

P.E.R.C. NO. 2005-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF IRVINGTON,

Petitioner,

-and-

Docket No. SN-2005-026

IRVINGTON POLICE SUPERIOR
OFFICERS ASSOCIATION;
IRVINGTON P.B.A. LOCAL 29 and
IRVINGTON WORKERS' ASSOCIATION,

Respondents.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Township of Irvington for a restraint of binding arbitration of grievances filed by the Irvington Police Superior Officers Association, Irvington P.B.A. Local 29, and the Irvington Workers' Association. The grievances challenge a change in pay periods for the 2004 calendar year. The Commission holds that the timing of paychecks is mandatorily negotiable and therefore legally arbitrable. The Commission concludes that the Township changed the pay dates and that an arbitrator may decide whether the parties' contracts authorized the employer to make that change.

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 (Ramon Rivera, on the brief)

For the Respondents, Mets & Schiro, LLP, attorneys
(James M. Mets, on the brief)

DECISION

On November 5, 2004, the Township of Irvington petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of grievances filed by the Irvington Police Superior Officers Association, Irvington P.B.A. Local 29, and the Irvington Workers' Association. The grievances challenge a change in pay periods for the 2004 calendar year.

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

The SOA represents sergeants, lieutenants and captains in the police department. The PBA represents police officers below

the rank of sergeant. Their collective negotiations agreements are effective from January 1, 2003 through December 31, 2005.

The grievance procedures end in binding arbitration.

The Irvington Workers' Association represents full-time and part-time white and blue collar Township employees. Its collective negotiations agreement is effective from January 1, 2002 through December 31, 2006. The grievance procedure ends in binding arbitration.

The Salaries article in the SOA agreement provides, in part:

3. Salaries shall be paid in accordance with past practice in approximately equal payments at fourteen (14) day intervals (pay periods).

(a) The bi-weekly pay shall be determined by dividing the Gross Annual Salary by twenty-six (26).

(b) The daily pay shall be determined by dividing the bi-weekly salary by ten (10).

(c) The hourly rate shall be determined by dividing the daily salary by eight (8).

The PBA contract contains almost identical language. The IWA agreement provides that the "Township agrees to pay regular salary on a bi-weekly basis, subject to law. Pay day shall be on Friday."

After realizing that there were 27 pay periods in calendar year 2004, the Township notified employees that it would use a different pay cycle. After meeting with the unions and

employees, the Township agreed to maintain the 26-pay period year. On December 24, 2003, the Director of Revenue and Finance sent this memorandum to all employees:

On the pay date of December 19, 2003, all employees received a memo indicating that your salary was going to be paid over 27 pay periods for the calendar year 2004.

After receiving objections and concerns from the unions, and upon further discussions we have mutually agreed to maintain 26 pay periods for the 2004 calendar year as follows:

January 2, 2004	July 2, 2004
January 16, 2004	July 15, 2004
January 30, 2004	August 2, 2004
	(Replaces 07/31/04)
February 13, 2004	August 17, 2004
	(Replaces 08/13/04)
February 27, 2004	September 1, 2004
	(Replaces 08/27/04)
March 12, 2004	September 15, 2004
	(Replaces 09/10/03)
March 26, 2004	October 1, 2004
April 9, 2004	October 15, 2004
April 23, 2004	October 29, 2004
May 7, 2004	November 12, 2004
May 21, 2004	November 26, 2004
June 4, 2004	December 10, 2004
June 18, 2004	December 24, 2004

In order to maintain 26 pays, 4 pay dates were required to be adjusted (as listed above). By handling this issue in this manner all employees bi-weekly salary will remain the same, and at the same time address the concerns of all involved.

The regular bi-weekly cycle will continue into 2005, the first payroll will be January 7, 2005.

On July 30, 2004, the SOA filed a grievance on behalf of the SOA and the PBA alleging that the Township violated the parties' agreements by changing the pay dates for 2004. The grievance stated, in part:

1. Violation of Collective Bargaining Agreement Article X section 3

This section states "Salaries shall be paid in accordance with past practice in approximately equal payments at fourteen day intervals (pay periods.)"

a. July 30, 2004 represents 14 days from the last payday (every other Friday) and a notice was issued no paychecks would be issued until August 1, 2004).

b. Although the Township has issued memorandums to employees stating they were "revising the payroll calendar", the information [within] in those memorandums constitutes a [breach] of contract obligation.

c. The past practice has been established in when this bi-weekly pay causes 27 pays instead of 26 pays in a calendar year. The past practice has been to pay the employees. This occurs every 11 years.

d. Although termed "salaried", employees under this collective bargaining agreement are paid for work in excess of the assigned shift or on days off. Under the terms and conditions of the Fair Standard Labor Act we are not exempt employees and therefore not "salaried" (see Article IX section 2 entitled Overtime).

2. Violation of Collective Bargaining Agreement: Article IV

This section states: "Any new rules or modifications of present rules affecting the

working conditions or terms of employment shall be negotiated with the SOA prior to establishment in accordance with N.J.S.A. 34:13A-1.

a. The Township modified the terms of the employment with respect to pay without negotiations PRIOR TO THE ESTABLISHMENT.

b. Article XXI, Section 3 of the collective bargaining agreement state[s] the agreement incorporates the entire understanding of the parties on all matters which were or could have been subject to negotiations. The township failed to negotiate this change during the last negotiation as required before implementing any change. This was not a fact hidden from their view, and it was the Township's responsibility to recognize the need for 27 pays in 2004, and if they wished to negotiate it during the last negotiation session. The calendar year has not been subject to change.

c. Article XXI, section 4 of the collective bargaining agreement states the agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties. This change has not been agreed to by the SOA and is currently the subject of arbitration procedures.

The grievance sought an immediate halt to the alleged contract violation and 80 hours' pay at overtime rates absent such a halt.

The IWA also filed a grievance although that grievance has not been submitted to us. When the grievances remained unresolved, the unions demanded arbitration. The parties met with the arbitrator for a mediation session to discuss settlement, but were unable to resolve the matter. 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. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the merits of the grievances or any contractual defenses the employer may have. We specifically do not consider the Township's argument that the contracts authorized it to change the pay dates.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a

subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

Police officers have a broader scope of negotiations that includes permissive subjects of negotiations. Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981). No preemption issue is presented.

The Township acknowledges that the timing of paychecks is mandatorily negotiable, but argues that an employer may correct the payroll divisor to have salary payments match negotiated annual salaries. The unions argue that the grievances involve this legally arbitrable issue: did the Township violate the collective negotiations agreements by changing the day employees receive their paychecks?

Timing of paychecks is mandatorily negotiable and therefore legally arbitrable. See Brick Bd. of Ed., P.E.R.C. No. 2003-25, 28 NJPER 436 (¶33160 2002) and cases cited therein.

The Township asserts that in Passaic Community College, D.U.P. No. 93-8, 18 NJPER 464 (¶23209 1992), we noted in a similar dispute over a 27th pay period that the employer had a right to change a payroll divisor so that annual salaries would match the annual salaries in the contract. The cited decision, however, was issued by the Director of Unfair Practices in refusing to issue a Complaint based on an unfair practice charge. We sustained the refusal to issue a Complaint on other grounds,

holding that a dispute over adding a 27th pay period and changing the divisor used to compute salaries involved a negotiated salaries issue that had to be resolved through the contractual grievance procedure. Passaic Community College, P.E.R.C. No. 93-54, 19 NJPER 59 (¶24027 1992), recon. den. P.E.R.C. No. 93-67, 19 NJPER 147 (¶24072 1993). Consistent with our analysis in Passaic Community College, we conclude that whether the parties' agreements in this case permitted the Township to make the disputed adjustments or whether those agreements require the payment of additional salary every 11 years is an issue of contract interpretation subject to the parties' negotiated grievance procedures.

The Township's reliance on Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 89-23, 14 NJPER 576 (¶19243 1988), is also misplaced. In that case, we held that the employer's decision to issue one rather than two paychecks to employees holding extracurricular positions was not mandatorily negotiable. We found no negotiable effect on employees because the date, method and amount of payment had not been changed. Here, the Township changed pay dates and thus affected a mandatorily negotiable term and condition of employment. Whether the parties' contracts authorized the employer to make that change will be decided by an arbitrator.

ORDER

The request of the Township of Irvington for a restraint of binding arbitration is denied.

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, DiNardo and Katz voted in favor of this decision. Commissioner Mastroiani abstained. Commissioners Fuller and Watkins were not present. None opposed.

DATED: May 26, 2005
Trenton, New Jersey
ISSUED: May 26, 2005