

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-2003-45

CAMDEN COUNTY CORRECTIONS,  
P.B.A. LOCAL 351,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of contract proposals submitted by Camden County Corrections, P.B.A. Local 351, for inclusion in a successor collective negotiations agreement with the County of Camden. The Commission finds the following to be mandatorily negotiable: a preservation of rights clause so long as it does not seek to set any employment conditions of employees outside the PBA's unit; a proposal to delete a fully-bargained clause in a contract; proposals to include longevity and holiday pay in base pay for compensation purposes; a portion of a proposal on legal representation to the extent, if any, it seeks to have applicable portions of the Law Enforcement Officers Protection Act and the parties' contract apply to terms and conditions of employment; a proposal concern vacation scheduling; a proposal that minor disciplinary matters be included in the grievance procedure; a proposal which changes the first step of the grievance procedure from being heard by the warden to being heard by the chief of investigations, and a proposal concerning work rules.

The Commission finds the following to be not mandatorily negotiable: a portion of a proposal on legal representation to the extent, if any, it seeks to have the Law Enforcement Protection Act and the parties' contract apply to circumstances beyond the terms of that statute or the terms and conditions of employment of corrections officers; and a proposal concerning discipline because it permits binding arbitration of major disciplinary disputes involving corrections officers, including suspensions of six days or more.

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.

P.E.R.C. NO. 2004-7

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Respondent.

Appearances:

For the Petitioner, Genova, Burns & Vernioia, attorneys  
(Lynn S. Degan, on the brief)

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

DECISION

On February 28, 2003, the County of Camden petitioned for a scope of negotiations determination. The County seeks a determination that certain successor contract proposals submitted by Camden County Corrections, P.B.A. Local 351 are not mandatorily negotiable.

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

The PBA represents correction officers, correction sergeants, and investigator sergeants in the County's department of corrections. The parties' most recent collective negotiations agreement expired on December 31, 2002. On January 10, 2003, the

PBA petitioned for interest arbitration. The PBA has proposed that certain provisions of the predecessor contract be carried over into the successor contract and that certain new provisions be added.

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:

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 a contract proposal is mandatorily negotiable. It is our policy not to decide whether proposals, as opposed to 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).<sup>1/</sup>

The PBA proposes the following clause, entitled Preservation of Rights:

The parties agree that all benefits, rights, duties, obligations and conditions of employment relating to the status of the Department which benefits, rights, duties, obligations, terms and conditions of employment are not specifically set forth in this Agreement, shall be maintained in not less than the highest standards in effect at the time of the commencement of collective bargaining negotiations between the parties leading to the execution of this Agreement.

Unless a contrary intent is expressed in this Agreement, all existing benefits, rights, duties, obligations and conditions of employment applicable to any Officer pursuant to any rules, regulations, instruction, directive, memorandum, statute or otherwise shall not be limited, restricted, impaired, removed or abolished.

In West Caldwell Tp., P.E.R.C. No. 2002-55, 22 NJPER 414 (¶27226 1996) and Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248

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<sup>1/</sup> We reject the PBA's assertion that the petition is untimely. The petition was timely filed on the day the County's answer to the PBA's interest arbitration petition was due. See N.J.A.C. 19:16-5.5(c).

1983), we held that identically worded clauses were mandatorily negotiable because they simply preserved benefits and did not refer to or restrict any managerial prerogatives. We so hold in this case as well. We add that this clause may not be invoked to set the employment conditions of employees outside the PBA's unit.

The predecessor contract contains this preamble:

This Agreement . . . has as its purpose the promotion of harmonious relations between the County and the Association; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and other conditions of employment, and represents the complete and final understanding on all the bargainable issues between the County and Association.

Article XXIV of the predecessor contract is entitled Fully Bargained Agreement. It provides:

Section 1. This Agreement represents and incorporates the complete and final understanding and settlement by the parties of the bargainable issues which were or could have been the subject of negotiations during the term of the Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and not within the knowledge or contemplation of either or both parties at the time they negotiated or signed this Agreement.

The PBA seeks the deletion of the underlined part of the preamble and of Article XXIV from the successor contract.

We have held that a proposal to include a fully-bargained provision in a contract presents a mandatorily negotiable issue. Borough of Hopatcong, P.E.R.C. No. 90-110, 16 NJPER 330 (¶21135 1990); City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983). It follows that a proposal to delete such a clause is mandatorily negotiable. We reject the assertion that N.J.S.A. 34:13A-5.3 requires the retention of a fully-bargained clause in order to make the successor contract binding.

Part of the PBA's proposals on longevity and holidays states:

The PBA proposes a modification in the method of payment of the longevity benefit. Details will be supplied at the initial meeting.

The PBA proposes a modification in the method of payment of holidays. Details will be supplied at the initial meeting.

The County states that during negotiations the PBA provided details indicating that it seeks to have all longevity and holiday pay included in base pay for pension purposes. The PBA asserts that it seeks to have holiday pay and longevity pay included in base pay for salary and overtime purposes.

An interest arbitrator may not consider a proposal to include holiday and longevity pay in base pay for pension purposes. Gloucester Cty. Prosecutor, P.E.R.C. No. 2002-44, 28 NJPER 141 (¶33045 2002); City of Orange, P.E.R.C. No. 2002-4, 27 NJPER 323 (¶32115 2001); Delran Tp., P.E.R.C. No. 99-86, 25 NJPER

166 (¶30076 1999). But these same cases also hold that an arbitrator may consider a proposal to include such pay in base pay for other compensation purposes. We make the same negotiability distinction in this case.

The PBA has proposed a new clause entitled Legal Aid. This clause would provide:

The Employer will provide legal aid to all personnel covered by this Agreement in suits or other legal proceedings against them arising from incidents in the line of duty. Camden County Correction Officers shall receive the same rights and privileges set forth in applicable Civil Service Rules and Regulations and in N.J.S.A. 40A:14-117 as these provisions have been made applicable to Correction Officers in Camden County consistent with the present practice for reimbursement.

The Employer acknowledges the applicability of the Law Enforcement Officer's Protection Act to employees covered by this bargaining agreement.

The first paragraph of this proposal is mandatorily negotiable. The subject of legal representation is mandatorily negotiable absent a preemptive statute or regulation. See, e.g., City of Newark, P.E.R.C. No. 98-82, 24 NJPER 56 (¶29035 1997). The statute cited in the proposed clause is not preemptive. N.J.S.A. 40A:14-117 provides:

Whenever a member or officer of a county police, county park police, department or force is a defendant in any action or legal proceeding arising out of or incidental to the performance of his duties, the governing body of the county, or county park

commission, as the case may be, shall provide said member or officer with necessary means for the defense of such action or proceeding, other than for his defense in a disciplinary proceeding instituted against him as a result of a complaint on behalf of the county or park commission. If any such disciplinary or criminal proceeding instituted by or on complaint of the county or park commission shall be dismissed or finally determined in favor of the member or officer, he shall be reimbursed for the expense of his defense.

The clause is consistent on its face with the statute and provides the same rights and benefits.

We will assume that the second paragraph is meant to incorporate terms and conditions of employment specified in the Law Enforcement Officers Protection Act. Neither party, however, addresses the application of specific provisions of that act to the terms and conditions of employment of corrections officers. Absent such specificity, we will simply hold that this provision is mandatorily negotiable to the extent, if any, it seeks to have applicable portions of that statute and the parties' contract apply to the terms and conditions of employment of corrections officers and not mandatorily negotiable to the extent, if any, it reaches beyond the scope of the statute or employees' terms and conditions of employment.

Article XVI is entitled Vacations. The PBA has proposed to add the following:

That two sergeants and four corrections officers be granted time off for each shift each day of the calendar year for the Main



Jail, one sergeant and two correction officers for Admissions, one sergeant and one correction officer for Administration, and one correction officer for Maintenance. The only exception to this rule will be for overriding emergent operational needs. Where the employer claims overriding emergent operational needs then the employer shall have the burden of establishing same.

This proposed clause is mandatorily negotiable. The scheduling of vacation time is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements. An employer may deny a requested vacation day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take a vacation day even though doing so will require it to pay overtime compensation to a replacement employee. See, e.g., Long Hill Tp., P.E.R.C. No. 2000-40, 26 NJPER 19 (¶31005 1999); Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996). The proposal expressly permits the employer to deny a vacation request to respond to an emergency and the record does not demonstrate how this proposal would prevent the employer from meeting its staffing needs. We also reject the assertion that this proposal would force employees to take unrequested vacation time; the clause assumes that vacation time must be requested and granted. If the clause is included in the successor contract and if the PBA seeks to arbitrate a claim that the employer believes would preclude it from meeting its staffing

needs in a particular instance, the employer may file a scope of negotiations petition at that time.

The PBA has proposed this new provision as part of the grievance procedure:

Minor disciplinary matters (less than six (6) days of fine or suspension or equivalent thereof) shall be included in this Grievance Procedure.

The County asserts that N.J.S.A. 34:13A-5.3 preempts this proposal because it limits "minor discipline" under that section to suspensions or fines of less than five days. However, the Appellate Division has held that the Legislature meant to permit parties to subject suspensions of five days or less to their grievance procedures, including binding arbitration. Monmouth Cty. v. CWA, 300 N.J. Super. 272 (App. Div. 1997); City of Cape May, P.E.R.C. No. 2001-18, 26 NJPER 434 (¶31171 2000). We hold that the proposed clause is mandatorily negotiable given the judicial construction of the statute.

The PBA has also proposed that this clause be added to a successor contract:

No Employee shall be disciplined without just cause. Discipline cases, except discharge, shall be arbitrable. . . .

This provision is not mandatorily negotiable because it permits binding arbitration of major disciplinary disputes involving these corrections officers, including suspensions of six days or

more. See State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993); Monmouth Cty.

The PBA has proposed that the successor contract contain this first step of the grievance procedure:

STEP ONE

Grievances shall be submitted in writing to the office of the Chief of Investigations within ten (10) days following the date upon which the grievance occurred. The grievance shall thereupon be discussed at a meeting consisting of the employee involved, the PBA representative, and the Chief of Investigations or his/her designee. The meeting shall be conducted within fourteen (14) days from the date the grievance is submitted unless the PBA and the Chief of Investigations agree to conduct the meeting at a later date.

The predecessor contract had required submission of grievances to the Warden through the PBA. If the grievant was not satisfied with the result, the grievance could be submitted to the Camden County Labor Relations Committee, and then to binding arbitration. The proposal requires grievances to be submitted to the office of the Chief of Investigations where there will be a meeting between the employee involved, the PBA representative, and the Chief of Investigations or his or her designee. If the grievance is not settled at that level, the PBA may appeal to the Employer. Unresolved contractual grievances may then be submitted to binding arbitration.

The employer argues that requiring that grievances be submitted to the office of the Chief of Investigations rather than to the Warden and having the Chief or his or her designee decide first step grievances is not mandatorily negotiable. The PBA has not specified a reason for seeking this change and the County has not specified a reason for opposing this change.

N.J.S.A. 34:13A-5.3 requires public employers to "negotiate written policies setting forth grievance . . . procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions . . . affecting them." In West Windsor Tp. v. PERC, 78 N.J. 98 (1978), our Supreme Court construed this statutory language to command negotiations over such procedural details as "time restrictions, the number of steps in the grievance procedure, the forum for resolution at each step, and the forum for final, binding resolution." See also New Jersey State Troopers, P.E.R.C. No. 81-81, 7 NJPER 70 (¶12026 1981) (both parties may participate in negotiations over selection of person or forum to render final and binding decision on grievances); Old Bridge Tp., P.E.R.C. No. 91-56, 17 NJPER 57 (¶22024 1990) (employer repudiated grievance procedure by substituting hearing before designee for meeting with mayor at step 5); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987) (requiring negotiations over proposal to

reduce the grievance procedure to two steps and to eliminate the steps between the police chief or officer in charge and the council or its designee); cf. Plumbers Local Union No. 44 (Bingham Mechanical & Metal Products, Inc., 162 NLRB 1343 (1967)) (contract called for joint grievance board to hear grievances; employer could not instead designate attorney to act on its behalf). Negotiating over the levels of authority to discuss and decide grievances is necessary for the parties to agree on a grievance procedure that provides fair, prompt, inexpensive and binding dispute resolution. Contrast Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-46, 22 NJPER 35 (¶27017 1995) (restraining arbitration over grievance contesting use of second administrator to take notes at hearing conducted by first administrator; no change in level of authority for responding to grievance).

In this case, the proposed level of authority for presenting first step grievances would be the office of the Chief of Investigations and either the Chief or his or her designee would meet with the grievant and a PBA representative to discuss the grievance at that level. Given section 5.3, West Windsor, and the other cited cases; given the discretion granted the Chief of Investigations to designate a representative to decide grievances at that step; and absent any specific factual reasons for distinguishing the relevant legal authority, we hold that this proposal is mandatorily negotiable.

Article XVII of the predecessor contract is entitled Work Rules. This article provides:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

This language tracks N.J.S.A. 34:13A-5.3. Because this clause is consistent with the statute and not contradictory, its proposed inclusion in the successor contract is mandatorily negotiable.

Borough of Mountainside, P.E.R.C. No. 83-94, 9 NJPER 81 (¶14044 1982). See generally West Windsor Tp. v. PERC, 78 N.J. 98, 107 (1978).

#### ORDER

The following provisions or proposals are mandatorily negotiable:

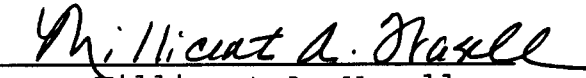
1. The proposed clause entitled Preservation of Rights.
2. The preamble to the predecessor contract.
3. Article XXIV of the predecessor contract.
4. The PBA's proposal to include longevity benefits and holidays in base pay for salary and overtime purposes.
5. The first paragraph of the proposed clause entitled Legal Aid and the second paragraph of the clause to the extent, if any, it seeks to have applicable portions of the Law Enforcement Protection Act and the parties' contract apply to the terms and conditions of employment of corrections officers.

6. The proposed addition to Article XVI of the predecessor contract.
7. The proposal to make minor disciplinary matters subject to the grievance procedure.
8. The proposed change in the grievance procedure.
9. Article XVII of the predecessor contract.

The following provisions or proposals are not mandatorily negotiable:

1. The second paragraph of the Legal Aid proposal to the extent, if any, it seeks to have the Law Enforcement Protection Act and the parties' contract apply to circumstances beyond the terms of that statute or the terms and conditions of employment of corrections officers.
2. The proposal making discipline cases, except discharge, subject to binding arbitration.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners DiNardo, Katz, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

DATED: July 24, 2003  
Trenton, New Jersey  
ISSUED: July 25, 2003