

P.E.R.C. NO. 2005-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LOWER,

Petitioner,

-and-

Docket No. SN-2005-011

P.B.A. LOCAL 59,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a scope of negotiations petition filed by the Township of Lower. The petition seeks a determination that the implementation of a prior police work schedule for employees represented by P.B.A. Local 59 is a non-negotiable managerial prerogative. The Commission holds that this petition is untimely under N.J.A.C. 19:16-5.5(c).

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, Anthony P. Monzo, P.C., attorneys
(Anthony P. Monzo, on the brief)

For the Respondent, Cohen, Leder, Montalbano &
Grossman, LLC, attorneys (Bruce D. Leder, on the brief)

DECISION

On August 10, 2004, the Township of Lower petitioned for a scope of negotiations determination. The Township seeks a determination that the implementation of a prior police work schedule for employees represented by P.B.A. Local 59 is a non-negotiable managerial prerogative.

The PBA represents all patrol officers and sergeants in the department. The parties' collective negotiations agreement expired on December 31, 2003. The parties are in negotiations for a successor agreement. On February 18, 2004, the PBA petitioned for interest arbitration. On March 18, the Township submitted a response to the petition. The response listed "Determination of work period" as an additional economic issue in

dispute. The parties' expired agreement sets forth an 8-hour police work schedule. However, in 2001, the Township changed to a 12-hour schedule, which the officers continue to work. The contractual work schedule provision was never amended to incorporate a 12-hour schedule.

This scope petition was filed nearly six months after the interest arbitration petition. The PBA asserts that the petition should be dismissed as untimely under N.J.A.C. 19:16-5.5(c). That regulation requires scope petitions to be filed within 14 days of the receipt of the filing of an interest arbitration petition and specifies that the failure to file a timely petition will constitute an agreement to arbitrate all unresolved issues.^{1/} The PBA argues that the parties have met twice, on May

^{1/} N.J.A.C. 19:16-5.5(c) provides that:

Where a dispute exists as to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the Commission a petition for scope of negotiations determination pursuant to N.J.A.C. 19:13. This petition must be filed within 14 days of receipt of the notice of filing of the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

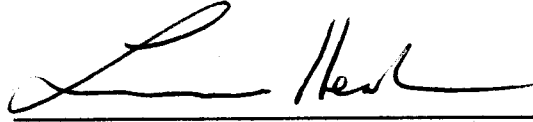
24 and August 10, 2004, with the interest arbitrator in an attempt to resolve the differences concerning the work schedule issue, and to permit this petition to go forward will further delay the processing. The Township has not responded to this argument.

We dismiss the Township's scope petition. The timeline set forth in N.J.A.C. 19:16-5.5(c) structures the interest arbitration process; ensures that the parties and the arbitrator know the nature and extent of the controversy at the outset; and fosters the statutory goal of providing for an expeditious, effective and binding procedure for resolution of disputes between employers and police. Wyckoff Tp., P.E.R.C. No. 2004-63, 30 NJPER 107 (¶43 2004). Scope petitions filed after the time period set in N.J.A.C. 19:16-5.5(c) are presumptively time-barred, although we will consider, on a case-by-case basis, arguments that N.J.A.C. 19:16-5.5(c) should be relaxed. Borough of Roseland, P.E.R.C. No. 2000-46, 26 NJPER 56 (¶31019 1999); N.J.A.C. 19:10-3.1. The Township has not shown good cause or unusual circumstances to relax N.J.A.C. 19:16-5.5(c).

ORDER

The scope of negotiations petition is dismissed.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson
Chairman

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

DATED: October 28, 2004
Trenton, New Jersey
ISSUED: October 28, 2004