

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATROLMEN'S BENEVOLENT ASSOCIATION,  
LOCAL NO. 99, ROSELLE POLICE,

Petitioner,

-and-

Docket No. SN-77-24

BOROUGH OF ROSELLE,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the PBA, the Commission rules on whether certain matters in dispute between the PBA and the Borough are within the scope of collective negotiations. The PBA sought a determination as to whether the following issues were required subjects for collective negotiations: 1) the inclusion in the contract of a work schedule; 2) the designation of that section of management who would have the right and responsibility to oversee (a) split vacations, (b) shift manpower levels, (c) the promulgation of a set of rules and regulations, (d) the promulgations of a table of organization; and 3) the inclusion in the contract of a clause that would require the proper maintenance of police vehicles. The Commission determines that the issues relating to work schedules and vehicle maintenance insofar as it impacts on employee safety are required subjects for collective negotiations. The Commission therefore orders the Borough to negotiate in good faith upon the demand of the PBA with regard to these particular issues. The Commission further concludes that the issue relating to the designation of the Borough's representatives who would have the responsibility for the administration of certain management prerogatives relating to the operations of the police department is a permissive subject for collective negotiations. The Commission orders that the PBA refrain from insisting, to the point of impasse, upon the inclusion of this particular matter in a collective negotiations agreement with the Borough.

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Appearances:

For the Petitioner, Frederick Smith, Richard Connallon, Edward Carey,  
Robert Lehmann, Louis Bock and Dennis Harrison

For the Respondent, Irving F. Sturm, Esq.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on January 26, 1977 by Patrolmen's Benevolent Association, Local No. 99, Roselle Police (hereinafter the "PBA") seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act").<sup>1/</sup> The statement of dispute in the petition requests a determination as to whether the following issues are within the scope of collective negotiations:

<sup>1/</sup> N.J.S.A. 34:13A-5.4(d) provides: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

(1) The inclusion in the contract of a work schedule;

(2) Designation of that section of management who shall have the right and responsibility to oversee the following:

- (a) Split vacations
- (b) Shift manpower levels
- (c) Promulgation of a set of rules and regulations
- (d) Promulgation of a table of organization;

(3) The inclusion in the contract of a clause that would require the maintenance of police vehicles in accordance with Title 39, N.J.S.A.

The factual context in which the instant dispute arose is not complicated and is undisputed by the parties. The PBA represents all police officers employed by the Borough of Roselle (hereinafter the "Borough"), other than the Chief of Police. The last collective negotiations agreement relating to these employees covered the period from January 1, 1976 to December 31, 1976. During the course of negotiations for a successor agreement the PBA sought to negotiate, in part, with respect to the aforementioned issues, which matters the Borough contends are not required subjects for collective negotiations. The instant scope petition was thereafter filed by the PBA in response to the Borough's position.

In support of its scope petition the PBA filed briefs, received by the Commission on January 26, 1977, with regard to each of the three basic issues in dispute. The Borough filed a letter memorandum dated February 16, 1977. Thereafter the PBA filed a reply brief that was received by the Commission on March 3, 1977. Neither party has requested an evidentiary hearing or oral argument.

The first issue as set forth in the PBA's petition relates to the inclusion of a work schedule in the contract between the PBA and the Borough that would define the basic parameters of the police officers' work week, e.g. four consecutive eight-hour days followed by two consecutive days off, except for those officers on special assignments, and that would delineate certain lunch hour, overtime, starting time and shift practices. The PBA submits that its proposals relating to a work schedule provision would simply memorialize benefits enjoyed by police officers for many years that, in part, were defined in a Borough Ordinance promulgated in October of 1970. The Borough in its limited submission does not argue that the working hours and schedules of its employees and related "fringe benefits" are not required subjects for collective negotiations. The Borough, however, raises three "defenses" to the PBA's position. The Borough contends that the work schedule is already included in the contract through the wording of Article VI of the current agreement between the parties which states in part that "...[A]ll benefits and obligations which have heretofore inured to the employees pursuant to applicable ordinances shall be continued during the term of this agreement ..." and that it is unnecessary therefore to specifically include a work schedule provision in the contract or to negotiate about said inclusion. Secondly, the Borough appears to argue that the issue of the inclusion of a work schedule is not negotiable because it would impermissibly tie the Borough's hands if the Borough attempted unilaterally to change the work schedules of the police officers while still maintaining a 37½ hour week. The Borough also appears to question the negotiability of this provision and its inclusion in the contract insofar as it would dictate the terms and conditions of employment for future police officers not presently part of the negotiations unit.

The Commission notes that the PBA's demand to negotiate the inclusion of a work schedule in the contract between the parties relates solely to the length of the police officers' work day and work week and thus is clearly a term and condition of employment and, as such, is a required subject for collective negotiations. Both the Commission and the courts of this State have dealt extensively and in detail with the duty of public employers to negotiate in good faith with exclusive representatives of public employees covering hours of work and related terms and conditions of employment.<sup>2/</sup> It does not matter if, as averred in the PBA's submissions, the affected employees are prepared to accept the status quo on work schedules as previously established by the Borough in ordinance form. Nor does it matter that an existing "maintenance of benefits" clause may be deemed to provide contractually for the continuation of existing terms and conditions of employment relating to work schedules affecting the police officers represented by the PBA. Inasmuch as the proposal at issue relating to work schedules refers to terms and conditions of employment, this proposal must be negotiated with the PBA, and the Borough must be prepared to sign a written document embodying any agreement reached on these terms and conditions of employment, regardless of whether any existing ordinance or contractual provision may accord similar protections to the employees involved.<sup>3/</sup>

<sup>2/</sup> See In re Piscataway Township Board of Education, P.E.R.C. No. 77-37, 3 NJPER (1977), appeal pending [App. Div. Docket No. A-2613-76] and the Commission and judicial decisions cited therein.

<sup>3/</sup> N.J.S.A. 34:13A-5.3 prescribes the duty to negotiate. It states in pertinent part:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

(Cont'd)

The Commission further notes in reference to the second defense raised by the Borough relating to this particular issue, i.e. that the issue of the inclusion of the work schedule is non-negotiable since it would illegally restrict the Borough's right to unilaterally change work schedules while maintaining the existing  $37\frac{1}{2}$  hour work week, that Commission and judicial decisions have held that a dispute concerning an alteration in hours of employment, even if total hours remained constant, is related to terms and conditions of employment within the meaning of the Act and thus concerned a required subject for collective negotiations.<sup>4/</sup>

A third argument raised by the Borough would appear to question the right of the PBA to negotiate the inclusion of a work schedule in the contract since it would restrict the Borough's right to change the average number of hours worked per week for future employees. The Commission is not persuaded that this defense has any relevance with regard to the issue of the negotiability of the PBA's proposal relating to work schedules. This contention of the Borough simply deals with the wisdom of agreeing to the proposal that has been submitted by the PBA. The Commission points out that its determination that a proposal relating to the inclusion of a work schedule in the contract between the parties in no way

<sup>3/</sup> Continued... and goes on to state that:

"When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative."

See also In re Cliffside Park Board of Education, P.E.R.C. No. 77-2, 2 NJPER 252 (1976) in which we stated that public employers "...are required to negotiate with the majority representatives of their employees on terms and conditions of employment and when these negotiations result in accord they are required to reduce that agreement to writing and execute that writing." At pp. 4-5 of slip opinion.

<sup>4/</sup> See, e.g. In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), affirmed in apposite part, reversed in part [App. Div. Docket No. A-3015-75] (decided March 29, 1977), petition for rehearing pending [M-2202-76] and In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

compels the Borough to agree to the specific proposals made concerning this work schedule, e.g. its potential application to future employees. The Borough may, if it wishes, negotiate the issue of a change in working hours with the PBA, the effect of which may arguably single out, for disparate treatment, newly hired police officers. The Commission further notes that the further extension of this particular contention of the Borough would be that no term or condition of employment relating to its present complement of police officers would be negotiable, since future employees would also be covered by the negotiated contract when hired by the Borough.<sup>5/</sup>

At the end of its brief with regard to the work schedule issue the PBA requests a determination that it represents as a matter of law all future employees for purposes of collective negotiations. Given the nature of a scope of negotiations proceeding<sup>6/</sup> and the Commission's determination with regard to this particular issue, the Commission finds it unnecessary and inappropriate to specifically make a finding as to whether the PBA appropriately represents future employees under the Act. That issue is not presently in dispute.

The second set of issues in dispute relates to the negotiability of the PBA's demand to negotiate concerning those individuals who would have the right and responsibility to oversee the granting of split vacations; the determination and maintenance of shift manpower levels; the promulgation and review

<sup>5/</sup> In a recent Commission decision, In re East Orange Education Association, P.E.R.C. No. 77-60, 3 NJPER \_\_\_\_ (1977), the Commission dealt with a contention of the board of education in that matter that to negotiate the first step of a teachers' salary guide with the majority representative would in some way involve the forfeiting of its management prerogatives with regard to the establishment of hiring rates relating to new teaching personnel not presently within the negotiating unit. The Commission in determining that the first step of a teachers' salary guide in that matter was a required subject for collective negotiations, in part, stated the following:

"Nevertheless, [newly hired teachers] will commence employment in September and their salary, as with that of all other public employees who are represented by an employee organization, are subject to mandatory negotiations."

<sup>6/</sup> See In re Hillside Board of Education, supra.

of a set of rules and regulations covering members of the department; and the promulgation and review of a Table of Organization. The PBA in one of its briefs submitted that both parties agreed that the aforementioned procedures themselves are managerial prerogatives and, as such, are not required subjects for collective negotiations. The PBA, however, believes that negotiations concerning the individuals responsible for management policy in these above-mentioned areas are required since these negotiations would deal with the impact or effect of these enumerated management prerogatives on terms and conditions of employment, such as safety considerations. The PBA adds that the inclusion within the contract of a provision that would identify the person or persons charged with the right to make certain management decisions would ensure equitable adjudication of disputes arising from any decisions made in these areas. The Borough contends that all the items set forth relating to this particular issue clearly concern management prerogatives and are not negotiable. The Borough adds that these responsibilities always were and still are under the control of the Chief of Police.

The Commission concludes that the PBA's demand concerning the specific designation of the Borough's agents to be charged with the responsibility to make particular management decisions does not relate to terms and conditions of employment and is not a required subject for collective negotiations. The decisions of a public employer concerning which individuals will be responsible for the administration of its public safety system relate to basic management prerogatives that are not mandatorily negotiable. We do not, however, read the Act as prohibiting the Borough from discussing or negotiating with the PBA with regard to this particular issue on a voluntary basis, and thus deem this particular demand to constitute a permissive subject for negotiations. The Act does



not preclude the PBA from placing the issue on the negotiations table, so long as the PBA does not insist, to the point of impasse,<sup>7/</sup> upon its inclusion in an agreement.<sup>8/</sup>

The Commission acknowledges that the PBA in briefing this particular issue in dispute appears primarily to be concerned that management's right to unilaterally select its representatives for the administration of certain police policy matters substantially affects police officers' safety and/or their ability to grieve decisions relating to shift manpower levels and a Table of Organization, for example, that may adversely affect members of the negotiating unit. In this regard, the Commission has in the past determined that employee job safety is a required subject for collective negotiations,<sup>9/</sup> and in a recent case determined that a public employer must negotiate and include in any agreement entered into with a recognized or certified majority representative written policies setting forth a grievance procedure by means of which that employee organization or their representatives may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them.<sup>10/</sup> The Commission,

<sup>7/</sup> We have not yet confronted, and we need not determine at this time, the circumstances under which an impasse, in the context of permissive negotiating conduct, has occurred in given factual situations.

<sup>8/</sup> The Commission notes that the specific proposals cited by the PBA to illustrate exactly what it was seeking to negotiate [see January 26, 1977 brief on this issue - pages 2 and 3] in part seek to place certain substantive restrictions on the Borough's ability, for example, to determine shift manpower levels or to promulgate a Table of Organization, decisions that have been determined by the Commission to be management prerogatives. See In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER \_\_\_\_ (1977) and cases cited therein.

<sup>9/</sup> See In re Brookdale Community College Police Force, P.E.R.C. No. 77-53, 3 NJPER \_\_\_\_ (1977), appeal pending [App. Div. Docket No. A-3041-76]; In re Byram Twp. Bd. of Education, P.E.R.C. No. 76-27, 2 NJPER 142 (1976), appeal pending [App. Div. Docket No. A-3402-75]; In re Hunterdon County Bd. of Chosen Freeholders, E.D. No. 76-9, 1 NJPER 64 (1975). Cf. In re Newark Firemen's Union of New Jersey, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) and In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER \_\_\_\_ (1977).

<sup>10/</sup> See In re PBA Local 130, P.E.R.C. No. 77-59, 3 NJPER \_\_\_\_ (1977).

however, does not conclude that the issue of the designation of the person responsible for the effectuation of management policy is, in and of itself, either a safety or grievance-related issue.

The third issue referred to in the PBA's scope petition relates to the question of whether the proper maintenance of police vehicles in accordance with provisions of Title 39, N.J.S.A., on the proper maintenance of motor vehicles is a required matter for collective negotiations. The PBA in its briefs asserts that the parties agreed that the number, type and size of police vehicles, are and should be managerial prerogatives. The PBA contends that the proper maintenance of police vehicles once obtained directly affects the safety of the employees in the unit as well as the public. The PBA specifically refers to instances where individual officers were compelled to operate police cars that were in poor or unsafe condition. The Borough contends that the issue of vehicle maintenance is a management prerogative and as such is not negotiable.

The Commission, after careful consideration of the parties' submissions, determines that the issue of vehicle maintenance directly affects the safety of the Borough's police officers and as such is a required subject for collective negotiations.<sup>11/</sup> This is not to say, however, that the provisions of Title 39 are mandatorily negotiable. They are not. What is negotiable is the safety of the Borough's police officers. However, it is not the function of this agency to enforce the provisions of Title 39. The negotiations that we are mandating are independent of Title 39.

#### ORDER

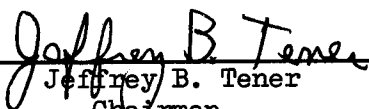
With respect to those matters which we have hereinabove determined to be required subjects for collective negotiations, specifically the issues relating to work schedules and employee safety, the Borough of Roselle is hereby ordered to negotiate in good faith upon demand of Patrolmen's Benevolent Association, Local No. 99, Roselle Police.

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<sup>11/</sup> See footnote 9.

With respect to that matter which we have hereinabove determined to be a permissive subject for collective negotiations, specifically the issue relating to the designation of the Borough's representatives who would have the responsibility for the administration of certain management prerogatives relating to the operations of the police department, Patrolmen's Benevolent Association, Local No. 99, Roselle Police is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of this matter in a collective negotiations agreement with the Borough of Roselle.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hipp, Hurwitz, and Hartnett voted for this decision.

DATED: Trenton, New Jersey  
May 12, 1977  
ISSUED: May 13, 1977