

P.E.R.C. NO. 95-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WARREN,

Employer,

-and-

Docket No. SN-95-48

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION, INC.,
WARREN TOWNSHIP LOCAL NO. 235,

Employee Organization.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable a contract proposal submitted by the New Jersey State Policemen's Benevolent Association, Inc., Warren Township Local No. 235 in successor negotiations with the Township of Warren to the extent it requires the Township to reimburse retirees for health benefits coverage without meeting the requirements of N.J.S.A. 52:14-17.38 and N.J.A.C. 17:9-5.5(a). A proposal to memorialize the current work schedule in the successor contract is mandatorily negotiable.

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 Employer, Bivona Cohen, attorneys
(John E. Coley, Jr., of counsel; Julianne S. Duncan,
on the brief)

For the Employee Organization, Schneider, Goldberger,
Cohen, Finn, Solomon, Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

DECISION AND ORDER

On November 14, 1994, the Township of Warren and New Jersey State Policemen's Benevolent Association, Inc., Warren Township Local No. 235 jointly petitioned for a scope of negotiations determination. The parties have filed a certification from the police chief, their 1993-1994 collective negotiations agreement, and briefs. These facts appear.

Local No. 235 represents the Township's police officers except for the police chief. The parties' most recent collective negotiations agreement expired December 31, 1994. They are engaged in successor contract negotiations. Local No. 235 proposed that a

provision in the predecessor contract designated retirement benefits be carried over into any new contract. It also proposed that the current work schedule for police officers be memorialized in any successor contract.

ARTICLE XXIX

Section 1 of Article XXIX is entitled Contingent Retirement and Disability Benefit. This section provides:

Section 1. Contingent Retirement and Disability Benefit:

- A. Retirees: A retirement benefit, as set forth hereinafter, will be extended to Officers who have served as a Police Officer in New Jersey for at least 25 years with at least 20 years of that service being in Warren Township. A Police Officer possessing the service set forth above shall be deemed a "Qualified Officer" as designated in this Article.
- B. Disability: A disability benefit, as set forth hereinafter, will be extended to Officers who have served as Police Officers in Warren Township for at least five (5) years and who are disabled as a result of a work-related incident as defined under the New Jersey Workmen's Compensation Statute and who are also qualified to collect a pension disability under the requirements of the Police and Firemen's Retirement System. A Police Officer possessing the service and disability set forth above shall be deemed a "Qualified Officer" as designated in this Article.
- C. The Township will pay \$2,400.00 per year to those who qualify for the same hereunder during the year 1993 and \$3,150.00 per year for those who qualify hereunder during the year 1994. These payments may be utilized by the Officer as he or she deems appropriate.

D. Termination of above benefit: The Township has provided the benefits set forth in the within section contingent upon the following:

a) A Qualified Officer, who, during retirement or disability, accepts a position of employment for which he or she is eligible for medical benefits, must elect the medical benefits from that employer and the retirement benefit hereunder will lapse. If a Qualified Officer, whose retirement benefit has lapsed as set forth above, is no longer provided medical insurance by a subsequent employer (the same not being available through the employer), the Township will again pay a retirement benefit to the Qualified Officer of \$2,400.00 per year if he or she retired or became disabled (qualified hereunder) or continued to be disabled during the year 1994.

b) A Qualified Officer who, during retirement or disability accepts another position of employment for which he or she is eligible for medical benefits, must elect the benefits from that employer and the benefits provided hereunder shall lapse. If a Qualified Officer, whose retirement benefit has lapsed as set forth above, is no longer provided medical insurance through his medical coverages, the Township will again pay a retirement benefit to the Qualified Officer of \$2,400.00 per year if he or she retired or became disabled (qualified hereunder) or continued to be disabled during the year 1993 and \$3,150.00 per year if he or she retired or became disabled (qualified hereunder) or continued to be disabled during the year 1994.

c) If health benefits are provided to retired or disabled Police Officers in the future by State Law, this section 1 (Article XXIX) will lapse and be of no

effect provided the State offered medical coverage is equal to or better than the retirement benefit set forth herein.

d) Upon the death of a Qualified Officer, the Township will pay \$2,400.00 per year if the Qualified Officer retired or became disabled (qualified hereunder) or continued to be disabled during 1993 and \$3,150.00 per year if the Qualified Officer retired or became disabled (qualified hereunder) or continued to be disabled during 1994 annually to the Qualified Officer's spouse and/or qualifying dependents. In the event the spouse remarries, this retirement benefit will lapse. In the event the Qualified Officer's dependents are no longer eligible for coverage under the Qualified Officer's medical coverage, this retirement benefit will lapse as to them. In the event a Qualified Officer's spouse and qualifying dependents can be covered by the spouse's or another's medical coverages, this benefit will lapse.

This benefit has not been provided to any other Township employee. The Township has not yet had to pay any benefits under this article, but an eligible police officer is about to retire. Local No. 235 has proposed that this article be retained in any successor contract and that the payment under Paragraph C be increased to \$4,000.

The Township participates in the Police and Firemen's Retirement System ("PFRS"). N.J.S.A. 43:16A-1 et seq. It also participates in the State Health Benefits Program ("SHBP"). N.J.S.A. 52:14-17.25 et seq. The Township has not adopted the

provisions of a Chapter 88 resolution necessary to permit an SHBP employer to pay for retiree health care coverage. See N.J.S.A. 52:14-17.38; N.J.A.C. 17:9-5.5(a).

On April 15, 1994, an Administrative Analyst for the SHBP wrote a letter to the Township's attorney. The letter stated that the parts of Article XXIX concerning reimbursement for the cost of retiree health care coverage are contrary to SHBP statutes and regulations because they impose extra conditions (e.g. working for the Township for at least 20 years) and because the Township had not adopted the provisions of a Chapter 88 resolution.

On May 4, 1994, the Township's attorney wrote a letter to the Administrative Analyst stating that Article XXIX did not provide for reimbursement for health benefits coverage but instead provided a retirement benefit. The letter also stated that the Township would not make any payments under Article XXIX until it received legal approval to do so.

The specific inquiry concerns the payments required by Section C of Article XXIX. We have no basis for secondguessing the determination of the SHBP Administrative Analyst that the Township cannot legally provide qualified retirees with money to pay for health insurance coverage unless it comports with all SHBP conditions and requirements.

WORK SCHEDULE

The Township's police department has a chief and 21 police officers. The chief and five officers work eight hour shifts, Mondays through Fridays. The other sixteen officers are deployed in

four squads, each one composed of one sergeant and three police officers. Two squads work a 12 hour shift from 7 a.m. to 7 p.m.; the other two squads work a 12 hour shift from 7 p.m. to 7 a.m. Officers on 12 hour shifts work three days one week, four days the next. Two of each officer's 12 hour shifts each month are reduced to eight-hour shifts.

The work schedule calling for 12 hour shifts replaced a schedule calling for eight hour shifts and a five days on, two days off rotation. The current schedule was first suggested by Local No. 235. In May 1993, the chief and Local No. 235 entered a Scheduling Contract implementing that schedule. The contract specified that the chief would have the sole option to evaluate the effectiveness of the 12 hour shift and that he would retain his managerial prerogatives as if the contract did not exist. It further stated that the chief would be able to rotate police officers and change their individual work schedules.

The chief has been pleased with the current work schedule. He believes it has improved morale, decreased overtime and sick time, maintained productivity, increased the number of days off and weekends off for each police officer, and satisfied coverage needs. He has extended the schedule to run throughout 1995. The police officers are also pleased with the current work schedule. They wish to memorialize it in the successor contract.

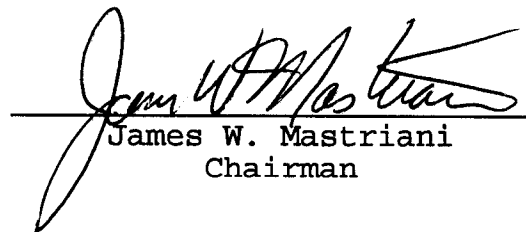
We need not review all our precedents concerning work schedules to decide this case. Instead, this case is governed by In

re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987), aff'g P.E.R.C. No. 86-72, 12 NJPER 23 (¶17008 1985). There, the Appellate Division found mandatorily negotiable a proposal to memorialize the existing work schedule in the parties' collective negotiations agreement. The employer had expressed no dissatisfaction with the schedule and had no intention to change it. The same considerations obtain here and make Local No. 235's proposal mandatorily negotiable.

ORDER

Article XXIX, Section 1, Paragraph C is not mandatorily negotiable to the extent it requires the Township to reimburse retirees for health benefits coverage without meeting the requirements of N.J.S.A. 52:14-17.38 and N.J.A.C. 17:9-5.5(a). The proposal to memorialize the current work schedule in a successor contract is mandatorily negotiable.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn and Klagholz voted in favor of this decision. None opposed. Commissioners Ricci and Wenzler were not present.

DATED: April 10, 1995
Trenton, New Jersey
ISSUED: April 11, 1995