

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. SN-2002-54

P.B.A. LOCAL 44,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of aspects of a police promotional system proposed for inclusion in a collective negotiations agreement between the Township of Maplewood and P.B.A. Local 44. The Commission finds that interviews by the Township committee and weight to be given to responses in interviews are not mandatorily negotiable. The Commission concludes that given the subjective nature of promotional interviews, it cannot require the employer to negotiate the specific criteria it must use in assessing candidate responses to the specified topics. The parties may, however, negotiate over how many days' notice are required before interview subjects can be changed since that issue is predominately procedural. The Commission concludes that a proposal that the Township Committee's caucus following promotional interviews be taped, is not mandatorily negotiable. The Commission finds that our Supreme Court has noted that excluding the public from executive session discussions of personnel matters permits open and free comments and evaluations of employees that would be inhibited if the discussion were to be conducted publicly. South Jersey Publishing Co., Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 493 (1991). The Commission holds that the issue of whether the Township must negotiate over a proposal that Committee members not know the scores and ranking of candidates before the interviews is not mandatorily negotiable. The Commission concludes that the Township's interest in knowing as much as possible about promotional candidates before the interviews outweighs the employees' interest in insuring that interview scores will not be influenced by other factors. The Commission holds that the issue of whether the Township must negotiate over its decision not to have a written test for candidates for promotion to captain is not mandatorily negotiable, but a proposal that the Township announce new point allocations for captain promotions is mandatorily negotiable. The Commission finds that a proposal that the promotional system be subject to a one-year trial period is mandatorily negotiable to the extent the trial period applies to mandatorily negotiable promotional procedures.

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. 2003-51

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Appearances:

For the Petitioner, Genova, Burns & Vernioia, attorneys  
(Sandro Polledri, on the brief)

For the Respondent, Abramson and Liebeskind Associates  
(Marc Abramson, on the brief)

DECISION

On May 3, 2002, the Township of Maplewood petitioned for a scope of negotiations determination. The Township seeks a negotiability determination concerning a police promotional system.

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

P.B.A. Local 44 represents police officers excluding the chief. The Township and the PBA are parties to a collective negotiations agreement that expired on December 31, 1998. On December 8, 2000, an interest arbitrator issued an award establishing terms and conditions of employment through December 31, 2002. The parties then exchanged contract language, but they have not yet executed a successor agreement.

The parties have been involved in negotiations since approximately 1999 for the development of a police promotional system. This issue was apparently not considered by the interest arbitrator. On October 18, 2000, a joint recommendation for a promotional testing procedure for sergeants and lieutenants was prepared by the police chief and the PBA and was forwarded to the Township administrator for review. In June 2001, the Township drafted an Ordinance accepting most of the recommended procedures, but excluding a section which sought to have the top-scoring candidate promoted. The Ordinance provided that the top three candidates be interviewed by the Township committee, after which the Committee would select the candidate to be promoted.

The PBA was not satisfied with the draft Ordinance, particularly the procedure that enabled the governing body to hold interviews and make the final selection from the top three candidates. In addition, the PBA wanted the new promotional procedure to apply to captains, as well as sergeants and lieutenants.

On August 7, 2001, the Township Committee adopted the Ordinance with revisions which, in response to the PBA's concerns, included captains in the promotional system.

The PBA opposed the final version of the Ordinance and, on August 13, 2001, filed an unfair practice charge alleging that the Township violated the New Jersey Employer-Employee Relations

Act by unilaterally adopting and implementing the Ordinance. The parties agreed to negotiate over the Ordinance so the charge has been held in abeyance.

On March 19, 2002, the Township submitted its proposals. On April 17, the PBA submitted a response and counterproposals. The Township rejected the PBA's counterproposals as outside the scope of negotiations. This petition ensued.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. 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 or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, 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 firefighters, 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. [87 N.J. at 92-93; citations omitted]

We will consider only whether proposals are mandatorily negotiable. We do not decide whether contract proposals concerning police officers are permissively negotiable since the employer need not negotiate over such proposals or 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 PBA has raised concerns about certain sections of the Ordinance and the Township's proposed modifications. We will review only those portions of the Ordinance and the proposals and counterproposals specifically disputed by the parties.

The first issue involves interviews by the Township Committee. The PBA argues that this aspect of the revised Ordinance is unconstitutionally vague in describing the criteria the Committee will use to score each candidate in the subject areas. The PBA questions what weight will be given to positive responses and what will be a proper response. The PBA also objects to the Township's ability to change the subject areas of the interview with only 14 days' notice. The PBA has proposed that the subject areas contain measurable standards and it argues that its proposal is procedural and mandatorily negotiable.

The Township argues that formal interviews are a universally accepted method to meet candidates and evaluate their

skills and abilities. The Township points out that the interview is not a single criterion to determine promotions, but accounts for only a small portion of the overall score. Because the subject areas of the interview have been announced, and any change will be provided to the PBA within 14 days, candidates can prepare for the interview and can discuss the subject areas. The Township argues that the process is precise and contains elements consisting of written exams, oral exams, written evaluations, oral interviews, and consideration of seniority.

It has long been held that a public employer has a non-negotiable managerial prerogative to set promotional qualifications and criteria. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 92 (1978). The Township has a managerial prerogative to have its Township Committee interview promotional candidates. Given the subjective nature of promotional interviews, we cannot require the employer to negotiate the specific criteria an employer must use in assessing candidate responses to the specified topics. The parties may, however, negotiate over how many days' notice are required before interview subjects can be changed. That issue is predominately procedural.

The next issue involves the PBA's proposal that the Township Committee caucus following the interviews be taped. The Township argues that under Burke v. Franklin Tp., 261 N.J. Super. 592 (App. Div. 1993), it should not be required to negotiate over the taping of the caucus discussion. The PBA responds that the fact

that Burke does not require taping does not make it non-negotiable. The PBA argues that by taping the caucus meeting, any appearance of impropriety would be eliminated.

Burke held that the employer was not required to tape interviews. Here, there is no dispute that interviews will be recorded. The dispute is over whether the caucus discussion will be recorded. Our Supreme Court has noted that excluding the public from executive session discussions of personnel matters permits open and free comments and evaluations of employees that would be inhibited if the discussion were to be conducted publicly. South Jersey Publishing Co., Inc. v. New Jersey Expressway Auth., 124 N.J. 478, 493 (1991). Given this precedent, we find the PBA's proposal to be not mandatorily negotiable.<sup>1/</sup>

The next issue is whether the employer must negotiate over a PBA proposal that Committee members not know the scores and ranking of candidates before the interviews. The PBA argues that this proposal is procedural in nature and mandatorily negotiable. The Township argues that it has a managerial prerogative to provide the Committee with this information so that it can fully evaluate the candidates based on the entire record.

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<sup>1/</sup> Rice v. Union Cty. Reg. H.S. Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), discusses an exception to the Open Public Meeting Act, N.J.S.A. 10:4-15, that permits all employees whose rights could be adversely affected to request a public hearing. The Court held, however, that this right is a personal one that cannot be transferred to a union representative by implication. Id. at 75.

The Township will already know that the interviewees are the three highest-ranked candidates. On balance, we believe that the Township Committee's interest in knowing as much as possible about promotional candidates before the interviews outweighs the employees' interest in ensuring that interview scores will not be influenced by other factors.

The next issue is whether the employer must negotiate over a proposal that multiple promotions be drawn from the final, post-interview, list of the top three candidates. The PBA argues that the Township could agree to promote employees based on their order on the promotional list. The Township argues that it has a managerial prerogative to interview three candidates for each opening so that there is always an adequate pool of candidates to be considered for supervisory positions.

While the Township could agree to promote based on its announced promotional list, see State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981), it has a managerial prerogative to interview as many candidates as it believes necessary before deciding on any particular promotion.

The next issue is whether the Township must negotiate over its decision not to have a written test for candidates for promotion to captain. The PBA argues that the deletion of the written test for captain candidates renders the Ordinance devoid of standards. It questions how captains will reach the maximum raw score if they do not take a written examination and points out that point



allocations under other sections would have to be different for captains. The Township argues that a public employer need not negotiate over whether a written examination is administered.

As we stated earlier, the Township has a prerogative to set promotional qualifications. That prerogative extends to deciding whether to have a written test for captain. The PBA may negotiate to have the Township announce new point allocations for captain promotions so that candidates will be on notice of how promotional points for captain are allocated. State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981).

The final issue concerns a PBA proposal that the promotional system be subject to a one-year trial period. The PBA states that its proposal is mandatorily negotiable and has not been challenged by the Township. The Township responds that it stated its objection to a trial period by filing this scope petition.

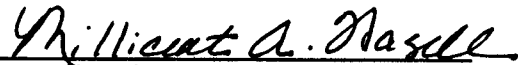
The PBA's proposal that the promotional system be subject to a one-year trial period is mandatorily negotiable to the extent the trial period applies to mandatorily negotiable promotional procedures. The Township has a prerogative to announce that non-negotiable aspects of the promotional system shall be permanent.

#### ORDER

The following are mandatorily negotiable: the number of days' notice of changes in interview subjects; the proposal that the Township announce new point allocations for captain promotions; and the proposal that mandatorily negotiable promotional procedures be subject to a one-year trial period.

The following are not mandatorily negotiable: the proposal that caucus meetings be recorded; the requirement that promotional candidates be interviewed by the Township Committee; the proposal that Township Committee members not know the scores of earlier aspects of the promotional process before interviewing candidates; the decision that candidates for captain need not take a written test; the proposal requiring multiple promotions from among only three candidates; and the proposal that non-negotiable aspects of the promotional process be subject to a one-year trial period.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: January 30, 2003  
Trenton, New Jersey  
ISSUED: January 31, 2003