

P.E.R.C. NO. 2004-75

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS COUNTY PROSECUTOR'S OFFICE,

Petitioner,

-and-

Docket No. SN-2004-37

P.B.A. LOCAL 327,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a proposal made by P.B.A. Local 327 during negotiations for a successor collective negotiations agreement with the Morris County Prosecutor's Office. The Commission concludes that the PBA's proposal to increase the paid work hours of investigators from 37 1/2 to 40 hours per week 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 Petitioner, Laufer, Knapp, Torzewski & Dalena, LLC, attorneys (Fredric M. Knapp, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, P.C., attorneys (Robert A. Fagella, on the brief)

DECISION

On January 16, 2004, the Morris County Prosecutor's Office petitioned for a scope of negotiations determination. The employer seeks a determination concerning the negotiability of a proposal made by P.B.A. Local 327 during interest arbitration proceedings for a successor collective negotiations agreement. The PBA proposes increasing the paid work hours of investigators from 37 1/2 hours to 40 hours per week.

The parties have filed briefs and exhibits. The employer has submitted the certification of its labor counsel and a reply certification of the first assistant prosecutor. The PBA has

submitted the certification of the PBA president. These facts appear.

The PBA represents all investigative personnel in the Prosecutor's office below the rank of sergeant. The parties' most recent collective negotiations agreement expired on December 31, 2002. On December 23, 2003, the PBA petitioned for interest arbitration.

The Prosecutor's office has normal office hours of 8:30 a.m. to 4:30 p.m. Attorneys, clerical staff, and administrative staff work 35 hours per week. The PBA asserts that investigators do not have regular office hours. Before January 1, 2001, investigators were paid for a 35 hour workweek and had one hour each day of unpaid lunch. After that date, they were paid for a 37 1/2 hour workweek and had 1/2 hour each day of unpaid lunch.

The PBA proposed that investigators' paid work hours be increased from 37 1/2 to 40 hours per week. The employer responded that the office does not need employees to work 40 hours per week to get the job done. The PBA responded that it would be willing to forego a wage increase in the year in which the 40-hour proposal was put into effect. No written proposal was submitted.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

"The Commission is addressing the abstract issue: is the subject

matter in dispute within the scope of collective negotiations."

We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the 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 a proposal is mandatorily negotiable. We do not decide whether contract proposals

concerning police officers or firefighters are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

No statute or regulation preempts negotiations by mandating that the employer use a particular work schedule. Compare Local 195, IFPTE v. State, 88 N.J. 393, 405-406 (1982). The question, then, is whether, based on a balancing of the parties' interests in light of the facts, the proposed increase in paid work hours involves a mandatorily negotiable term and condition of employment. Local 195 at 404; see also City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574 (1998).

The employer concedes that work schedules of individual employees are mandatorily negotiable. However, it argues that this case is not about individual work schedules, but rather about the hours and days it will deliver a government service.

The PBA agrees that an employer has the right to determine when its services will be offered, but asserts that investigators work irregular hours depending on the particular assignments and duties. The PBA suggests that the increase in work hours could be accommodated within the current work day by paying unit members for their lunch break.

On the one hand, work hours are among the most fundamental terms and conditions of employment. Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1, 8-9 (1973); Burlington Cty. Coll. Faculty Ass'n v. Bd. of Trustees, 64 N.J. 9 (1973); State Supervisory at 67; Woodstown-Pilesgrove Reg. Sch. Dist. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 589 (1980); Local 195; see also Troy v. Rutgers, 168 N.J. 364 (2001) (employer did not have managerial prerogative to determine number of days employee could work). The Legislature has also expressly designated work hours as a negotiable terms and conditions of employment for police officers and firefighters. N.J.S.A. 34:13A-14 et seq.; N.J.S.A. 34:13A-16g(2) and (8). Generally included in the duty to negotiate over work hours is the duty to negotiate over the length of the work year, workweek and workday. Galloway Tp. Bd. of Ed. v. Galloway Tp. of Ed. Sec., 78 N.J. 1, 8 (1978). Also included is the duty to negotiate, upon request, over paid, duty-free lunch periods. Trenton Bd. of Ed., P.E.R.C. No. 92-91, 18 NJPER 133 (¶23063 1992).

On the other hand, an employer generally has a prerogative to determine the hours during which it will offer its services. Local 195. However, the proposed addition of paid work hours does not appear to compromise this prerogative. The PBA's proposal for a paid 40-hour workweek can apparently be met within the confines of the employees' normal workweek and the employer's normal office hours by simply providing for a paid lunch period.

Applying the negotiability balancing test to the facts of this case, we therefore conclude that the employees' interest in negotiating over how many work hours will be considered compensable outweighs the employer's interest in determining that issue unilaterally. The investigators are removed from the labor market when they are either at work or at lunch; the employer may agree to pay employees for all of those hours; and the parties may also negotiate the rate of pay for any of those hours or any additional assigned hours. There is no significant interference with the employer's ability to determine when its offices will be open. The PBA proposal is mandatorily negotiable.

ORDER

The PBA proposal for a 40-hour workweek is mandatorily negotiable.

BY ORDER OF THE COMMISSION

A handwritten signature in cursive script, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present. Commissioner Mastriani abstained.

DATED: May 27, 2004
Trenton, New Jersey
ISSUED: May 28, 2004