

P.E.R.C. NO. 2004-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WINSLOW,

Petitioner,

-and-

Docket No. SN-2004-14

WINSLOW TOWNSHIP POLICE
ASSOCIATION (SERGEANTS),

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of proposals which the Winslow Township Police Association (Sergeants) seeks to submit to interest arbitration for inclusion in a successor collective negotiations agreement with the Township of Winslow. The Commission concludes that a proposal concerning salary guide credit for prior service in other jurisdictions; a proposal relating to lump sum payments for unused sick leave time; a modified proposal relating to health benefits upon retirement; a proposal to increase life insurance, and a proposal concerning clothing allowance are all 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 Petitioner, Zeller & Bryant, attorneys
(James W. Burns and Michael J. Needleman, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On August 4, 2003, the Township of Winslow petitioned for a scope of negotiations determination. The Township seeks a negotiability determination concerning issues that the Winslow Township Police Association (Sergeants) seeks to submit to interest arbitration for inclusion in a successor collective negotiations agreement.

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

The Association represents all police sergeants. The parties' collective negotiations agreement expired on December 31, 2002 and the Association has petitioned for interest

arbitration. The Township disputes the negotiability of five of the Association's proposals.

In Paterson Police PBA 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 officers and firefighters. 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 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).

Article VI of the expired agreement is entitled Rates of Pay. Section 2 provides:

Police sergeants progressive rates shall begin on the anniversary date of his hire, except that no period of valid suspension shall be included therein.

The Association has proposed the following underlined changes:

Except as addressed elsewhere in this agreement, Police Sergeants progressive rates shall begin on the anniversary date of his/her hire, and will reflect his/her total time with Winslow Township, except that no period of valid suspension shall be included therein.

The Township argues that credit for years of service neither intimately nor directly affects employee work and welfare; the proposal would affect the integrity of the pension system; and negotiations would interfere with the Township's determination of governmental policy. It asserts that a sergeant in another jurisdiction who is nearing retirement would be motivated to seek a transfer to the Township in order to collect an increased pension benefit, even though that officer has not served the residents of Winslow Township.

The Association responds that initial salary guide placement is mandatorily negotiable and that salary guide credit for prior

law enforcement experience outside the Township is also mandatorily negotiable.

The Township replies that credit for time served is not mandatorily negotiable because any individual salary adjustments that are granted primarily in anticipation of the member's retirement are specifically excluded from that which may be calculated for pension purposes.

Salary guide credit for prior service in other jurisdictions intimately and directly affects employee work and welfare and does not significantly interfere with any governmental policy determinations. Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 16 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992). Accordingly, the Association's proposal is mandatorily negotiable. The effect of the proposal, if granted, on pension credit is for the Division of Pensions to determine. See Gloucester Cty. Prosecutor, P.E.R.C. No. 2002-44, 28 NJPER 141 (¶33045 2002).

Article XII is entitled Disability and Sick Leave Pay.

Section 2 provides, in part:

Sick leave not used and not taken as compensatory time shall accumulate after January 1, 1989, until retirement in good standing. Effective January 1, 1998, upon retirement in good standing, payment shall be made at seventy-five (75%) percent up to a maximum of \$20,000.00.

The Association has proposed:

This section to continue in its current language on sell back at 75% up to a maximum of \$20,000.00 at retirement if a Sergeant desires this option. If however a sergeant chooses to place unused sick time at retirement in a "bank," to be used to offset the Sergeants portion of his/her retirement medical insurance, the time will be entered at a rate of 100% with a maximum of 2000 hours being placed into the bank. The funds from the "bank" for the Sergeants portion of his/her medical insurance will be based on the Sergeant's rate of pay at his/her retirement. At retirement, a Sergeant may have to choose which option he/she will take. There is no splitting of options as addressed above. With mutual agreement of the retiree and the Township, a Sergeant may also place any unused vacation, and compensatory time into the "bank" to be used for the purposes addressed previously. The rate of input will also be 100% based on the rate of pay at the Sergeant's retirement. At no point can the total bank hours exceed 2000 hours. Any left over vacation/compensatory time will be paid to the retiring Sergeant at the rate of pay he/she retires at. Unused sick time in excess of the 2000 hours cannot be sold back.

The Township argues that sick leave hours may intimately and directly affect employee work and welfare, but the cash value of those hours at retirement does not. The Township asserts that cash payment on retirement for unused sick leave is an incentive for sergeants to use time for only sick leave purposes and that it has a managerial prerogative to decide to what extent a cash incentive is to be paid.

The Association responds that cash payment for accrued and unused sick leave time is mandatorily negotiable.

The Township replies that regard for the potential impact on the Township's budget is a fundamental element in deciding whether a subject is arbitrable.

The size of a cash payment for unused sick leave upon retirement intimately and directly affects employee work and welfare. Concern for the financial impact on the employer does not outweigh the employees' interest in negotiating over this or other traditional terms and conditions of employment. Accordingly, lump sum payments for accumulated sick leave have been held to be mandatorily negotiable. See, e.g., Monroe Tp. Bd. of Ed., P.E.R.C. No. 93-9, 18 NJPER 428 (¶23194 1992). We so hold here.

Article XIII is entitled Medical Insurance. Section 5 provides that upon retirement a sergeant with 25 years full-time service and his/her spouse shall receive the same medical coverage in effect on the date of retirement, at a co-pay rate of 65% for the Township and 35% for the retiree. The Association proposes changing the co-pay to 80% for the Township and 20% for the retiree.

Citing the uniformity requirements of N.J.S.A. 40A:10-23 and Pemberton Tp., P.E.R.C. No. 2000-5, 25 NJPER 369 (¶30159 1999), the Township argues that since other Township employees receive less than 80% post-retirement medical coverage, the Association's proposal is non-negotiable.

The Association responds that, consistent with Pemberton, it modified its proposal to delay implementation of the proposed changes until any uniformity requirements are met.

The Township replies that its other negotiations units have agreed to post-retirement health insurance benefits that meet the individualized needs of those units and that are different from the Association's proposed benefits. It contends that the Association cannot assert that it will wait until the rest of the Township's bargaining units receive comparable health insurance benefits.

Under the Local 195 balancing test, health insurance benefits upon retirement are mandatorily negotiable. Pemberton accommodates the negotiability of benefits with the uniformity requirements of N.J.S.A. 40A:10-3. The Association's modified proposal may therefore be submitted to interest arbitration.

Article XIV is entitled Life Insurance and provides that each sergeant employed for a period of not less than 90 days shall be covered by life insurance premiums paid by the Township in the amount of \$10,000 double indemnity. The Association proposes increasing the amount to \$20,000.

The Township argues that this issue does not intimately and directly affect the work and welfare of the sergeants. It also argues that an increase in the life insurance benefit would significantly diminish the Township's tax resources.

The Association responds that life insurance for employees is mandatorily negotiable.

The Township replies that life insurance is a non-economic fringe benefit at the Township's prerogative.

Life insurance intimately and directly affects employee work and welfare. City of Jersey City, P.E.R.C. No. 81-141, 7 NJPER 349 (¶12157 1981). The employer's fiscal concerns do not outweigh the employees' interests in being able to negotiate over increases in insurance benefits. Accordingly, the proposal may be submitted to interest arbitration.

Article XVII is entitled Equipment, Clothing Allowance and College Credits. With respect to clothing allowance, it provides that each sergeant shall receive \$1,220 on each anniversary of his/her employment to be used for purchasing new or replacement clothing, maintenance of clothing and equipment. The Association now proposes that the clothing allowance be adjusted in accordance with the Consumer Price Index.

The Township argues that an increase in clothing allowance will place a substantial limitation on its policymaking powers in that it will be faced with a diminished budget for Township services. The Association responds that clothing allowance is a mandatorily negotiable subject. The Township replies that its decision to provide a clothing allowance, or to reimburse


employees for the costs of damaged or worn out uniforms, is a governmental policy determination.

Applying Local 195, we have long held that contract proposals for clothing allowances are mandatorily negotiable. See, e.g., Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). The employer has not presented any basis for departing from this precedent.

ORDER

The Association's proposals to amend Article VI, Section 2; Article XII, Section 2; Article XIII, Article XIV and Article XVII are mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: December 18, 2003
Trenton, New Jersey
ISSUED: December 19, 2003