

P.E.R.C. NO. 2005-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-2004-078

ORANGE POLICE SUPERIOR OFFICERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of proposals or articles sought to be included in a successor collective negotiations agreement between the City of Orange Township and the Orange Police Superior Officers Association. The Commission does not address the City's health benefits proposal since both parties agree that the employer cannot implement premium sharing for dependents that does not meet the uniformity requirements under the State Health Benefits Program. The Commission finds the proposal to have overtime paid by separate check to be not mandatorily negotiable. The Commission finds a training proposal to be mandatorily negotiable to the extent it concerns course work separate from and in addition to the employer's mandatory training courses.

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, Lum, Danzis, Drasco & Positan, LLC,
attorneys (Domenick Carmagnola, of counsel; Ramon
Rivera, on the brief)

For the Respondent, Fox & Fox, LLP, attorneys
(David I. Fox, of counsel; Daniel J. Zirrith, on the
brief)

DECISION

On June 7, 2004, the City of Orange Township petitioned for a scope of negotiations determination. The City seeks a negotiability determination concerning proposals or articles sought to be included in a successor collective negotiations agreement between the City and the Orange Police Superior Officers Association.

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

The SOA represents superior officers in the ranks of sergeant, lieutenant and captain. The parties' most recent

agreement expired on December 31, 2003. The parties are negotiating for a successor agreement. On May 7, 2004, the SOA 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).

Health Insurance

The City is in the State Health Benefits Program (SHBP). Under the SHBP, the employer must pay the employee's cost of coverage and may pay any portion of the cost for dependent coverage. An employer who elects to pay any portion of the cost of dependent coverage must meet a uniformity requirement of paying the same proportion of dependent coverage for all covered employees. N.J.A.C. 17:9-5.4(b). This employer currently pays the full cost of dependent coverage. It proposes to have unit employees enrolled in the traditional plan contribute toward the cost of dependent coverage. In its interest arbitration petition, the SOA contended that the employer's proposal does not

meet the uniformity requirement of the SHBP. The SOA has not filed its own scope of negotiations petition and asks us not to permit the employer to seek a negotiability determination on its own proposal.

In Ocean Tp., P.E.R.C. No. 95-12, 20 NJPER 331 (¶25172 1994), aff'd 21 NJPER 324 (¶26208 App. Div. 1995), we held that a proposal to share the cost of dependent coverage was mandatorily negotiable so long as it set forth that it would take effect only after the uniformity requirement set forth in N.J.A.C. 17:9-5.4(b) was met. Both parties agree that the employer may not implement premium sharing for dependents that does not meet the uniformity requirement of the SHBP. Accordingly, we need not address this issue further.

Overtime

Article X is entitled Overtime. It provides, in part, that employees will be paid time and one-half for work in excess of eight hours in a daily period. The SOA proposes the following new section:

Any overtime owed an employee above one (1) regular overtime shift (currently 8 hours) shall be paid to said employee by separate check.

The City argues that it has a prerogative to pay employees by single or multiple checks and that the proposal violates the Fair Labor Standards Act, 29 U.S.C. §201 et seq., (FLSA), since

it would require that overtime be paid for in cash and would prohibit payment by compensatory time off.

The SOA responds that City has not cited any authority for its asserted prerogative to pay employees by single or multiple checks, and the FLSA does not permit the City to provide compensatory time off in lieu of overtime compensation because the parties' agreement does not provide for compensatory time in lieu of overtime.

In Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 89-23, 14 NJPER 576 (¶19243 1988), we restrained arbitration over a grievance challenging the issuance of one paycheck, rather than two, to staff who performed extracurricular duties. We found that receiving two paychecks instead of one did not "intimately and directly affect" employee work and welfare. In this case, the SOA has not shown how this proposal would affect employee work and welfare. We therefore follow Old Bridge and find that the proposal is not mandatorily negotiable. Accordingly, we need not address the impact of the FLSA.

Training

The SOA proposes that:

Employees shall be allowed to attend any three New Jersey Police Training Commission courses, to be paid by the City, each calendar year. The City may pick no more than two of the three courses, with the employee choosing at least one course. The

course selections must be chosen prior to the calendar year of attendance.

The City argues that a public employer has a managerial prerogative to require training and to determine how to train employees. The City admits that it has an obligation to negotiate over such issues as compensation for training and paying for the cost of training. It argues, however, that it is not required to negotiate over whether officers or which officers should receive additional training or which training programs it deems most appropriate and therefore it is not required to negotiate over the selection of training courses.

The SOA responds that since the training courses are in addition to those already provided by the City, the training is similar to course work for which paid tuition is mandatorily negotiable. Under its proposal, the City will continue to direct the regular training it has provided in the past, and will be permitted to select two of the three additional police training courses.

An employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be trained. See Wayne Tp., P.E.R.C. No. 98-85, 24 NJPER 71, 73 (¶29040 1997); Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). However, an employer may agree to reimburse employees for tuition payments for work-related

courses. Wayne; Dunellen; Hackettstown; Burlington Cty. College,
P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989). Based on these precedents and applying the negotiability balancing test to the particular facts of this case, we find this article is mandatorily negotiable to the extent it concerns course work separate from and in addition to the employer's mandatory training courses. It advances the employees' interest in being more knowledgeable about policing and does not significantly interfere with the employer's right to determine what they must know to do their jobs.

ORDER

The SOA's overtime proposal is not mandatorily negotiable.

The SOA's training proposal is mandatorily negotiable to the extent it concerns course work separate from and in addition to the employer's mandatory training courses.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

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

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