

P.E.R.C. NO. 87-93

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MINE HILL,

Petitioner,

-and-

Docket No. SN-86-58

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 279,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain proposals made by Policemen's Benevolent Association, Local 279 to the Township of Mine Hill in successor contract negotiations. The Commission finds that the following proposals are mandatorily negotiable: retirement incentive; management rights; work week; compensation for attendance at police school and seminars; protection of bargaining unit work; maintenance of physical facilities; recognition clause; union leave; procedural rules for departmental investigation; off-duty employment; grievance procedure; salary payment schedule; personal days; no discrimination clause and duration of a collective negotiations agreement. The Commission finds that the following proposals are not mandatorily negotiable: determining who is to attend police school and seminars and determining who is to clean physical facilities.

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Appearances:

For the Petitioner, Wiley, Malehorn and Sirota, Esqs.
(Jeffrey E. Michelson, of counsel)

For the Respondent, Loccke and Correia, Esqs.
(Leon B. Savetsky, of counsel)

DECISION AND ORDER

On March 11, 1986, the Township of Mine Hill ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a determination whether certain proposals made during successor contract negotiations by Policemen's Benevolent Association, Local 279 ("PBA"), the majority representative of the Township's police officers, are mandatorily negotiable. The Township and the PBA are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq.

The Township has filed briefs and exhibits. The PBA has not.

In Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.^{1/} 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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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. [Id. at 92-93; citations omitted]

We consider only whether the proposals are mandatorily negotiable. It is our policy not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the

^{1/} The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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

RETIREMENT INCENTIVE

Article XVIII provides that on reaching retirement age, an officer shall be entitled to a cash award for accumulated compensatory time up to seventy-five (75) days. This proposal is mandatorily negotiable. Tp. of Edison, P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984); City of Newark, P.E.R.C. No. 83-143, 9 NJPER 296 (¶14137 1983); Somers Point, P.E.R.C. No. 77-48, 3 NJPER 99 (1977). See also Maywood Education Ass'n, Inc. v. Maywood Bd. of Ed., 131 N.J. Super. 551 (Ch. Div. 1974).

MANAGEMENT RIGHTS

Article III provides that the agreement covers all matters pertaining to working conditions of members of the negotiations unit and sets forth the anniversary date for accrual of certain economic benefits. It is mandatorily negotiable.

WORK WEEK

Article IV sets forth the work schedule for police officers. The Township asserts that under Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super 71 (App. Div. 1983), this proposal is non-negotiable. In Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985) and several subsequent decisions, Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); City of Orange, P.E.R.C. No. 86-23, 11 NJPER 522

(¶16184 1985), we rejected such an expansive reading of Atlantic Highlands in favor of a balancing approach. Applying that approach in Tp. of Mt. Laurel, P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), appeal pending App. Div. Dkt. No. A-2408-85T6, we found that a proposal to retain an existing work schedule was mandatorily negotiable where the employer had not alleged that it had any plans to change the schedule. Mt. Laurel is applicable here and the proposal is mandatorily negotiable.

POLICE SCHOOL AND SEMINARS

Article X states that police officers may be required to attend police school or seminars as part of their continuing education, and sets forth a rate of pay if such attendance exceeds their normal tour of duty. Based on Franklin Tp., the first sentence concerning required attendance is not mandatorily negotiable. However, the second sentence concerning compensation is mandatorily negotiable.

REPLACEMENTS

Article XIX is a new proposal. It states:

No full time employee covered by this Agreement shall be replaced by any non-police officer, part time or other personnel.

No post presently filled by a full-time employee covered by this Agreement shall be covered by any non-police officer, part time or other personnel.

This proposal is identical to one we found mandatorily negotiable in Tp. of Washington, P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983). See also Cty. of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111

1979), aff'd in pertinent part, App. Div. Docket No. A-3564-78 (6/19/80).

WORKING CONDITIONS

Article XXII provides that the Township will provide a clear and healthy environment for employees to work in and that police headquarters and vehicles shall be cleaned at least once a week by a cleaning service. The maintenance of physical facilities concerns the health and welfare of employees and is therefore a mandatory subject of negotiation. Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981), Tp. of Saddlebrook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶14097 1978); Tp. of Hillside, P.E.R.C. No. 78-59, 4 NJPER 159 (¶14076 1978); PBA Local 99, Roselle Police, P.E.R.C. No. 77-66, 3 NJPER 166 (1977). However, that portion which provides that the cleaning be done by a cleaning service pertains to how government services are delivered and is not negotiable.

PREAMBLE AND RECOGNITION CLAUSE

These two clauses, (Articles I and II) often included in collective negotiations agreements, are mandatorily negotiable. The preamble merely sets forth the parties, while the recognition clause identifies the PBA as the exclusive majority representative and defines the unit for collective negotiations.^{2/}

^{2/} There is no dispute over the composition of the P.B.A.'s unit.

PBA ACTIVITIES

Article XXIII states that one PBA Delegate shall be entitled to attend one monthly State PBA meeting without loss of pay, provided such meetings are related to promotion of public safety. The Township objects to this clause because it argues that allowing paid release time for union officials would impinge on its ability to make assignments and deploy personnel. We disagree. See Town of Kearny, 7 NJPER at 16. Leaves of absence, including time off to handle organization activities, are terms and conditions of employment. See Haddonfield Bd. of Ed., P.E.R.C. No. 80-53, 5 NJPER 488 (¶10250 1979). Article XXIII is mandatorily negotiable. See also Town of Kearny, 6 NJPER at 431.

INVESTIGATION OF POLICE OFFICERS

Article XXV sets forth procedural rules for departmental investigations of police officers, but does not limit the Town's substantive right to investigate instances of employee misconduct. We found an almost identical proposal to be mandatorily negotiable in Franklin Tp. Article XXV is mandatorily negotiable.

OUTSIDE CONTRACTED WORK

Article XXVI states that:

[M]embers of the Mine Hill Police Department will be contracted to work other than normal patrol duties and normal police work. Such work will be contracted through the Chief of Police....

All contracted police officers will be paid at the rate of \$20.00 per hour....

This clause concerns outside off-duty employment of police. It does not involve managerial decisions concerning provision of essential

services. We find this clause to be mandatorily negotiable. See Ass'n of New Jersey State College Faculties v. New Jersey Bd. of Higher Ed., 66 N.J. 72 (1974); Somerset Cty., P.E.R.C. No. 84-92, 10 NJPER 130 (¶15066 1984).

GRIEVANCE PROCEDURE

Article XXVII is mandatorily negotiable. The negotiability of grievance procedures was resolved in Tp. of West Windsor v. P.E.R.C., 78 N.J. 98 (1978). The Court, construing N.J.S.A. 34:13A-5.3's mandate that the parties "shall negotiate written policies setting forth grievance procedures" affecting terms and conditions of employment, held:

Thus the particular procedural details of the grievance mechanism are subject to determination by the negotiated agreement of the parties. These details would cover items such as time restrictions, the number of steps in the grievance procedure, the forum for resolution at each step and the forum for final, binding determination.
[78 N.J. at 105-106]

PAY DATES

Article XXI sets forth the dates and times when pay checks will be distributed. A salary payment schedule is a mandatory subject of negotiations. City of Paterson, P.E.R.C. No. 80-68, 5 NJPER 543 (¶10280 1979), aff'd App. Div. Docket No. A-1318-79 (2/10/81).

PERSONAL DAYS

Article XXIV sets the number of personal days given to each employee, states when they can be taken (with the chief's approval) and provides that unused days will be paid at straight time if not

taken in any one year. This provision is mandatorily negotiable. Town of Kearny, 7 NJPER at 456.

DISCRIMINATION

Article XX states:

There will be no discrimination by supervisory or other employees of the township not included in the units covered by this agreement against any employee because of membership or activities in the PBA. The PBA and the Township reaffirm their intention that the provisions of this agreement will continue to be applied without discrimination because of race, creed, color, sex, age or national origin of the employee.

Articles prohibiting discrimination are mandatorily negotiable.

However, grievances alleging discrimination in managerial decisions which do not involve terms and conditions of employment may not be submitted to binding arbitration. See Teaneck Bd.of Ed., 94 N.J. 9 (1983); Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984).

TERM AND RENEWAL - ARTICLE XXVIII

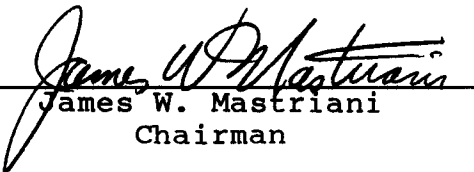
The duration of a collective negotiations agreement is a mandatorily negotiable term and condition of employment. Dover Bd. of Ed., P.E.R.C. No. 76-34, 2 NJPER 188 (1976); City of Union City, P.E.R.C. No. 82-18, 7 NJPER 500 (¶12222 1981).

ORDER

A. Articles XVIII, III, IV, X (second sentence), XIX, XXII, except for that portion which requires a cleaning service, II, I, XXIII, XXV, XXVI, XXVII, XXI, XX, XXVIII and XXIV are mandatorily negotiable. Any unresolved dispute with respect to these matters may be submitted to interest arbitration.

B. The first sentence of Article X and that portion of Article XXII which requires a cleaning service are not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
January 16, 1987
ISSUED: January 16, 1987