

P.E.R.C. NO. 2002-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Petitioner,

-and-

Docket No. SN-2002-41

FRATERNAL ORDER OF POLICE  
LODGE #39,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal which Fraternal Order of Police Lodge #39 seeks to include in a collective negotiations agreement with the Somerset County Sheriff is mandatorily negotiable. The proposal concerns the hourly rate of pay for road work performed by sheriff's officers for outside contractors. The Commission finds that the proposal does not appear to restrict the employer's power to ban road jobs if required by law or public safety considerations, but merely sets an hourly rate of pay covering compensation and benefit costs for any road jobs actually done.

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, Bateman, Coley, Yospin, Kunzman,  
Davis & Lehrer, attorneys (John E. Coley, Jr., on the  
brief)

For the Respondent, Loccke & Correia, attorneys  
(Michael A. Bukosky, on the brief)

DECISION

On March 1, 2002, the Somerset County Sheriff petitioned for a scope of negotiations determination. The petition seeks a determination that a proposal that Fraternal Order of Police Lodge #39 seeks to submit to interest arbitration is not mandatorily negotiable. The proposal concerns the hourly rate of pay for road work performed by sheriff's officers for outside contractors.

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

The FOP represents all sheriff's officers, excluding supervisors. The parties' most recent collective negotiations agreement expired on December 31, 2001. The parties are in negotiations for a successor agreement and the FOP has petitioned for interest arbitration.

Officers are currently permitted to provide assistance while in uniform to independent contractors for traffic control and other similar situations. The employer charges each contractor an hourly rate covering both direct compensation costs paid to the officer and indirect compensation costs attributable to workers' compensation and other employee benefits. The FOP has proposed codifying the current rate of \$52.50 per hour, with the employer receiving 15%.

The employer asserts that this proposal is not mandatorily negotiable because it is not within the scope of employment for the officers and does not relate to job responsibilities and duties. The employer wishes to reserve the power to prohibit this supplementary income and does not "wish to include it in the contract if for whatever reason it is required by law or by the interests of public safety to ban it."

The FOP contends that both off-duty employment and the rate of pay for such work are mandatorily negotiable. It adds that the employer's original brief did not claim that any part of the proposal was permissively negotiable rather than mandatorily negotiable. Nor did the employer file a reply brief raising such a claim.

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

We consider only whether the proposal is mandatorily negotiable. It is our policy not to decide whether contract proposals, as opposed to contract grievances, concerning police

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<sup>1/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).

and fire department employees are permissively negotiable since the employer 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).

Given our case law, the facts, and the narrow arguments presented, we hold that the FOP's proposal is mandatorily negotiable. See Hanover Tp., P.E.R.C. No. 94-85, 20 NJPER 85 (¶25039 1994); Montclair Tp., P.E.R.C. No. 90-39, 15 NJPER 629 (¶20264 1989); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Somerset Cty. P.E.R.C. No. 84-92, 10 NJPER 130 (¶15066 1984). See generally Ass'n of New Jersey State College Faculties, Inc. v. New Jersey Bd. of Higher Ed., 66 N.J. 72 (1974); Bowman v. Pennsauken Tp., 709 F. Supp. 1329 (D.N.J. 1989). We add that the clause does not appear to restrict the employer's power to ban road jobs if required by law or public safety considerations. Instead, it merely sets an hourly rate of pay covering compensation and benefit costs for any road jobs actually done.<sup>2/</sup>

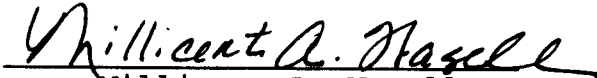
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<sup>2/</sup> We do not consider Borough of Paramus, P.E.R.C. No. 2001-57, 27 NJPER 188 (¶32062 2001), since the employer has not asserted that this case involves an administrative fee or covers the same types of costs as in that case.

ORDER

The FOP's proposal setting the hourly rate for road jobs is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato and Sandman voted in favor of this decision. Commissioners Katz and Ricci were not present.

DATED: April 25, 2002  
Trenton, New Jersey  
ISSUED: April 26, 2002