

P.E.R.C. No. 78-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX COUNTY PARK POLICE,
P.B.A. LOCAL #156,

Petitioner,

-and-

Docket No. SN-78-42

MIDDLESEX COUNTY BOARD OF
FREEHOLDERS,

Respondent.

SYNOPSIS

In a Scope of Negotiations proceeding, initiated by the P.B.A., the Commission determines that the County's decision to require park police to obtain a motorcycle license relates to qualifications or prerequisites of employment, and as such is permissively but not mandatorily negotiable. The Commission does conclude that the County's implementation of its decision to require the obtaining of motorcycle licenses may impact on terms and conditions of employment of park police. These impact considerations which may involve, for example, the amount of time within which the license must be obtained, or additional money for operating "Cushman Patrolsters" are mandatorily negotiable.

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Appearances:

For the Petitioner, Peter J. Schwartz, Esq.

For the Respondent, Francis Foley, Esq. and Louis
Alfonso, Assistant County Counsel

DECISION AND ORDER

On June 7, 1978 the Middlesex County Park Police, P.B.A. Local #156 (the "P.B.A."), filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute is within the scope of collective negotiations pursuant to N.J.S.A. 34:13A-5.4(d).

The P.B.A. obtained a temporary injunction from Chancery Division Judge C. John Stroumtsos on April 11, 1978, restraining, until further order of the court, Robert M. Hudson, the Chief of Police of the Middlesex County Park Police, from requiring all members of the negotiations unit represented by the P.B.A. below the rank of lieutenant, to obtain motorcycle operators' licenses

in anticipation of the utilization of three "Cushman Police Vehicles" purchased by the Middlesex County Board of Freeholders ("County") for use within the County park system patrolled by members of the Middlesex County park police. At the adjourned return date of an Order to Show Cause relating to the above matter, held on May 26, 1978, Judge David Furman continued the above restraints and directed the P.B.A. to submit to the Public Employment Relations Commission the issue of whether the Order of Chief Hudson, an agent of the County, relating to the obtaining of motorcycle licenses, was properly a subject for collective negotiations, or whether it was properly an administrative policy decision made by the Chief of Police. Judge Furman retained jurisdiction over the matter before him, pending the Commission's decision as to whether the requirements of obtaining a motorcycle license for the operation of a three-wheeled police vehicle, related to a required, permissive, or illegal subject for collective negotiations.^{1/}

The P.B.A. submitted the same papers that it had filed with

^{1/} The Commission has concluded that matters regarding terms and conditions of employment are required subjects of collective negotiations and that matters where mutual or bilateral agreement would modify or contravene a statute that specifically limits the authority or discretion of a public employer are illegal subjects. The Commission has defined a permissive subject as one which is neither illegal nor required. Therefore, if a party chooses not to negotiate upon it, the other party cannot require that it be negotiated, but conversely, if it is raised, the parties are permitted to negotiate upon it and reach agreement, if they can, and that agreement, incorporated in the contract is enforceable as part of the contract. In re Ridgefield Park Board of Education, P.E.R.C. No. 77-71, 3 NJPER (1977) and N.J.A.C. 19:13-3.9.

the Chancery Division to the Commission in support of its contention that the requirement of obtaining a motorcycle operator's license related to a required subject of collective negotiations. These papers, which were filed with the Commission on June 7, 1978, included Judge Furman's executed Order, a verified Complaint in Support of Order to Show Cause, an Affidavit from the P.B.A. President in support of the request for temporary restraints made before Judge Furman, the Answer of the Defendant, Chief of Police Robert Hudson, and an Affidavit from Hudson with attachments in opposition to the request for restraints. The County, through its Assistant County Counsel, submitted a copy of the Collective Negotiations Agreement between the County and the P.B.A. to the Commission, and also submitted a letter memorandum with attachments dated June 26, 1978 in support of its position.

As set forth in the papers filed with the Chancery Division originally, the P.B.A. asserts that the County's new requirement that all members of the unit represented by the P.B.A. obtain New Jersey motorcycle operators' licenses for the purpose of operating a three-wheeled vehicle on park patrol, known as "Cushman Patrolsters" concerned working conditions, i.e., a required subject for collective negotiations, that had to be negotiated with the P.B.A. before being established. Much of the P.B.A.'s supportive documentation goes to the wisdom of utilizing these Patrolsters instead of patrol cars to

supplement foot patrols, and relates to the P.B.A.'s fear that these vehicles are unsafe when used for park patrol. The County, in representing Chief Hudson in the Chancery Division action, maintained that the issue of requiring a motorcycle operator's license was not a proper subject for collective negotiations and related to a managerial prerogative.

The Commission in the past has determined that the qualifications for employment or prerequisites to the performance of a particular job are not terms and conditions of employment but rather are within the employer's prerogative.^{2/} The Commission has therefore concluded that qualifications or prerequisites for employment are permissively negotiable but not mandatorily negotiable. The Commission, in the Plainfield P.B.A. decision, supra, determined that the establishment of minimum educational requirements for promotions within the negotiations unit, i.e., individuals within the unit had to obtain college credits to be eligible for promotional opportunities, related to prerequisites to the performance of a particular job and not to terms and conditions of employment. The Commission in this Plainfield matter did conclude that the impact or effect of the institution of the above educational requirements, e.g., a reimbursement program for credits obtained and arrangements

^{2/} In re Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375, 1977, In re Plainfield Patrolmens' Benevolent Association, Local #19, P.E.R.C. No. 76-42, 2 NJPER 216, 1976, and In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142, 1976.

made to permit time off to obtain college credits, were required subjects for collective negotiations and had to be negotiated by the City upon demand of the P.B.A. In the Salem Community College matter, supra, the Commission, in apposite part, determined that the decision of the college to require that those faculty members who benefitted from work experience in obtaining faculty rank, earn academic credits for the purpose of remaining qualified for their present rank, and for the additional purpose of qualifying for promotion, was an educational policy decision and not mandatorily negotiable. The Commission in this matter, however, stated the following in reference to the issue of the potential effect of the college's decision on the terms and conditions of employment of individual faculty members:

"As stated, however, the impact of these decisions on terms and conditions of employment is mandatorily negotiable. To illustrate, one area of impact would include the number of credits to be earned per year or the amount of time within which a certain number of credits must be earned. Other possible areas of impact might be reimbursement for the costs associated with earning the necessary credits, the special consideration in scheduling to permit the employee to earn the credits and still meet his or her job responsibilities, leaves of absence to meet the degree requirements, etc. Each of these items is a term or condition which is mandatorily negotiable in that each affects an employee's earnings or mandatory expenditures, hours of work and total workload, and so on." (Footnote deleted.)

Applying the above principles to the instant matter, we find that the County's decision to require park policemen to obtain a motorcycle license relates to qualifications or prerequisites of employment and as such is permissively but not mandatorily negotiable.^{3/}

^{3/} The County's decision also relates to the manner and means by which it should render police services to its constituency, a subject which the Commission has also determined to be non-mandatorily negotiable. See e.g., Brookdale Community College, Police v. Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156, 1977, Appeal Dismissed, App. Div. Docket No. A-3041-76.

However, it is evident to us that the County's implementation of its decision to require the obtaining of motorcycle licenses may impact on the terms and conditions of employment of the park police. These impact considerations which may involve, for example, the amount of time within which the license must be obtained or additional money for operating the Cushman Patrolsters are mandatorily negotiable.^{4/}

Although not placed directly before the Commission, the parties in their submissions before the Chancery Division make many references to the wisdom of purchasing the Cushman Patrolsters and utilizing them in a park setting. These submissions specifically deal with the safety implications of utilizing these vehicles instead of patrol cars. Suffice it to say that although the purchase and utilization of the Cushman Patrolsters is not a required subject of collective negotiations, the safety implications of using these vehicles are required subjects for collective negotiations.^{5/}

ORDER

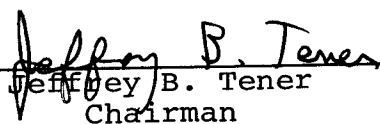
The Middlesex County Park Police, P.B.A. Local #156
is hereby ordered to refrain from insisting, to the
point of impasse, upon the inclusion of the aforesaid permissive

^{4/} Our holding that the impact is mandatorily negotiable does not mean that the County will necessarily agree with any proposal which may be put forth by the P.B.A. See State of New Jersey v. Council of New Jersey State College Locals, 141 N.J. Super. 470 (App. Div. 1976).

^{5/} See Brookdale Community College Police v. Brookdale Community College, supra.

subject relating to the obtaining of motorcycle licenses within a collective negotiations agreement with the County and, absent mutual agreement, from submitting to any interest arbitrator appointed in accordance with Chapter 85, Public Laws of 1977, a dispute relating to the obtaining of motorcycle licenses.^{6/}

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Parcels and Schwartz voted for this decision. None opposed. Commissioner Hipp was not present.

DATED: Trenton, New Jersey
June 30, 1978
ISSUED: July 5, 1978

^{6/} A copy of this decision will be forwarded to Judge Furman pursuant to his executed Order of May 26, 1978.