

P.E.R.C. NO. 2019-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PEMBERTON

Petitioner,

-and-

Docket No. SN-2019-044

PBA LOCAL 260,

Respondent.

SYNOPSIS

The Commission Chair issues an expedited scope of negotiations ruling on a disputed proposal by the PBA in a pending interest arbitration proceeding between the Township and the PBA. The PBA's proposal sought to require the Township to staff school extra duty assignments as part of its voluntary "Jobs in Blue" program with a minimum of two officers. Finding that the Township has a significant managerial prerogative to determine minimum staffing levels, as well as to administer extra duty employment involving police-type services performed by uniformed officers, the Chair holds that the PBA's proposal is not mandatorily negotiable.

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, Archer & Greiner, attorneys (David A. Rapuano, on the brief)

For the Respondent, Sciarra & Catrambone, LLC, attorneys (Christopher A. Gray, on the brief)

DECISION

This decision is issued pursuant to N.J.A.C. 19:16-5.5(c), which authorizes the Commission Chair to issue an expedited scope of negotiations decision where a dispute exists among parties to a pending interest arbitration petition over whether an unresolved issue is within the scope of negotiations. On January 7, 2019, PBA Local 260 (PBA) submitted a petition to initiate compulsory interest arbitration to resolve a negotiations impasse with the Township of Pemberton (Township) over the terms of a successor collective negotiations agreement (CNA) between the parties.<sup>1/</sup> (Docket No. IA-2019-012). On January 22, the Township

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<sup>1/</sup> The PBA's interest arbitration petition was perfected with its January 9 submission of the filing fee, and the Director  
(continued...)

petitioned for a scope of negotiations determination and requested to have the disputed issue decided on an expedited basis. In support of its petition, the Township filed a brief, exhibits, and certification of its Business Administrator, Dennis Gonzalez. The PBA filed its opposition to the scope of negotiations petition on January 30, which consisted of a brief. On January 31, the Chair granted the Township's request for expedited processing.

The Township and PBA are parties to a CNA with an effective term of January 1, 2014 through December 31, 2017. Article XX of the CNA, entitled "Uniformed Jobs in Blue Program," provides that the Township may occasionally engage with public or private entities to provide security services using uniformed officers. Article XX states that "the Township shall have the authority to authorize, manage and control a program to allow members to perform such uniformed work, consistent with the Township's obligation to bargain with the PBA over equitable assignment of opportunities and hourly rates." Article XX further sets forth a seniority based preference system for uniformed work assignments,

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1/ (...continued)  
of Conciliation and Arbitration issued a letter on January 10 notifying the Township of the filing. The Township then had 10 days to file a request for an expedited scope of negotiations determination (N.J.A.C. 19:16-5.5(c)(1)) which fell on a holiday weekend and was therefore due on the next business day, January 22. N.J.A.C. 19:10-2.1(a).

as well as the hourly rates for officers assigned uniformed work under the Jobs in Blue program.

The Jobs in Blue program is also governed by Section 41-14 of the Township Code. Section 41-14 authorizes the Mayor to use uniformed officers to provide security, traffic control, and other police-related services to various public, private, or nonprofit entities during times when those officers are not scheduled for a tour of duty by the Police Department. The Township currently utilizes the Jobs in Blue program primarily for School District events and sometimes for nonprofit events within the Township. After the School District submits a request for uniformed officers to the Police Chief, the Chief posts the work opportunity(ies) for officers to volunteer for. The School District pays the Township for the services pursuant to Section 41-14 of the Township Code, and the Township then pays the officer(s) for their time worked in the extra duty assignment pursuant to the compensation agreed to in Article XX of the CNA.

During successor contract negotiations, the PBA has sought to negotiate over several aspects of the Jobs in Blue program. The parties agree that the PBA's request to increase the hourly pay rate for the program is mandatorily negotiable, while the PBA's request that the program be extended to private companies is not mandatorily negotiable. The issue in dispute is whether

the PBA's request to have a minimum of two officers assigned for each school extra duty assignment is mandatorily negotiable.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for firefighters and police:

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.

In cases involving collective negotiations or interest arbitration, we do not decide whether contract language or proposals are permissively negotiable because an employer has no obligation to negotiate over such proposals or to consent to

their submission to interest arbitration. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015) (citing Town of West New York, P.E.R.C. 82-34, 7 NJPER 594 (¶12265 1981)). We consider only whether the proposals are mandatorily negotiable.

The Township asserts that it has a non-negotiable managerial prerogative to determine staffing levels for Jobs in Blue program assignments. It argues that the PBA's proposal for a minimum of two officers to be assigned to every school extra duty assignment infringes on its prerogative to administer the Jobs in Blue program and determine minimum staffing levels for assignments.

The PBA asserts that staffing levels for extra duty assignments are negotiable because Jobs in Blue program assignments are voluntary. It argues that the PBA's two officer minimum proposal must be negotiable to address the safety concerns of officers participating in the Jobs in Blue program.

The Commission has consistently barred negotiations over contract clauses binding employers to specific staffing levels for public safety officers, despite the impact manning levels may have on officer safety. Bergen Cty. and PBA Local No. 134, Bergen Cty. Sheriff's Officers, NJPER Supp.2d 143 (¶128 App. Div. 1984), aff'g, P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983) (proposal for two officers to transport and guard prisoner taken to hospital's secure ward was not negotiable); Franklin Bor., P.E.R.C. No. 98-138, 24 NJPER 273 (¶29130 1998) (proposal for two

uniformed officers on shift was not negotiable); City of Sea Isle, P.E.R.C. No. 96-83, 22 NJPER 240 (¶27125 1996) (proposal for two officers for motor vehicle stops and issuing warrants was not negotiable); Lopatcong Tp., P.E.R.C. No. 91-15, 16 NJPER 479 (¶21207 1990) (provision requiring two officers per patrol car after sunset was not negotiable); Bor. of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987) (proposal for two officers per shift was not negotiable); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (proposal for two officers per patrol car was not negotiable); and Readington Tp., P.E.R.C. No. 84-7, 9 NJPER 533 (¶14218 1983) (proposal for two officers per shift was not negotiable).

I find no compelling reason to diminish a public employer's ability to establish staffing levels in the context of volunteer extra duty assignments such as the Jobs in Blue program at issue here. The Commission has held that when the type of extra duty employment at issue is police-type services performed by police officers in police uniforms, the public employer's policymaking interests in regulating that type of outside employment are more powerful than its interests in regulating other types of outside employment. City of Elizabeth, P.E.R.C. No. 2014-94, 41 NJPER 67 (¶21 2014), aff'd, 42 NJPER 454 (¶124 App. Div. 2016); City of Paterson, P.E.R.C. No. 2004-6, 29 NJPER 381 (¶120 2003). Thus, while issues such as compensation for such extra duty work and

the allocation of extra duty opportunities among qualified officers are generally mandatorily negotiable, the public employer has a significant non-negotiable managerial prerogative to administer an extra duty employment system. See, e.g., Elizabeth, supra, 41 NJPER at 69 (managerial prerogative to limit "pay job" opportunities to ranks below captain); Livingston Tp., P.E.R.C. No. 2014-66, 40 NJPER 448 (¶156 2014), aff'd, 41 NJPER 461 (¶142 App. Div. 2015) (managerial prerogative to prohibit officers out on terminal leave from performing extra duty assignments); Paterson, supra, 29 NJPER at 384 (managerial prerogative to take over administration of the extra duty uniformed officers program from PBA and approve of officer assignments to such jobs); and City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (proposal for extra duty employment of police officers to be jointly administered by PBA and Chief of Police was not negotiable "since it involves an undue delegation of managerial authority"); Cf. Waldwick Bor., P.E.R.C. No. 86-53, 11 NJPER 705 (¶16243 1985) (employer had managerial prerogative to determine minimum manning of three officers for extra duty assignment to football game and, where a third officer did not volunteer, to assign on-duty officer).

Accordingly, I find that an agreement requiring the Township to staff each school extra duty "Jobs in Blue" assignment with a



minimum of two officers would significantly interfere with its exercise of management prerogatives.

ORDER

The PBA's proposal to have a minimum of two officers assigned to each school extra duty assignment is not mandatorily negotiable.

*Joel M. Weisblatt*  
Joel M. Weisblatt  
Chair

ISSUED: February 20, 2019

Trenton, New Jersey