

P.E.R.C. NO. 88-90

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Petitioner,

-and-

Docket No. SN-88-19

NUTLEY P.B.A. LOCAL NO. 33,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of proposals made by the Nutley PBA Local No. 33 during successor contract negotiations with the Township of Nutley. The Commission determines that notification of shift changes, posting of vacancies, stating reasons for management personnel actions and notice of manpower allocation are mandatorily negotiable. The Commission further determines, however, that the following proposals are not mandatorily negotiable: determination of daily uniform; shotguns and shotgun racks and study of automatic weapon use.

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Appearances:

For the Petitioner, Mark S. Ruderman, Esq.

For the Respondent, Abramson & Liebeskind Associates  
(Arlyne K. Liebeskind, consultant; Gary Helwig, on the  
brief)

DECISION AND ORDER

On July 30, 1987, the Township of Nutley ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a determination that certain proposals made by the Nutley Township P.B.A. Local No. 33 ("PBA") during successor contract negotiations are outside the scope of negotiations.<sup>1/</sup>

The PBA is the majority representative of all patrol officers and sergeants of the Township's police department. The

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<sup>1/</sup> While the petition was pending, the PBA substituted new language for the shift assignment proposal (Article X, §1). The Township concedes its negotiability. The PBA also concedes that two-officer patrols and shotguns are not mandatorily negotiable. The Township admits the negotiability of patrol car cages. Thus, these portions of Article XXII, §2 will not be considered.

parties are engaged in interest arbitration proceedings to resolve an impasse in successor contract negotiations. Both parties filed briefs.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.<sup>2/</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. [Id. at 92-93; citations omitted]

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<sup>2/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

We will consider only whether these proposals are mandatorily negotiable. Our policy is 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. Bridgewater Tp., P.E.R.C. No. 84-63, 10 NJPER 16, 17 (¶15010 1983), aff'd 196 N.J. Super. 258 (App. Div. 1984); Hillside Tp., P.E.R.C. No. 83-132, 9 NJPER 271, 272 (¶14123 1983); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

#### Seasonal Transition of Uniforms

Article VIII, ¶6, #6 provides that the police chief has discretion to decide when to change several uniforms and that he shall consider the temperature within the calendar range. His discretion must be reasonably applied and exercised in consultation with the commander. Determination of the daily police uniform, inclusive of garments, shoes and headwear, is not mandatorily negotiable. City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den. P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131 1979), aff'd in pt., rev'd in pt., App. Div. Dkt. No. A-3966-78 (10/3/80). Mandatorily negotiable aspects of police uniforms are those that relate to employee health and safety. See Trenton; Bor. of Butler, P.E.R.C. No. 87-121, 13 NJPER 292 (¶18123 1987); Bor. of

Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987). Economic consequences of uniform changes are also mandatorily negotiable. Town of Kearny, P.E.R.C. No. 81-34, 6 NJPER 446 (¶11229 1980). Art. VIII ¶6, #6 concerns the determination of daily police uniforms as in Maywood and the determination of when such uniforms shall be worn by all staff members as in Hunterdon Cty., P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982). It is not mandatorily negotiable.

#### Notification of Shift Changes

Article X, §2 provides that employees receive seven days notice of shift changes, except in cases of emergency or voluntary waiver of such notice. Notice to employees of assignment changes is mandatorily negotiable. Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). However, such provisions must not restrict management's prerogative to make emergency assignments. Phillipsburg Tp., P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983). Our decisions have upheld the negotiability of notice periods of 24 hours, Phillipsburg; 72 hours, Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985) and 10 days, Atlantic City, P.E.R.C. No. 85-89, 11 NJPER 140 (¶16022 1985). Article X, §2 allows notice to be suspended in emergency situations. It protect management's prerogative to deploy personnel and is therefore mandatorily negotiable.

#### Posting of Shift Vacancies

Article X, §3 requires posting shift vacancies for a minimum of five days before they are permanently filled. The section also allows employees to make oral and written requests for

the reasons they are denied a transfer to vacant shifts. These requests satisfy step one of the grievance process. The PBA has proposed new language which would terminate grievances concerning Article X, §3 at step two.

The posting of vacancies is mandatorily negotiable since it pertains to promotional procedures. State of New Jersey, P.E.R.C. No. 86-16, 11 NJPER 497 (¶16177 1985). However, these clauses cannot require employers to fill the posted openings, Paterson, nor can they usurp an employer's right to establish qualifications for the positions. Jersey City Bd. of Ed., P.E.R.C. No. 82-110, 8 NJPER 318 (¶13144 1982). The first sentence of Article X, §3 is mandatorily negotiable. It neither requires the filling of such vacancies nor dictates qualifications and thus does not significantly interfere with managerial prerogatives.

Employee requests for justification of management personnel actions are negotiable, as long as such requests do not infringe upon the employer's right to exercise its managerial functions. See Donaldson v. No. Wildwood Bd. of Ed., 65 N.J. 236 (1974). The second and third sentences of Article X, §3 are mandatorily negotiable.

The last sentence of Art X, §3 allows the employees to grieve the the reasons for denial of transfers. The PBA proposes new language that would terminate grievances arising from this section at step two, prior to binding arbitration. Proposals to limit the scope of grievances which can be submitted to arbitration are mandatorily negotiable. See W. Windsor Tp. v. PERC, 78 N.J. 98 (1978) W. Windsor also holds that step one of any grievance

procedure must be broad enough to allow grievances concerning any matters affecting employee terms and conditions of employment. Thus, both the last sentence of Art X, §3 and the PBA's proposed addition are mandatorily negotiable.

#### Notice of Manpower Allocation

Article X, §5 provides that the chief of police shall notify the PBA quarter-annually of the minimum patrol officer allocation for patrol officers in vehicles on each shift. Minimum staffing clauses are not mandatorily negotiable. See Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982). However, Article X, §5 does not dictate the number of patrol officers per shift nor does it impose burdensome reporting requirements. In Edison Tp., P.E.R.C. No. 84-89, 10 NJPER 121 (¶15063 1984), we held that a contract clause requiring a table of organization for a police force, including minimum staffing requirements, was mandatorily negotiable. However, the employer did retain the non-negotiable right to change that table at any time. This clause is analogous.

#### Shotgun and Shotgun Racks

The contract language, as worded, is not mandatorily negotiable. Egg Harbor Tp., P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985).

#### Study of Automatic Weapon Use

Article XXII, §3 mandates that the department study the use of automatic weapons. The choice of weapons is a non-negotiable

managerial prerogative. See Brookdale Comm. Coll., P.E.R.C. No. 77-53, 3 NJPER 156 (1977); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pert. part App. Div. Dkt. No. A-3564-78 (6/19/80); Union Cty., P.E.R.C. No.84-23, 9 NJPER 588 (¶14248 1983); So. Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986). A required study of specific weapons is a matter of governmental policy. The PBA is free to offer its input. Cf. Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 31-32 (1973). However, a study is not mandatorily negotiable.


ORDER

The following sections of the existing contract are mandatorily negotiable: Article X, Sections 2, 3 (including proposed additional language) and 5.

The following sections of the existing contract are not mandatorily negotiable: Article VIII, ¶6, #6; Article XXII, Section 2, (language pertaining to shotgun racks), and Article XXII, Section 3.

The rest of the petition is dismissed.

BY ORDER OF THE COMMISSION

  
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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  
March 18, 1988  
ISSUED: March 21, 1988