

P.E.R.C. NO. 83-166

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WASHINGTON,

Petitioner,

-and-

Docket No. SN-83-39

P.B.A. LOCAL 206 (WASHINGTON
TOWNSHIP UNIT),

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds mandatorily negotiable a contract proposal of PBA Local 206 (Washington Township Unit) which seek to protect the PBA's interest in not having unit work assigned to non-unit employees of the Township of Washington. Under Rutgers and AFSCME, AFL-CIO, Local 52, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Docket No. A-468-81T1 (May 18, 1982), the preservation of unit work for unit employees instead of non-unit employees is distinguishable from subcontracting unit work to a private employer and is mandatorily negotiable.

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Appearances:

For the Petitioner, Marc H. Pfeiffer, Business
Administrator, Township of Washington

For the Respondent, Loccke & Corrêia, Esqs.
(Richard D. Loccke, of Counsel)

DECISION AND ORDER

On November 16, 1982, the Township of Washington ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township contends that two proposals that P.B.A. Local 206 (Washington Township Unit) ("PBA") has made during negotiations for a successor contract are not mandatory subjects of collective negotiations. Both parties have filed briefs.

The PBA is the majority representative of all the Township's patrol officers, detectives, sergeants, lieutenants, and captains, but excluding the Chief of Police, special traffic monitors, special police, probationary employees, and all other members. The parties entered a contract effective from January 1, 1981 through December 31, 1982. Negotiations over a successor

contract reached impasse and the parties are now involved in interest arbitration proceedings.

The first proposal reads:

When an employee works in a higher rank, he shall receive the pay of that higher rank in which he is working and the Township shall not defeat the intent of this clause by shifting two (2) or more employees to cover the higher rank in question.
(Emphasis supplied).

The Township only contests the underlined portion of the proposal. The PBA, in its brief, has withdrawn the challenged language. Both sides agree that the non-underlined portion is negotiable. Accordingly, we need not consider the negotiability of the underlined language.

The remaining proposal 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.

The Township contends that this proposal infringes upon its prerogatives to determine the number of employees required to perform a function, assign employees, and subcontract work. It specifically asserts that the proposal infringes upon its ability to use civilian dispatchers and special police officers to perform such tasks as answering telephones, thus allowing more regular police officers to patrol.

The PBA argues that the proposal is essentially identical to the preservation of unit work clause found to be

mandatorily negotiable in In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part, rev'd in part, App. Div. Docket No. A-3564-78 (6/19/80).

The Township, in its reply brief, maintains that Middlesex has been overridden by IFPTE, Local 195 v. State, 88 N.J. 393 (1982) ("Local 195") and Belmar PBA Local No. 50 v. Belmar, 89 N.J. 255 (1982).

We agree with the PBA that the instant clause is essentially identical to one found to be mandatorily negotiable in Middlesex.^{1/} There, we rejected the employer's argument that the proposal unduly interfered with its ability to make necessary transfers and reassignments. We reasoned:

However, after a careful review of the language of this provision, the Commission finds that on its face it does not deal with transfers, reassignments or employee safety. The provision states, in effect, that unit members shall not be replaced by non-unit County personnel and that positions currently filled by unit members will not be filled with non-unit members. The Commission has consistently stated that the decision to shift unit work outside the unit is mandatorily negotiable. The Commission concludes that this provision deals with the subject of protecting unit work from encroachment by non-unit employees.

Both parties may have read too much into this provision. The County, in its brief, states: "Here, too, the County has in the past and intends in the future to assign and reassign members of the PBA to various tasks covered under their job duties and additionally, non correctional officers (CETA, part-times, etc.) are assigned and reassigned to do various jobs where a trained correctional officer is not needed. This provision, as the Commission interprets it, does not in any way inhibit the County from exercising

^{1/} The only difference is that the clause in Middlesex prohibited replacement by any "non-correction officer" instead of any "non-police officer."

its managerial right to assign PBA members to various tasks within their function as correction officers or to assign other employees to non-correctional duties. It merely protects the legitimate interest of the PBA that unit work is not assigned to non-unit employees. Within this area of concern the provision is mandatorily negotiable.

Supra at p. 196 (footnotes omitted).

The instant proposal must be similarly interpreted as limited to protecting the PBA's legitimate interest in not having unit work assigned to non-unit employees of the Township.^{2/} So understood, the proposal does not intrude upon the Township's sole managerial prerogative to make subcontracting decisions under Local 195 nor does it significantly interfere with the Township's ability to make assignments or determine the number of employees required to perform a function.^{3/} The Appellate Division of the Superior Court has recently affirmed a Commission decision holding that the preservation of unit work is mandatorily negotiable

^{2/} As in Middlesex, supra at p. 197, n. 16, there is no question about the qualifications of the employees represented by the PBA to perform the work. Further, we are ruling on the negotiability of this proposal in the abstract and not in the context of a specific grievance under that proposal which the PBA wishes to submit to binding arbitration and the Township claims compromises its ability to make governmental policy determinations necessary to service the community and operate its police force. If a dispute arises as to the arbitrability of a particular grievance, another scope petition can be filed.


^{3/} Belmar recognizes that special police officers may be hired on a full-time, part-time, or continuous basis for up to a year in order to supplement a regular police force during periods of unusual demand for police services and to help with anticipated and unexpected emergencies. Belmar also holds, however, that special police employees may not be employed on a full-time annual basis as a subterfuge to avoid hiring regular police. The PBA's proposal, as we interpret it, does not prevent the Township from hiring and using special police officers when appropriate under Belmar. This proposal would merely prevent the "subterfuge" of replacing a regular police officer with a special police officer performing the same duties.

and has specifically distinguished Local 195 which found the subcontracting of unit work to a private employer not to be a mandatory subject for negotiations. Rutgers v. AFSCME, AFL-CIO, Council 52, App. Div. Docket No. A-468-81T1 (May 18, 1983), affirming P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981). We follow Middlesex and Rutgers in holding the instant proposal, as interpreted in this decision, mandatorily negotiable.

ORDER

The proposal of PBA Local 206 (Washington Township Unit) concerning the replacement of full-time employees by non-police officers, part-time, or other personnel, as interpreted and limited in this opinion, is mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Graves, Newbaker and Suskin voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
June 24, 1983
ISSUED: June 27, 1983