

P.E.R.C. NO. 88-126

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRATERNAL ORDER OF POLICE,
GARDEN STATE LODGE NO. 3,

Petitioner,

-and-

Docket No. SN-88-1

TOWNSHIP OF PENNSAUKEN,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that the Fraternal Order of Police, Garden State Lodge No. 3's proposal to assign steady shifts or steady days off by seniority given a proviso that seniority would not control in emergency situations or where special qualifications were required is a mandatory subject of negotiations.

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Appearances:

For the Petitioner, Colflesh & Burris, Esqs.
(Ralph Henry Colflesh, Jr., of counsel)

For the Respondent, Pachman & Glickman, Esqs.
(Steven S. Glickman, of counsel)

DECISION AND ORDER

On July 6, 1987, the Fraternal Order of Police, Garden State Lodge No. 3 ("FOP") filed a Petition for Scope of Negotiations Determination. The petition asserts that a proposal to assign steady shifts or steady days off by seniority if the Township of Pennsauken ("Township") changes to steady shifts or steady days off is mandatorily negotiable given a proviso that seniority would not control in emergency situations or where special qualifications were required. The Township contends that the entire proposal is non-negotiable.

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

The FOP is the majority representative of the Township's rank-and-file police officers, including detectives. The Township and the FOP are engaged in interest arbitration for an agreement to succeed their July 1, 1984 through June 30, 1986 agreement.

In a prior decision involving these parties, we held that section A.1 of the FOP's proposed Article VIII, "Seniority" was not mandatorily negotiable because its language would not sufficiently preserve the Township's ability to staff shifts with officers it deemed best suited to work on a particular shift. P.E.R.C. No. 87-101, 13 NJPER 161, 163 (¶18071 1987), recon. den. P.E.R.C. No. 87-134, 13 NJPER 356 (¶18145 1987).^{1/} That proposal read:

When and if the current practice, policy or procedure of this Department is the implementation of and or use of steady shifts or steady days off, then assignment of Police Officers to these shifts or steady days off shall be made according to the Police Officer's primary preference with the first assignment being given to the most senior Police Officer as determined in Section B of this article.

The FOP has proposed a new Section B.2, which it contends will give the Township latitude to make assignments. It provides under the heading "Exclusion" that:

Nothing herein is to be construed to mean that this Article is to be applied to anything other than when the department utilizes steady shifts and/or steady days off. Nor does this Article apply in emergency

^{1/} The correct citation for the decision cited at 13 NJPER 163 is Kearny PBA Local No. 21, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980)

situations, or situations which require personnel with specialized qualifications.

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.^{2/} 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]

We consider only whether the FOP's proposal is mandatorily negotiable. It is our policy not to decide whether contract

^{2/} 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).

proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the Township has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The Township argues that even as modified the proposal is not negotiable because it does not reflect that seniority can only control in circumstances where all qualifications are equal. It relies on Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983).

Sections A.1 and B.2, taken together, are mandatorily negotiable.^{3/} Hours of work, in general, are mandatorily negotiable. Bor. of Closter, P.E.R.C. No. 85-86, 11 NJPER 132, 134-135 (¶16059 1985). In Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985), we found mandatorily negotiable language providing that: "Shift work shall consist of steady shift assignment which shall be made on the basis of choice by seniority. It is understood that the Chief could deviate from the seniority list in special cases in which special skills are required or in emergency situations...." Id. at 226. We noted that the "Township may legally agree that, as a general rule, it will schedule work in accordance with contractual seniority provisions where all qualifications are equal." See Bor. of Maywood, P.E.R.C. No.

^{3/} However, Article VIII, A.1 would remain non-mandatorily negotiable if B.2 were not also included in the agreement.

83-107, 9 NJPER 144 (¶14068 1983), aff'd. App. Div. Dkt. No. A-3071-82T2 (12/15/83); Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd. App. Div. Dkt. No. A-3664-81T3 (4/28/83).

Unlike the proposal in Phillipsburg, the FOP's current proposal contains the language necessary to preserve the employer's right to make assignments where special circumstances and the need for special qualifications warrant it. It is also consistent with Lacey Tp., P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987), where the proposal would have prevented the employer from making permanent exceptions to the "assignment by seniority" rule.

ORDER

Article VIII, Sections A.1 and B.2 are mandatorily negotiable and may be submitted to interest arbitration in accordance with N.J.S.A. 34:13A-14 et seq.

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
May 25, 1988
ISSUED: May 26, 1988