

P.E.R.C. NO. 2004-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEST MILFORD,

Petitioner,

-and-

Docket No. SN-2004-41

P.B.A. LOCAL 162 and  
WEST MILFORD SUPERIOR  
OFFICERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of proposals submitted by P.B.A. Local 162 and West Milford Superior Officers Association for inclusion in successor collective negotiations agreements with the Township of West Milford. The Commission holds that a proposal concerning the definition of a grievance does not specifically require binding arbitration of major discipline and is mandatorily negotiable. The Commission holds that a proposal under Departmental Investigations dealing with officers' constitutional rights is not mandatorily negotiable because it does not intimately and directly affect employee work and welfare and deals with criminal, not departmental, investigations. The Commission holds that a proposal under Departmental Investigations concerning a 45-day cap on the time limit for bringing any charges against an officer is not mandatorily negotiable to the extent it would prohibit the filing of complaints by private individuals after 45 days. The Commission holds that a proposal concerning ammunition for weapons practice is, on this record, mandatorily negotiable because employees have an interest in having the employer supply and pay for ammunition necessary to maintain required weapons training and certification.

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

DECISION

On February 9, 2004, the Township of West Milford petitioned for a scope of negotiations determination. The Township seeks a negotiability determination concerning proposals that P.B.A. Local 162 and the West Milford Superior Officers Association seek to submit to interest arbitration for inclusion in successor collective negotiations agreements.

The parties have filed briefs and exhibits.<sup>1/</sup> These facts appear.

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<sup>1/</sup> The PBA acknowledges that the administrative fee portion of its "Extra Duty Rate" proposal is not mandatorily negotiable. The employer does not contest the negotiability of the balance of the proposal.

The PBA represents patrol officers, detectives and sergeants. The SOA represents lieutenants and captains. The parties' most recent collective negotiations agreements expired on December 31, 2003. On January 7, 2004, the unions petitioned for interest arbitration.

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).

Article III sets forth the parties' grievance procedures.

Section B, entitled Definition, provides:

The term "grievance" as used herein means any controversy arising over the interpretation, application or alleged violation of the terms and conditions of this Agreement, and may be raised by the PBA on behalf of an individual or individuals, or the Township. The following grievance procedure shall include issues involving minor discipline matters.

The unions propose the following new Section B:

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 Township argues that this proposal is too broad because it includes major discipline, which cannot be submitted to binding arbitration. The unions respond that the proposal does not mention major discipline and that it did not intend to drop the last sentence referencing minor discipline. The Township replies that the proposal must explicitly exclude major discipline from the broad language to be mandatorily negotiable.

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); see also 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). Major discipline of municipal and county police officers may be grieved, but not submitted to binding arbitration. State v. State Troopers Fraternal Ass'n, 134 N.J. 393 (1993). The unions' proposal does not specifically require binding arbitration of major discipline and is mandatorily negotiable. Should a union seek to arbitrate a grievance challenging major discipline, the employer may petition for a restraint of arbitration.

The PBA has submitted a proposal on Departmental Investigations. The employer disputes the negotiability of the underlined portions of two paragraphs.

7. In cases other than departmental investigations, if an officer is under arrest or if he is a suspect or the target of a criminal investigation, he shall be given his rights pursuant to the current decisions of the United States Supreme Court.
  
11. Under no circumstances shall an employee be subject to any charge whatsoever after 45 days. The 45 day period shall be calculated consistent with NJSA 40A:14-147. [emphasis added]

The Township argues that paragraph 7 is not mandatorily negotiable because a police officer cannot negotiate for greater protections during criminal investigations than other citizens would be accorded in criminal rather than departmental investigations. The PBA responds that the proposal merely provides that an employee under a criminal investigation is entitled to be given his rights under the current state of the law.

Paragraph 7 is not mandatorily negotiable because it does not intimately and directly affect employee work and welfare. Paterson. It addresses criminal, not departmental, investigations and does not address terms and conditions of employment. Our holding does not, however, diminish any employee's constitutional rights. These rights attach independent of any contractual protection.

The Township argues that N.J.S.A. 40A:14-147 provides that the 45-day requirement cannot apply to the filing of a complaint by a private individual and that paragraph 11 is not mandatorily negotiable to the extent that it would prohibit the filing of such a complaint. The PBA responds that the proposal does not refer to complaints by private individuals or prohibit the filing of such complaints. It argues that the Township may seek appropriate relief should the union seek to circumvent the statutory provision.

We addressed the negotiability of an identical provision in Cherry Hill Tp., P.E.R.C. No. 93-77, 19 NJPER 162 (¶24082 1993). We held that the provision was not mandatorily negotiable to the extent it would prohibit the filing of complaints by private individuals after 45 days. That holding applies here.

The SOA agreement contains an article entitled "Miscellaneous." It provides:

The Township will provide sixty (60) rounds of reload ammunition per month, provided by the present supplier, upon request provided that previously issued ammunition has been utilized by the employee.

The provisions of this section shall terminate upon purchase of reloading equipment by the Township or inability to secure ammunition from the present supplier.

The PBA's contract does not contain this provision. The unions have proposed new language to be included in the next contracts. That proposal has been stated as follows: "The Associations

propose that sufficient ammunition be provided by the employer for weapons practice."

The Township argues that, under prior case law, the quantity of ammunition to be supplied is a governmental policy matter that is not mandatorily negotiable. The unions argue that the proposal does not specify weapons or a particular type or quantity of ammunition, as did the proposals in the cases cited by the Township, and that the proposal permits required weapons training and qualification to promote safety.

On this record, we hold that the proposal is mandatorily negotiable. Employees have an interest in having the employer supply and pay for ammunition necessary to maintain required weapons training and certification. See New Jersey Transit, P.E.R.C. No. 97-125, 23 NJPER 298 (¶28137 1997), aff'd 314 N.J. Super. 129 (App. Div. 1998) (cost of training is mandatorily negotiable). Employees have a further interest in having the employer supply and pay for training materials connected to their safety. The employer has not specified any governmental policy interest that would be affected by supplying and paying for ammunition for employees to practice for training and qualification.

Borough of Ringwood, P.E.R.C. No. 87-118, 13 NJPER 288 (¶18120 1987), held not mandatorily negotiable a contract proposal that pertained to the type and quantity of ammunition to



be supplied to police officers for quarterly qualification, and how often service weapon ammunition would be replaced. We noted that the union had not demonstrated a relationship to employee safety or employee payment for required supplies. Id. at 289 n.3. See also South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986) (employer has prerogative to determine types of weapons and quantities of ammunition to be supplied to officers and equipped in vehicles). The unions here do not seek to negotiate over what type or amount of ammunition will be used for regular duty or qualification. Those decisions are reserved to management. Nor do the unions seek to negotiate over how often ammunition for service weapons will be replaced. They simply want the employer to supply and pay for sufficient quantities of ammunition for weapons practice. On balance, the proposal strikes us as one that is predominantly economic and that would not significantly interfere with any governmental policymaking decision if included in a successor agreement. It is therefore mandatorily negotiable.

#### ORDER

The following contract proposals are mandatorily negotiable: the proposed Article III, Section B, and ammunition for weapons practice.

The following contract proposals are not mandatorily negotiable: paragraph 7 of "Departmental Investigations," and paragraph 11 of "Departmental Investigations" to the extent it would prohibit the filing of complaints by private individuals after 45 days.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson  
Chairman

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

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