual agreement of the parties.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Parcels and Schwartz voted for this decision. None opposed.
Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978