

P.E.R.C. NO. 93-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-92-111

P.B.A. LOCAL NO. 109, HUDSON COUNTY  
SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of four contract proposals made by P.B.A. Local No. 109, Hudson County Superior Officers Association during successor contract negotiations with the County of Hudson. Proposals concerning granting and scheduling of time off and allocation of overtime among qualified employees are mandatorily negotiable. Proposals concerning the "officer in charge" and carrying firearms are not mandatorily negotiable.

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Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys  
(Stephen E. Trimboli, of counsel)

For the Respondent, Loccke & Correia, attorneys  
(Manuel A. Correia, of counsel)

DECISION AND ORDER

On June 2, 1992, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a declaration that four successor contract proposals of P.B.A. Local No. 109, Hudson County Superior Officers Association are not mandatorily negotiable.

The County has filed exhibits and a brief. We do not consider the PBA's untimely brief or the County's reply. These facts appear.

Local No. 109 represents the County's superior rank corrections officers below the rank of warden who are assigned to the County jail or penitentiary. The parties entered into a collective negotiations agreement which expired on December 31,

1991. The parties engaged in successor contract negotiations and Local No. 109 petitioned to initiate interest arbitration. The County then filed this petition, asserting that two provisions in the previous contract which Local No. 109 sought to include in the successor contract and two new proposals which Local No. 109 has raised are not mandatorily negotiable.

Paterson Police P.B.A. No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters. It states:

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]

When a negotiability dispute arises over a contract proposal, we consider only whether the proposal is mandatorily negotiable since

permissively negotiable proposals cannot be submitted to interest arbitration without both parties' consent. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Article XIX, Section 19.1 of the previous contract provides:

Seniority is defined as an employee's total length of service within rank, beginning with his appointment date. The Senior Supervisor within rank shall be deemed the "officer in charge."  
(Emphasis supplied)

The underlined sentence is not mandatorily negotiable. The County has a right to determine how best to deploy its work force, including the right to determine who will be in charge. Paterson; Local 195, IFPTE v. State, 88 N.J. 393 (1982); Jackson Tp., P.E.R.C. No. 93-4, 18 NJPER 395 (¶23178 1992).

Article XXI, Section 21.1 of the previous contract provides:

Any officer charged with any detail that leaves the institution or goes anywhere on County business while in uniform shall be armed only if qualified in accordance with the guidelines established by the Police Training Commission for her or his own personal protection.

In Brookdale Community Coll., P.E.R.C. No. 77-53, 3 NJPER 156 (1977), we held that the subject of whether and when police officers carry fire firearms is not mandatorily negotiable. See also Mercer Cty., P.E.R.C. No. 87-105, 13 NJPER 259 (¶18106 1987); City of Newark, P.E.R.C. No. 83-158, 9 NJPER 374 (¶14169 1983); Town of West New York. We apply Brookdale and hold that this provision is not mandatorily negotiable.

Local No. 109 has proposed that the following language be added to the successor contract as Article V, Section 5.4:

A minimum of one (1) superior officer per tour shall be permitted use of personal days on a first come/first serve basis.

The granting and scheduling of time off are mandatorily negotiable so long as the agreed-upon system does not compromise an employer's staffing requirements. West Orange Tp., P.E.R.C. No. 85-101, 11 NJPER 237 (¶16091 1985); Hudson Cty., P.E.R.C. No. 80-161, 6 NJPER 352 (¶111177 1980). In Bor. of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989), we held mandatorily negotiable a provision stating that one police officer a week would be entitled to take vacation during the summer and two officers a week could take vacation at other times. We stated:

Absent a specific staffing shortage, this provision is mandatorily negotiable. See Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1989); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). The arbitrability of a grievance filed under this article can be assessed in light of any alleged staffing shortages when a vacation request is denied. [Id. at 286]

In Livingston Tp., P.E.R.C. No. 90-30, 15 NJPER 607 (¶20252 1989), we restrained arbitration over a claim that an employer had to grant personal leave requests which would prevent it from meeting its staffing levels; but we permitted arbitration over a claim that a particular request for leave was unreasonably denied given staffing levels. See also Teaneck Tp., P.E.R.C. No. 89-12, 14 NJPER 535, 537 (¶19228 1988). We therefore hold that Local No. 109's proposal is mandatorily negotiable in the abstract, subject to the County's right to deny a personal leave request if necessary to meet its supervisory staffing levels.

Article XIII, Section 13.6 of the existing contract provides:

Employees shall be called in for overtime based upon a rotating seniority roster in the order of rank-for-rank and seniority within rank.

Local No. 109 has proposed that the following language be added:

This list shall be voluntary and administered as follows: Deputy warden absent, utilize: (1) Deputy warden; (2) Captain; (3) Sergeant. Captain absent, utilize: (1) Captain; (2) Deputy warden; (3) Sergeant. Sergeant absent, utilize: (1) Sergeant; (2) Captain; (3) Deputy warden.

The allocation of overtime opportunities among qualified employees is a mandatorily negotiable subject. New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-143, 13 NJPER 492 (¶18181 1987), aff'd App. Div. Dkt. No. A-4781-86T8 (5/25/88); City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); see also Town of West New York, P.E.R.C. No. 91-52, 17 NJPER 5 (¶22003 1990), aff'd App. Div. Dkt. No. A-2259-90T1F (11/15/91). But an employer has a prerogative to make assignments necessary to protect the public interest. Long Branch at 450. Also, if an employer needs a particular employee with special skills and qualifications to perform a specific overtime task, it may order that individual to work the overtime and thus insure that its needs are met. Ibid. In Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985), the employer argued that an overtime allocation clause would result in the assignment of overtime to officers who were not qualified to perform the duties. The PBA did not respond. We accepted the employer's representations and therefore held that the clause was not mandatorily negotiable.

Here, the employer has not argued that the clause or proposal requires the assignment of unqualified employees and there is no evidence to that effect. Nor does either the clause or proposal limit the employer's right to use an employee with superior qualifications or skills if needed for the particular assignment. See Passaic Bd. of Ed., P.E.R.C. No. 90-3, 15 NJPER 490 (¶20200 1989). Accordingly, this clause and proposal are mandatorily negotiable, subject to the County's right to deviate from the allocation system to protect the public interest.

ORDER

The following provisions are mandatorily negotiable:

Proposed Article V, Section 5.4

Proposed Article XIII, Section 13.6

The following provisions are not mandatorily negotiable:

Existing Article XIX, Section 19.1

Existing Article XXI, Section 21.1

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting and Wenzler voted in favor of this decision. Commissioner Smith voted in favor of this decision with respect to Proposed Article V, Section 5.4 and Proposed Article XIII, Section 13.6. Commissioner Smith voted against this decision with respect to Existing Article XIX, Section 19.1 and Existing Article XXI, Section 21.1. Commissioners Grandrimo and Regan were not present.

DATED: November 25, 1992  
Trenton, New Jersey  
ISSUED: November 25, 1992