

P.E.R.C. NO. 88-145

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CARTERET,

Petitioner,

-and-

Docket No. SN-88-48

P.B.A. LOCAL 47,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that a proposal made by P.B.A. Local 47 to the Borough of Carteret during collective negotiations is mandatorily negotiable. The proposal concerns shift assignment by seniority.

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Appearances:

For the Petitioner, Desmond R. Abazia, Esq.

For the Respondent, S.M. Bosco Associates  
(Simon M. Bosco, Labor Consultant)

DECISION AND ORDER

On January 8, 1988, the Borough of Carteret ("Borough") filed a Petition for Scope of Negotiations Determination. The petition seeks a determination that a proposal made by P.B.A. Local 47 ("PBA") during collective negotiations is not mandatorily negotiable. The proposal concerns shift assignment by seniority.

Both parties have filed briefs. These facts appear.

The PBA is the majority representative of the Borough's police. During contract negotiations,<sup>1/</sup> the PBA proposed this provision:

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<sup>1/</sup> The Borough and the PBA are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq.

Commencing with the 15th of the month following the execution of this Agreement and, subsequently each October 15th thereafter, shift assignments shall be made, where all qualifications are equal, pursuant to a seniority based bid system. Standard slips shall be developed and distributed to all affected personnel no less than two (2) weeks prior to the commencement date. The employee shall list his/her shift choices giving 1st, 2nd, and 3rd preference. Assignments shall then be made based upon seniority. These assignments shall take effect as of January 1 following the submission date and shall remain in effect until the procedure is repeated the following year.

This shall not be interpreted to mean that duty assignments, such as detective bureau, traffic, etc. are to be bid. Those assignments remain the prerogative of the Chief which shall be in accordance with controlling Statutes. Further, in order to meet the needs of training and/or specialized abilities, shift assignments may need to be altered in order to meet the bona fide safety needs of the citizens of the Borough. In these cases the changes shall be made with timely notice and explanation and shall last until such time as the specific needs have been met, at which time the affected employee shall be returned to his bid shift.

This Section shall be applied equally, among members of the same rank. Patrol Officers shall bid with Patrol Officers, Detectives with Detectives, Sergeants with Sergeants. Lieutenants with Lieutenants, etc.

This Section will not preclude employees from voluntarily switching or swapping shifts with one another prior to the re-bid date. However, as is the current practice, such switches shall occur with the approval of the Chief of Police or his designee. Such approval shall not be arbitrarily or capriciously denied.<sup>2/</sup>

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<sup>2/</sup> The Borough's petition challenges an earlier version of this article. This proposal is the one the PBA has submitted to the interest arbitrator. The PBA asserts that during an

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.<sup>3/</sup> 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 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. [87 N.J. at 92-93; citations omitted]

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2/ Footnote Continued From Previous Page

October 8, 1987 meeting with Borough representatives, it orally advised the Borough it would modify the proposal to its present form. Thus, only the amended proposal is in dispute. The Borough did not file a reply brief addressing the amended proposal.

3/ The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:12A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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 is not obligated 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 proposal satisfies Paterson's first prong. N.J.S.A. 40A:14-118 does not preempt negotiations.<sup>4/</sup> Tp. of Lacey, P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987); 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) ("Franklin I").

The Borough does not dispute that the proposal intimately and directly affects the work and welfare of police officers. The Borough asserts that its police chief should determine which officers should be assigned to each shift and that under the PBA's initial proposal a shift might be composed of inexperienced or unqualified officers.

The PBA asserts its amended proposal does not interfere with the Borough's managerial prerogatives because it allows the chief the latitude necessary to assess requirements for each task

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<sup>4/</sup> See Gauntt v. City of Bridgeton, 194 N.J. Super. 468, 482 (App. Div. 1984), citing Quaglietta v. Halendon, 182 N.J. Super. 136 (Law. Div. 1981) for a discussion of that statute's intent.

as required by Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16027 1985). ("Franklin II")

In Franklin II, we held that an employer may agree to assign officers to shifts in accordance with seniority where qualifications are equal. The proposal allowed deviation from seniority in cases where special skills are required or in an emergency. See Bor. of Maywood, P.E.R.C. No. 83-107, 9 NJPER 144 (¶14068 1983 ), aff'd App. Div. Dkt. No. A-3071-82T2 (12/15/83); Middletown Tp., P.E.R.C. No. 82-90, 9 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3663-81T3 (4/28/83).

The PBA's amended proposal is mandatorily negotiable. It safeguards the Borough's ability to determine how to deploy its force. The Borough can change shift assignments to meet special needs. Franklin II. Voluntary shift exchanges must be approved by the chief. See Tp. of Teaneck, P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984).

ORDER

The PBA's proposal is mandatorily negotiable and may be submitted to interest arbitration in accordance with N.J.S.A. 34:13A-14 et seq.

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  
June 23, 1988  
ISSUED: June 24, 1988