

P.E.R.C. NO. 2005-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF STAFFORD,

Petitioner,

-and-

Docket No. SN-2005-029

P.B.A. LOCAL 297,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of proposals made by P.B.A. Local 297 during collective negotiations for a successor agreement with the Township of Stafford. The Commission finds that proposals to change the eligibility date for prior service credit, to change the departmental operator numbers of officers affected, and to change the starting salary guide step from 3 to 4, are mandatorily negotiable subjects. The Commission concludes that the PBA cannot negotiate over terms and conditions of employment of non-unit employees including special police, but finds the PBA's proposal concerning the hiring of special police officers to be mandatorily negotiable. The Commission concludes that the proposal can be applied to preserve the terms and conditions of employment of regular police officers, but not to be applied to determine terms and conditions of employment of special police officers. The Commission finds an article that provides that the on-call policy shall comply with the Fair Labor Standards Act is mandatorily negotiable as it requires compliance with the FLSA, and is not preempted by it.

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, Youngblood, Corcoran, Lafferty,
Hyberg & Waldman, P.A., attorneys (Mitchell Waldman, on
the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Charles E. Schlager, Jr., on the brief)

DECISION

On November 12, 2004, the Township of Stafford petitioned for a scope of negotiations determination. The Township asserts that certain proposals made by P.B.A. Local 297 during collective negotiations for a successor agreement are not mandatorily negotiable.

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

The PBA represents patrol officers and detectives. The parties' most recent agreement expired on December 31, 2004. The PBA has 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. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters. The Court stated:

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 consider only whether the provisions are mandatorily negotiable. We do not decide whether contract proposals concerning police officers are permissively negotiable as a public employer is not required to 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).

Credit for Prior Service

Article IV is entitled "Prior Service." It provides:

A. Police Officers appointed to full time permanent positions who have previously served as full time (defined as those working at least 40 hours per week) "Special Police officers" for the Township of Stafford prior to 1/1/02, shall receive full day to day credit for time served as a full time special police officer for purposes of:

- . Determining their salary on the salary guide
- . Years of Service for longevity calculation
- . Years of Service for selection of vacation

These provisions are not meant to be retroactive in any way. For purposes of interpreting this section, these provisions in Section "A" shall apply only to officers with departmental operator numbers, 426, 427, 428, 429 and 432.

* * *

C. A full time police officer who previously worked for another municipality for at least 5 years as a police officer on a full-time basis shall be appointed to the 3rd step on the salary guide or higher at the discretion of the township.

The Township challenges the negotiability of the PBA's proposals to change the eligibility date in Section A to January 1, 2005; change the operator numbers in Section A to 428, 439, 440, 441 and 442; and change Section C to provide that officers with five years of law enforcement experience start on salary step 4 rather than 3.

The Township argues that although these issues are not fully preempted and may touch on employee work and welfare, they are clearly managerial prerogatives. The PBA responds that it is seeking to negotiate compensation for special police officers only after they have been hired as regular police officers and that using prior service to determine salary guide placement, longevity and vacation is mandatorily negotiable.

A public employer is required to negotiate over the salary guide placement of newly hired police officers based on their prior law enforcement service. Middletown Tp. and Middletown PBA Local 124, 166 N.J. 112 (2000), aff'g 334 N.J. Super. 512 (App. Div. 1999). This principle also covers crediting prior service toward longevity payments, vacation days and sick leaves. See Middlesex Cty. Prosecutor and PBA Local 214, 255 N.J. Super. 333 (App. Div. 1992). The PBA's proposed changes intimately and

directly affect employee work and welfare and do not interfere with any governmental policymaking powers. Accordingly, the proposed changes are mandatorily negotiable.

Special Police

Article IX is entitled "Management." Section 3 provides:

Special Police officers shall be scheduled and utilized by the Township in accordance with the provisions of N.J.S.A. 40A:14-146.8 et seq.

The PBA proposes to add "hired," before "scheduled." The Township argues that N.J.S.A. 40A:14-118 gives the Township discretion to schedule and use special officers as it deems necessary and maintains that the PBA cannot negotiate terms and conditions of special police who are not members of the police force. The PBA agrees with the employer that it has no authority to negotiate over terms and conditions of employment for special police, but seeks to retain this provision in the contract to subject disputes over the application of N.J.S.A. 40A:14-146.8 et seq. to grievance arbitration.

N.J.S.A. 40A:14-118 is a general statute that does not preempt negotiations over terms and conditions of employment. See Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101, 102-103 (¶31041 2000).

We agree with both parties that the PBA cannot negotiate over the terms and conditions of employment of non-unit employees including special police. N.J.S.A. 40A:14-146.8 et seq. does,

however, touch upon the terms and conditions of employment of regular police officers. For example, it provides that special police officers may not be employed to replace or substitute for full-time, regular police officers or in any way diminish the number of full-time officers employed by the local unit.

N.J.S.A. 40A:14-146.16(b); see also Belmar Policemen's Benevolent Association v. Belmar, 89 N.J. 255, 259 n.1 (1982) (there may be issues pertaining to the use of special police that could be addressed in a grievance arbitration proceeding initiated by the majority representative of the regular police officers). A negotiated clause may legally be applied to preserve the terms and conditions of employment of regular police officers consistent with N.J.S.A. 40A:14-146.8 et seq. See, e.g., City of Egg Harbor City, P.E.R.C. No. 98-95, 24 NJPER 114 (¶29057 1998) (regular police could arbitrate claim that their overtime was reduced through the use of special police to fill in for absent officers). Under these circumstances, and in the absence of a specific argument as to how the contract provision is preempted by any of the laws governing special police, we conclude that the proposal is mandatorily negotiable. We hold that the provision can be applied to preserve the terms and conditions of employment of regular police officers, but cannot, as the parties acknowledge, be applied to determine the terms and conditions of employment of special police.

On-Call/FLSA

Section 4 of Article IX provides:

The Township agrees that the on-call policy for detectives and other officers shall at all times comply with the provisions of the Fair Labor Standards Act (29 U.S.C. §201) and applicable case law.

The Township argues that Section 4 is managerial and preempted by statute and should be excluded from interest arbitration because neither party is seeking to negotiate over the "on-call policy." The PBA responds that as on-call work affects compensation, Section 4 is mandatorily negotiable.

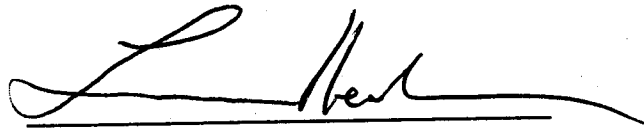
Compensation and other working conditions for law enforcement personnel on "stand-by" or "on-call" duty are generally mandatorily negotiable. See Kearny PBA Local No. 21 v. Town of Kearny, 81 N.J. 208 (1979); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502, 505 (¶16178 1985). Statutes addressing terms and conditions of employment can be incorporated by reference in a collective negotiations agreement. See State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). Inclusion of this provision in the parties' contract affords the PBA an opportunity to enforce alleged violations of the FLSA through the negotiated grievance procedure. It is possible that an FLSA mandate can preempt contrary terms of a collective agreement. This provision, however, requires compliance with the FLSA and is

therefore not preempted by it. Section 4 is mandatorily negotiable.

ORDER

A. Article IX, Sections 3 and 4, and the PBA's proposed changes to Article IV, Sections A and C and Article IX, Section 3 are mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

Lawrence Henderson
Chairman

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

DATED: January 27, 2005
Trenton, New Jersey
ISSUED: January 27, 2005