

P.E.R.C. NO. 87-133

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MAYWOOD,

Petitioner,

-and-

Docket No. SN-87-32

P.B.A. LOCAL 102,

Respondent.

BOROUGH OF MAYWOOD,

Petitioner,

-and-

Docket No. SN-87-33

SUPERIOR OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several proposals submitted by PBA Local 102 and Superior Officers Association to the Borough of Maywood in successor contract negotiations. The Commission finds the following to be mandatorily negotiable: who will pay for the cost of purchasing and maintaining uniforms and equipment and maintenance of the existing work schedule. The Commission finds the following to be not mandatorily negotiable: determination of the daily police uniform and minimum staffing requirements.

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Appearances:

For the Petitioner, Rupp & TenHoeve, Esqs.
(William F. Rupp, of counsel)

For the Respondents, Alfred G. Osterweil, Esq.

DECISION AND ORDER

On December 9, 1986, the Borough of Maywood ("Borough") filed Petitions for Scope of Negotiations Determination. The Borough seeks determinations that a proposal to retain existing contract provisions and a new contract proposal respectively made by

Maywood PBA Local 102 ("PBA") and the Superior Officers Association ("SOA") are not mandatorily negotiable.^{1/} Both parties have filed briefs.

In Paterson Police PBA Local 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 employees.

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 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 policy-making 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

^{1/} The PBA represents patrol officers. The SOA represents captains, lieutenants and sergeants. We have consolidated the two scope petitions because the issues are identical.

proposals, as opposed to contract grievances, concerning police 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).

The first article in dispute provides:

19.01 Each new EMPLOYEE shall receive from the Borough free of charge, in lieu of a clothing allowance, a complete uniform:

- A. Two (2) pairs uniform pants
- B. Six (6) long sleeve shirts
- C. Six (6) short sleeve shirts
- D. One (1) summer hat; one (1) trooper hat
- E. One (1) uniform blouse
- F. One (1) leather jacket
- G. All uniform leather goods
- H. One (1) night stick
- I. One (1) set handcuffs
- J. One (1) container Mace
- K. Two (2) uniform ties
- L. All uniform brass
- M. Foul weather gear (raincoat and rainboots)

The PBA also "expressed an intent to seek" a "baseball style" uniform cap and a separate off-duty revolver.^{2/}

The proposal concerns two issues: (1) what uniform accessories (i.e. equipment) are necessary; and (2) who will pay for the cost of purchasing and maintaining the equipment. The second issue is mandatorily negotiable. Tp. of Union, P.E.R.C. No. 87-119, 13 NJPER ____ (¶ ____ 1987). If the intent of the first issue is to

^{2/} The PBA denies that it has proposed such modifications but admits that it might in these negotiations. We, therefore, find these matters to be in dispute.

determine the daily police uniform, it is not mandatorily negotiable. City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26, 29 (¶17010 1985); Tp. of Egg Harbor, P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985); City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), aff'd on recon., P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131 1979), aff'd in pert. part, App. Div. Dkt. No. A-3966-78 (10/3/80); Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). However, if the intent of the article is to set forth all aspects of the uniform and gear to be provided, it is mandatorily negotiable.

The next article in dispute is:

44.02 The BOROUGH recognizes and agrees that in most instances an immediate and able backup police officer is both necessary and proper patrol procedure.

44.03 The BOROUGH shall use its best efforts to provide a minimum of two (2) police officers on patrol at all times on every tour of each day. This minimum patrol shall be constituted from ranks of Patrolmen and Sergeant.

44.04 The parties agree that on any tour not manned by the aforesaid minimum complement of Police Officers, the Patrolman shall notify the officer in charge of said condition who shall reasonably determine whether circumstances exist which renders it either impracticable or unnecessary to provide the aforesaid minimum complement.

This clause, to the extent it would impose minimum staffing requirements on the Town, is not mandatorily negotiable. City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985).^{3/}

The final proposal in dispute is:

11.02 The work schedule of (1) week of five (5) working days of 7:00 A.M. to 3:00 P.M. to be followed by three (3) days off; One week (1) of five (5) working days from 11:00 P.M. to 7:00 A.M. to be followed by two (2) days off; one week of five (5) working days of 3:00 P.M. to 11:00 P.M. to be followed by two (2) days off shall be maintained. The above work schedule shall not be altered without negotiation.

11.03 Work in excess of the EMPLOYEE's basic work week or tour for a day is overtime. Work in excess of an eight (8) hour day or in excess of a forty (40) hour week shall be paid at an hourly rate of one and one-half (1 1/2) times his base hourly rate.

11.07 The EMPLOYER shall continue the present practice of computing overtime beyond a normal tour for a day or on a day off.

The Borough seeks the deletion of this Article^{4/} because "[it] seeks the ability to alter the rotational work schedules where it is necessary to provide required training, proper supervision, manpower requirements and the needs of the department with respect to special duties or assignments." It relies on Atlantic Highlands v. Atlantic

^{3/} We decline to consider the PBA's proposal for "premium pay when patrol does not meet standards in section 53.03" because there are not sufficient facts in the record to enable us to make a negotiability determination.

^{4/} It does not dispute that the total number of hours in the employee's regular work day or week or that overtime in excess of the workday or week is mandatorily negotiable.

Highlands PBA Local 242, 192 N.J. Super. 71 (App. Div. 1983), certif. den. 96 N.J. 293 (1984) and Irvington Policemen's Benv. Ass'n Local #29 v. Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980).

We hold that this clause is mandatorily negotiable since it pertains to the existing work schedule and there is nothing in the record that would demonstrate that this clause, as written, interferes with the Borough's managerial prerogative. A standard work day and work week is mandatorily negotiable. E.g., Local 195, IFPTE v. State, 88 N.J. 393, 411 (1982). While we recognize that in certain circumstances the Borough may have the managerial prerogative to change work schedules, e.g., Borough of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985), such a decision would have to be made after examining the particular circumstances for the change. In Matter of Tp. of Mt. Laurel, 215 N.J. Super. 108 (App. Div. 1987), aff'g P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985), the Court stated that:

As we see it, nothing in [Atlantic Highlands and Irvington] should be read as establishing a per se rule of exclusion for police scheduling issues. The most that can and should be said of them is that in each case the statutorily prescribed balance as articulated in Local 195 and Paterson Police was properly struck in favor of the government employer. Indeed the court in Atlantic Highlands, citing the language of Irvington PBA Local #29 v. Town of Irvington, supra, specifically recognized that the differing facts of each case should determine whether a disputed subject is mandatorily negotiable and that such a decision needs to be made on a case-by-case basis. Atlantic Highlands, supra, 192 N.J. Super. at 77. In substance, this

principle is at the opposite end of the spectrum from a rule of automatic exclusion. [Id. at 114-115]

Therefore, we hold that the existing clause is mandatorily negotiable in the abstract.

Should the Borough decide to change a work schedule because of a particular need and should the Association seek to submit such a change to binding arbitration, the Borough can file another scope of negotiations petition and we can decide the dispute in a specific factual context. In this regard, we note that there are aspects of police work scheduling which are non-negotiable when the employer's interests are paramount. E.g., Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983) (Town has managerial prerogative to change shift assignment when it needs a particularly qualified individual to do a particular task); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 602 (¶13283 1982) (Town has managerial prerogative to change tours of duty to create and staff Juvenile Bureau and to enable superior officers to train and discipline rank and file officers). But here, as in Mt. Laurel, the majority representative merely seeks to retain the existing work schedule and the employer has identified no need to change it.

ORDER

Section 19.01 of the PBA and SOA contracts and the proposed amendments are mandatorily negotiable except to the extent they pertain to who will determine the daily police uniform. Sections

44.02, 44.03 and 44.04 are not mandatorily negotiable to the extent they would impose minimum staffing requirements on the Borough. Sections 11.02, 11.03 and 11.07 are mandatorily negotiable.

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
April 22, 1987
ISSUED: April 23, 1987