

P.E.R.C. NO. 2008-22

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF UPPER SADDLE RIVER,

Petitioner,

-and-

Docket No. SN-2007-070

NEW JERSEY POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL 218,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of three issues in dispute between the Borough of Upper Saddle River and the New Jersey Policemen's Benevolent Association, Local 218 during negotiations for a successor collective negotiations agreement. The issues involve retiree health benefits, a 12-hour work schedule, and stipends for four titles. The Commission holds that, on this record, all three issues are mandatorily negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Robert T. Regan, attorney, on the  
brief; Wiss & Bouregy, P.C., attorneys (Raymond R.  
Wiss, on the reply brief)

For the Respondent, D. John McAusland, attorney, on the  
brief

DECISION

On May 29, 2007, the Borough of Upper Saddle River  
petitioned for a scope of negotiations determination. The  
Borough seeks a determination that three issues listed on an  
interest arbitration petition by New Jersey Policemen's  
Benevolent Association, Local 218 are not mandatorily negotiable.  
The issues involve retiree health benefits, a 12-hour work  
schedule, and stipends for four titles. On this record, we find  
the issues to be mandatorily negotiable.

The parties have filed briefs and exhibits. The PBA has  
submitted the affidavit of Joseph Farrow, a member of its  
negotiations team. These facts appear.

The PBA represents all members of the police department excluding the chief. The parties' contract expired on December 31, 2006. The parties are in negotiations for a successor agreement and the PBA has petitioned for interest arbitration. Farrow states that the list of issues submitted on the PBA's interest arbitration petition was not intended to be specific proposals.

Our jurisdiction is narrow. We do not consider the wisdom of proposals, only the abstract issue of their negotiability. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

\_\_\_\_ Under Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), a subject is mandatorily negotiable if it is not preempted by statute or regulation and it intimately and directly affects employee work and welfare without significantly interfering with the determination of governmental policy.

The Borough is challenging the negotiability of these three issues:

1. Fully paid health benefits for employee and family to continue into and throughout retirement for any employee meeting service time or disability requirements pursuant to state law.
2. Memorialize present work schedule

3. Clarify stipend language to ensure qualification before pension board

The retiree health benefits issue is mandatorily negotiable. Consistent with N.J.S.A. 52:14-17.38(a), a local employer participating in the State Health Benefits Program ("SHBP") has the discretion to provide retiree health benefits and a union may seek to negotiate the apportionment of premium payments between employer and retiree. Evesham Municipal Utilities Auth., P.E.R.C. No. 2006-78, 32 NJPER 120 (¶56 2006). However, an interest arbitrator may not issue an award for one negotiations unit that sets terms and conditions of employment for another. Borough of Belmar, P.E.R.C. No. 2005-067, 31 NJPER 123 (¶52 2005). Because of an SHBP uniformity requirement, an employer providing retiree health benefits must provide the benefit to all eligible employees, although premium obligations can vary by negotiations unit. Therefore, a proposal for retiree health benefits cannot take effect until the uniformity requirements of the health benefits statutory scheme have been met. Belmar. Since the PBA has not finalized its proposal and is willing to include any required contingency language, we find the listed issue to be mandatorily negotiable.

The work schedule issue is also mandatorily negotiable. Teaneck Tp. and FMBA Loc. No. 42, 353 N.J. Super. 289, 304 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003), states:

Our holding in [In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987)] was that the union's proposal to reduce to writing a work schedule already in effect was negotiable. We emphasized that the Township submitted no facts in support of its position and failed to meet its burden "to advance reasons in support of its need, from a policy making point of view, to unilaterally control police work hours."

This reasoning applies as the Borough has not indicated that it has any need or plans to change the existing work schedule. Our ruling does not prevent the Borough from arguing to the interest arbitrator that the PBA's proposal should be rejected. It also does not prevent the Township from making any future work schedule changes that are necessary for governmental policy reasons.

Finally, the stipend issue is mandatorily negotiable. The parties' agreement contains stipends for four assignments: Officer in Charge of Investigation Section; Officer (Assignment to Investigation Section), Juvenile Officer (Assignment), and Officer - E.M.T. Certified. The PBA may seek to add descriptions of the assignments to the contract so that the stipends will more likely to be deemed creditable by the Division on Pensions. However, an interest arbitrator may not order that these stipends be creditable for pension purposes. That decision rests with the

Division on Pensions. Delran Tp., P.E.R.C. No. 99-86, 25 NJPER  
166 (¶30076 1999).<sup>1/</sup>

ORDER

The three disputed issues listed on the PBA's interest arbitration petition are mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: October 25, 2007

Trenton, New Jersey

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<sup>1/</sup> Should any negotiability issues arise after the PBA submits its formal proposals, the employer may file a new petition.