

P.E.R.C. NO. 87-120

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LACEY

Petitioner

-and-

Docket No. SN-86-50

P.B.A. LOCAL 238

Respondent

SYNOPSIS

The Public Employment Relations Commission determines that a proposal that tours of duty be determined by seniority made by PBA Local 238 to the Township of Lacey during collective negotiations is not mandatorily negotiable. The Commission finds that the proposal would prevent the Township from staffing shifts with officers it finds best suited to work a particular shift.

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Appearances:

For the Petitioner, Aron, Salsberg & Rosen
(Frank N. D'Ambra, of counsel)

For the Respondent, Colflesh & Burris, Esqs.
(Ralph H. Colflesh, of counsel)

DECISION AND ORDER

On February 18, 1986, the Township of Lacey ("Township") filed a Petition for Scope of Negotiations Determination. The petition seeks a determination that a proposal made by PBA Local #238 ("PBA") during collective negotiations is not mandatorily negotiable. The proposal concerns selection by seniority of tours of duty.

Both parties filed briefs and statements. The following facts appear.

The PBA is the majority representative of the Township's police employees. During successor contract negotiations,^{1/} the PBA proposed retaining this provision from the predecessor contract:

The employee will have the right to select his tour of duty schedule for his designated job duty by seniority. This section shall not apply where by reason of emergency or extra-ordinary circumstances, the Chief of Police finds it necessary to assign certain employees to certain tour of duty schedules, for a limited duration, to more efficiently or effectively operate the department.

This petition ensued.

In Paterson Police PBA Local 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 firefighters.^{2/} 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

^{1/} The Township and the PBA engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq. The parties received an interest arbitration award on September 16, 1986, but agreed to have this issue decided separately.

^{2/} 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).

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. [Id. at 92-93; citations omitted]

We consider only whether the proposal is 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 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).

The clause satisfies the first prong of the Paterson test. N.J.S.A. 40A:14-118 does not preempt negotiations.^{3/} Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983); Tp. of Franklin, P.E.R.C. No. 83-38, 8 NJPER 576 (¶13266 1982).

The Township does not dispute that the proposal intimately and directly affects the work and welfare of police officers.

^{3/} See Gauntt v. City of Bridgeton, 194 N.J. Super. 468, 482 (App. Div. 1984), citing Quanglietta v. Halendon, 182 N.J. Super. 136 (Law. Div. 1981) for a discussion of the legislative intent of the statute.

Relying primarily on Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983) certif. den. 96 N.J. 293 (1984) and Irvington PBA Local 29 v. Irvington, 179 N.J. Super. 539 (App. Div. 1979), certif. den. 81 N.J. 296 (1980), the Township asserts that it, through its Chief of Police, should determine which officers should be assigned to each shift. The Township contends that peer interrelationships and how individual officers adapt to crises are important considerations in assigning police officers. The Township also notes that under this proposal it is possible to have a shift of all veteran or all rookie officers and that shifts should instead be well-rounded.

The PBA asserts the proposal does not interfere with the Township's inherent managerial prerogatives because it allows the police chief the necessary latitude to reassign personnel in extraordinary or emergency circumstances.

In Tp. of Franklin, P.E.R.C. No. 85-97 11 NJPER 224 (¶16087 1985), we held that an employer may legally agree to assign officers to shifts in accordance with contractual seniority provisions where all qualifications are equal. The proposal allowed deviation from assignment by seniority in special cases, where special skills are required, or in an emergency. See Borough of Maywood, P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983), aff'd Docket No. A-3071-82T2 (App. Div. 1983); Middletown Tp., P.E.R.C. No. 82-90, 9 NJPER 227 (¶13095 1982), aff'd App. Div. Docket No. A-3663-81T3 (App. Div. 1983). Compare Irvington PBA v. Irvington,

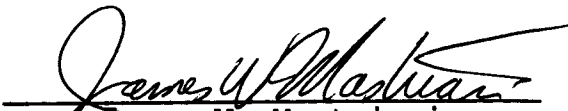
170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980). In Franklin, the Township remained free to assign employees to shifts based upon its managerial determination that such employees perform better in certain shifts.

Here, the clause goes one step further. It would permit exceptions to the seniority system in extraordinary or emergency circumstances, for a limited duration only. In other words, the proposal does not permit permanent exceptions to the seniority system. The clause prevents the Township from staffing shifts with officers it finds best suited to work a particular shift, Tp. of Pennsauken, P.E.R.C. No. 87-101, 13 NJPER ___ (¶ ___ 1987), Kearny PBA Local #21, P.E.R.C. No. 82-43, 7 NJPER 614 (¶12274 1981). We, therefore, conclude that Article X, Section 2 significantly interferes with the Township's ability to manage and deploy its police force.

ORDER

Article X, Section 2 is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987