

P.E.R.C. NO. 2004-79

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTHVALE,

Petitioner,

-and-

Docket No. SN-2004-50

NORTHVALE P.B.A. LOCAL 233,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Northvale P.B.A. Local 233 during negotiations for a successor collective negotiations agreement with the Borough of Northvale. The Commission concludes that a proposal concerning the definition of a grievance is mandatorily negotiable. The Commission holds that the PBA's proposal does not specifically require binding arbitration of grievances involving non-negotiable, managerial prerogatives and that should the PBA seek to arbitrate such grievances, the employer may petition for a restraint of arbitration.

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, Michael B. Ryan, attorney, on the brief

For the Respondent, Loccke & Correia, P.A., attorneys  
(Leon B. Savetsky, on the brief)

DECISION

On March 9, 2004, the Borough of Northvale petitioned for a scope of negotiations determination. The Borough seeks a negotiability determination concerning a successor contract proposal made by Northvale P.B.A. Local 233. The proposal concerns the definition of a grievance under the parties' negotiated grievance procedure.

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

The PBA represents all regular full-time police officers, excluding the captain and chief. The parties' most recent

collective negotiations agreement expired on December 31, 2003. On February 20, 2004, the PBA petitioned for interest arbitration. This petition ensued.

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. 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).

The parties' grievance procedure is set forth at Article XXXIV. The PBA has proposed adding the underscored language to the grievance definition:

For purposes of this Agreement, the term "grievance" means any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any employee(s) covered by this Agreement.

The Borough argues that the proposal is not mandatorily negotiable as it does not contain limitations required by case law. The PBA responds that it is seeking to broaden the

contractual definition of a grievance to include disputes arising over the interpretation, application or violation of any applicable rules or regulations or policies, agreements or administrative decisions affecting any covered employees.

N.J.S.A. 34:13A-5.3 requires employers to negotiate written policies setting forth grievance and disciplinary review procedures covering the interpretation, application or violation of policies, agreements and administrative decisions, including disciplinary determinations. West Windsor Tp. v. PERC, 78 N.J. 98 (1978). Grievance procedures can be broad, but unions may not submit grievances challenging non-negotiable managerial prerogatives to binding arbitration. The PBA's proposal does not specifically require binding arbitration of such disputes and is therefore mandatorily negotiable. See City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26 (¶17010 1985); State of New Jersey, P.E.R.C. No. 86-16, 11 NJPER 497 (¶16177 1985). Should the PBA seek to arbitrate such a grievance, the employer may petition for a restraint of arbitration.

ORDER

The PBA's grievance definition proposal is mandatorily negotiable.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", is written over a horizontal line.

Lawrence Henderson  
Chairman

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

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