

P.E.R.C. NO. 88-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WOOD-RIDGE,

Respondent

-and-

Docket Nos. SN-88-10  
ID-88-1

POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL 26,

Petitioner

SYNOPSIS

The Public Employment Relations Commission finds that a proposal made by the Borough of Wood-Ridge to the Policemen's Benevolent Association, Local 313 is not a mandatory subject of negotiations. The proposal concerns the composition of the bargaining unit. The Commission finds that the proposal is not a mandatory subject of negotiation because the Commission has jurisdiction over unit definition in the event of a dispute.

The Commission also determines that several proposals are "economic" for purposes of interest arbitration. The Commission finds that health insurance, elimination of police recruits from the coverage of economic items and severance pay are all economic for purposes of interest arbitration.

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POLICEMEN'S BENEVOLENT ASSOCIATION,  
LOCAL 313 (WOOD-RIDGE UNIT)

Petitioner.

Appearances:

For the Respondent, Jeffrey Suskin, Consultant

For the Petitioner, Alfred G. Osterweil, Esq.

DECISION AND ORDER

On July 17, 1987, the Policemen's Benevolent Association, Local 313 (Wood-Ridge Unit) ("PBA") the majority representative of the police officers employed by the Borough of Wood-Ridge ("Borough"), filed a Petition for Scope of Negotiations Determination. The PBA seeks a determination whether a proposal made during successor contract negotiations by the Borough is mandatorily negotiable. The Borough and the PBA are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq.

On July 21, 1987, the PBA filed a Petition for Issue Definition Determination. The PBA seeks a determination that three "non-economic" proposals made by the Borough should be

classified as economic issues for the purposes of interest arbitration pursuant to N.J.S.A. 34:13A-16(f)(2) and a fourth "economic" proposal should be classified non-economic. The proposals concern payment of additional salary on retirement, medical coverage for retiring employees, elimination of certain titles from the negotiating unit and exempting recruits from coverage under certain contract provisions.

The parties have filed briefs and exhibits. These facts appear.

The unit represented by the PBA was established by recognition in 1978 and currently contains 9 patrol officers, 5 sergeants, 2 lieutenants and a captain. The chief of police is excluded from the unit. The recognition clause of the most recent agreement recognizes the PBA as the majority representative of police in "all steps and ranks" except the chief. During interest arbitration proceedings the Borough proposed to modify the clause by excluding the titles sergeant, lieutenant, captain and deputy chief. The PBA then filed these petitions.

We first consider the scope of negotiations petition.

In Paterson Police PBA 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 fire fighters.<sup>1/</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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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]

N.J.S.A. 34:13A-5.3 provides, in part:

The negotiating unit shall be defined with due regard for the community of interest among the employees concerned, but the commission shall not intervene in matters of recognition and unit definition except in the event of a dispute.

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<sup>1/</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).

This statute allows a public employer and a majority representative to determine which employees shall be in the collective negotiations unit. However it provides that if an agreement cannot be reached on the unit definition, then the Commission may make that determination. See State v. Prof. Ass'n of N.J. Dept. of Ed., 64 N.J. 231, 242 (1974); Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404, 422 (1971); Elizabeth Fire Officers Ass'n. v. City of Elizabeth, 114 N.J. Super. 33, 37 (App. Div. 1971). N.J.S.A. 34:13A-6(d) authorizes the Commission to conduct elections, hold hearings and adopt administrative rules to resolve disputes over unit determinations. As the Supreme Court noted in State v. Prof. Ass'n, empowering an administrative agency to determine the appropriate unit when the parties are unable to agree is a nearly universal method of settling such questions. The court also observed that our authority to make unit determinations is analogous to that of the National Labor Relations Board pursuant to 29 U.S.C. §159(b). See 64 N.J. at 244.

Because parties are free to negotiate about the composition of the bargaining unit, but must have any disputes resolved by an administrative agency, the composition of the bargaining unit has been labeled a permissive subject of bargaining in the private sector. See Morris, The Developing Labor Law, at 848-849 (2d ed. 1983).

In Douds v. Longshoremen, 241 F.2d 278, 39 LRRM 2388 (2d Cir. 1957), the court noted that with respect to mandatorily

negotiable subjects neither side is required to agree or make a concession on the proposal and the Board has no power to settle the issue, but by contrast "[The Board] not only has power, but it is indeed directed to decide what is the appropriate bargaining unit in each case." The court also noted that one party's insistence on a change in an established bargaining unit constitutes a refusal to negotiate in good faith. See also Salt River Valley Users' Ass'n, 204 NLRB 83, 83 LRRM 1536 (1973), enforced, 498 F.2d 393, 86 LRRM 2873 (9th Cir. 1974).

Normally, permissive negotiability is determined by application of the test set forth in Paterson. Here, however, unit definition is permissively negotiable by operation of law, N.J.S.A. 34:13A-5.3. It has the same characteristics as other permissive subjects, i.e. the parties can negotiate about unit definition, but neither party may insist upon its proposal to impasse because the Commission is empowered to resolve disagreements. Although Paterson holds that once a contract containing a permissive subject expires an employer is free to excise it, that principle does not apply here. Because the Commission has jurisdiction over unit definition "in the event of a dispute," an employer could not unilaterally excise or modify a recognition clause identifying the negotiations unit when a contract

expires.<sup>2/</sup> Since N.J.S.A. 34:13A-16(f)(4) requires joint agreement to submit a permissive subject to interest arbitration and the PBA is not agreeable to negotiating a change in the current unit, the Borough must invoke the Commission's jurisdiction under N.J.S.A. 34:13A-6(d) if it seeks to alter the existing unit.<sup>3/</sup>

The definition of an economic issue for purposes of interest arbitration is found in N.J.S.A. 34:13A-16(f)(2).

Economic issues include those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings and other forms of compensation such as paid vacation, paid holidays, health and medical insurance, and other economic benefits to employees.

Article 25.2 currently provides that 25 year employees shall on retirement receive "the existing medical plans." The Borough has proposed to have the article read that the retiree shall receive "the present Blue Cross/Blue Shield, Major Medical and co-payment prescription plan." The PBA asserts that the proposal,

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<sup>2/</sup> In Passaic Cty. Reg. H.S. Dist. Bd. of Ed., we held that an employer could unilaterally exclude confidential employees from a negotiations unit since confidentials are not employees within the meaning of our Act. See N.J.S.A. 34:13A-3(e). The Borough's proposal assumes that superior officers are supervisory. We do not pass on this issue in a scope of negotiations proceeding. However, supervisors are covered by the Act and may only be removed from their current unit with the consent of the majority representative or pursuant to an order of the Commission. Cf. Willingboro Bd. of Ed., I.R. No. 85-9, 11 NJPER 72 (¶16035 1985); Clearview Reg. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977).

<sup>3/</sup> We need not determine whether the parties could agree to submit a dispute over unit composition to interest arbitration.

identified by the Borough as non-economic, is economic. The Borough argues that it is purely a language proposal which would not change any existing benefit. We have held that even if it is assumed that a proposal does not change an existing benefit, it is economic for purposes of interest arbitration if the subject falls within the above definition. See Bor. of Manasquan, P.E.R.C. No. 82-128, 8 NJPER 402 (¶13185 1982). This proposal involves health insurance which the statute lists as an economic item.

The Borough has proposed that new recruits, while receiving their training at the police academy in Mahwah, not be deemed covered by Articles 9.1 through 9.5 and Article 14. These articles define the normal workday (including meal breaks), work schedule, manpower per shift, time off between shifts, overtime, overtime rates, and priority for overtime assignments. The PBA asserts that the proposal, identified by the Borough as non-economic, is economic. The Borough asserts that while the recruits are at the academy, it has no control over their work assignments or work hours. However, that issue is not relevant to an issue definition determination.<sup>4/</sup> Proposals to change the classes of employees who are to receive a particular economic benefit are economic proposals. See Washington Tp., P.E.R.C. No. 83-142, 9 NJPER 285 (¶14133 1983). Articles 9 and 14 define the normal workday and provide for overtime compensation for work in excess of normal hours. They thus concern "wages, salaries and hours in relation to

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<sup>4/</sup> The parties must educate the arbitrator as to the impact, if any, of a particular economic proposal.



earnings." The elimination of police recruits from the coverage of those articles is an economic proposal.

The Borough's third "non-economic proposal" is to eliminate the titles sergeant, lieutenant, captain and deputy chief from the current recognition clause. The PBA asserts this proposal is economic. Since we have determined that this issue is a non-mandatory subject of negotiations, we need not decide this issue.

The Borough's "economic" proposal would grant police officers who retire with 25 years service an additional four months salary. The PBA asserts the proposal is non-economic. This proposal is economic. See Bor. of Paramus, P.E.R.C. No. 84-11, 9 NJPER 538 (¶14222 1983).

ORDER

The Borough's proposal to remove sergeants, lieutenants, captains and deputy chiefs from the negotiations unit is not mandatorily negotiable.

The proposals for four months salary for retiring officers, health insurance coverage for retiring officers and the exemption of police recruits at the academy from the coverage of Articles 9.1 through 9.5 and 14 are economic for purposes of interest arbitration.

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  
January 21, 1988  
ISSUED: January 22, 1988