

P.E.R.C. NO. 2007-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SPOTSWOOD,

Petitioner,

-and-

Docket No. SN-2007-053

P.B.A. LOCAL 225,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal made by P.B.A. Local 225 for inclusion in a collective negotiations agreement with the Borough of Spotswood is not mandatorily negotiable. The proposal would limit the number of prisoners transported per patrol car. The Commission concludes that although the number of prisoners in a patrol car and the number of patrol officers required to transport one or more prisoners have an impact on employee safety, the dominant issue in both situations is the non-negotiable policy decision of a public employer to determine staffing levels.

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, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Arthur R. Thibault, Jr., on the brief)

For the Respondent, Loccke, Correia, Schlager, Limsky & Bukosky, attorneys (Marcia J. Tapia, on the brief)

DECISION

On March 1, 2007, the Borough of Spotswood petitioned for a scope of negotiations determination. The Borough seeks a determination that a successor contract proposal made by P.B.A. Local 225 is not mandatorily negotiable. The proposal would limit the number of prisoners transported per patrol car. We hold that this proposal is not mandatorily negotiable.

The parties have filed briefs and exhibits. The Borough has submitted certifications from its counsel who is also its chief negotiator. These facts appear.

The PBA represents all sworn police officers, excluding the chief. The parties' most recent collective negotiations agreement expired on December 31, 2006.

Article 17, Section A is entitled Personal Safety. Section 1 provides:

At no time and under no circumstances shall a police officer of the Borough of Spotswood be required to perform his/her duties unassisted, singly, or alone. A minimum of two (2) patrol officers shall be required on each shift and on patrol. This shall be accomplished by either having two (2) cars patrolling with one (1) officer in each or by having two (2) officers in one (1) patrol vehicle.

The PBA proposed that this section be modified "with respect to transports so as to provide that not more than two (2) prisoners be transported per vehicle and that there be a prohibition on gender mixing." The Borough's counsel asserts that during negotiations, the PBA sought to require that a minimum of two officers transport a prisoner. The PBA's brief disputes that assertion. The Borough rejected the PBA's proposal and proposed eliminating the entire provision, asserting that it was not mandatorily negotiable. The PBA then petitioned for interest arbitration. This petition ensued.

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).

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), sets the standards for determining whether a contract proposal is mandatorily negotiable:

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. [87 N.J. at 92-93; citations omitted]

An employer need not negotiate over permissively negotiable proposals or agree to submit such proposals to interest arbitration. Thus, we consider only whether this proposal is mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981). No preemption argument has been made.

The negotiability of the current contract language is not the subject of this petition or the parties' briefs. Nor has either party briefed the issue of gender mixing. We limit our

decision to the negotiability of the PBA's proposal to modify Article 17, Section A, whether as stated in the written proposal or as allegedly modified during negotiations.

The PBA argues that it seeks to limit the number of prisoners transported per vehicle, not how many officers transport a prisoner, and that the proposal concerns the mandatorily negotiable issue of officer health and safety. The Borough responds that a proposal that defines the number of officers on duty at any given time is not mandatorily negotiable and that limiting the number of prisoners transported per vehicle effectively defines the number of officers on duty.

In Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983), we noted that "[t]he subjects of personnel deployment, number of personnel required to accomplish specific tasks, and prisoner and public safety are not mandatorily negotiable." Although the number of prisoners in a patrol car and the number of patrol officers required to transport one or more prisoners affect employee safety, the dominant issue in both situations is the determination of governmental policy. Whether directly or indirectly, both proposals would delegate non-negotiable staffing level determinations to the collective negotiations process.

We considered similar language and safety arguments in Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983), app. dism. NJPER Supp.2d 143 (¶128 App. Div. 1984). We held that a

proposal requiring that two officers be assigned to staff a hospital's secure ward predominantly involved the non-negotiable subject of staffing levels. Although employee safety is mandatorily negotiable, proposals that significantly interfere with managerial prerogatives are not mandatorily negotiable. See City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den. 88 N.J. 476 (1981). Thus, whether the PBA's proposal is construed to focus on the number of prisoners to be transported or on the number of officers assigned to transport prisoners, it is not mandatorily negotiable.

ORDER

A proposal to limit to two, the number of prisoners transported per vehicle is not mandatorily negotiable. A proposal to require that a minimum of two officers transport a prisoner is also not mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: May 31, 2007

Trenton, New Jersey