

P.E.R.C. NO. 2007-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX/
ESSEX COUNTY PROSECUTOR,

Petitioner,

-and-

Docket No. SN-2006-085

P.B.A. LOCAL 325,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of two proposals made by P.B.A. Local 325 during successor contract negotiations with the County of Essex/Essex County Prosecutor. The County/Prosecutor asserts that a proposal concerning initial salary guide placement for new investigators and a proposal to create a Senior Investigator/Detective position are not mandatorily negotiable. The Commission concludes that initial salary guide placement is mandatorily negotiable. The Commission also concludes that a public employer has a managerial prerogative to establish a new job title and to determine what duties will be performed by the employees holding that title and that the PBA's second proposal intrudes on that prerogative.

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, Genova, Burns & Vernioia, attorneys
(Brian W. Kronick, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum
& Friedman, P.C. (Paul L. Kleinbaum, on the brief)

DECISION

On April 17, 2006, the County of Essex/Essex County Prosecutor petitioned for a scope of negotiations determination. The County/Prosecutor seeks a determination that two successor contract proposals made by P.B.A. Local 325 are not mandatorily negotiable. One proposal concerns the initial salary guide placement of new investigators. The other proposal concerns the creation of a Senior Investigator/Detective position.^{1/}

The parties have filed briefs and exhibits. The County/Prosecutor has submitted a certification from an executive

^{1/} The petition also contests the negotiability of a proposal that a PBA officer participate on a hiring panel. The PBA has withdrawn that proposal.

assistant prosecutor. The PBA has submitted the certification of a vice-president. These facts appear.

The PBA represents detectives and investigators. The parties' most recent agreement expired on December 31, 2005 and the parties are in negotiations for a successor agreement. The PBA petitioned for interest arbitration and the County/Prosecutor then filed this scope petition pursuant to N.J.A.C. 19:16-5.5(c).

Our jurisdiction is narrow. We do not consider the wisdom of the proposals, only the abstract issue of their negotiability. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); 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), sets the standards for determining whether a contract proposal is mandatorily negotiable:

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. [87
N.J. at 92-93; citations omitted]

Initial salary guide placement

The PBA made this proposal:

Clause stating that Investigators when hired must be given salary at step level commensurate with experience. College stipend cannot be included as base salary for purposes of this clause. No individual can be hired at an in-between salary step.

The expired contract has a five-step salary guide and a provision entitled Additional Compensation. It calls for stipends for employees attaining specified numbers of college credits.

The executive assistant prosecutor states that the employer considers several factors in each case and then sets a new employee's salary at a level commensurate with experience; it is possible that salary may not accord with a specified step level on the salary schedule. She adds that college stipends are not included in base salary and instead constitute additional compensation as set forth in the prior contract.

The PBA's vice-president asserts that this proposal would ensure that a new investigator's salary is set at one of the negotiated steps. So long as the initial salary corresponds to one of these steps, the PBA does not seek to negotiate over which step an investigator will occupy. The PBA agrees with the employer that college stipends should not be used to compute an investigator's base salary.

The employer asserts that N.J.S.A. 2A:157-10 and N.J.S.A. 2A:157-18 preempt negotiations over the PBA's proposal. We disagree. These statutes grant the Prosecutor discretion to appoint investigators and fix salaries, but this type of statutory discretion must be exercised consistent with the duty under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., to negotiate over compensation and other employment conditions. These statutes are therefore not preemptive except to the extent they set salary minimums. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State Supervisory at 80-82.

In Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997), we held that the initial salary guide placement of police officers in light of their experience and academy training was a mandatorily negotiable compensation issue and that the employer committed an unfair practice when it unilaterally altered its practice concerning such placement. An Appellate Division panel and the New Jersey Supreme Court affirmed that ruling. Middletown Tp. and Middletown PBA Local 124, 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000); see also Belleville Ed. Ass'n v. Belleville Bd. of Ed., 209 N.J. Super. 93 (App. Div. 1986); Winslow Tp., P.E.R.C. No. 2004-40, 29 NJPER 548 (¶178 2003); Middlesex Cty. Prosecutor, P.E.R.C. No. 91-22, 15 NJPER 491 (¶21214 1990), aff'd 255 N.J. Super. 333 (App. Div. 1992).

These precedents govern this case and permit the PBA to seek a clause eliminating off-guide placements. The employer and the majority representative may present their reasons for respectively desiring salary guide flexibility and firmness to the interest arbitrator. The issue of how base salaries are calculated is also negotiable, although the parties do not dispute the exclusion of college stipends from the base.

Creation of Senior Investigator/Detective positions

The PBA proposes the creation of a Senior Investigator/Detective position.^{2/} Its proposal sets forth the duties, responsibilities and eligibility requirements for this position and specifies that it will carry more responsibility than the position of Investigator/Detective; the scope of supervisory responsibility will include assuming command when an immediate supervisor is absent; and the Senior Investigator/Detective will have command over junior investigators within their immediate command structure. Paragraph 5 of the proposal provides that a Senior Investigator/Detective will receive an increased salary of 4% over the top salary for investigators; employees automatically become eligible for this compensation if they have completed 17

^{2/} The proposal is actually entitled Senior Investigator/Corporal, but the text of the proposal makes it clear that the PBA is seeking a Senior Investigator/Detective position.

years of law enforcement experience in New Jersey, including ten years of investigative experience in the Prosecutor's Office, and if they received a satisfactory evaluation in the previous year.

A public employer has a managerial prerogative to establish a new job title and to determine what duties will be performed by employees holding that title. See, e.g., Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997); Bergen Pines Cty. Hosp., P.E.R.C. No. 87-25, 12 NJPER 753 (¶17283 1986). The PBA's proposal is not mandatorily negotiable because it intrudes upon that prerogative by creating the Senior Investigator/Detective title and conferring specified supervisory and command responsibilities on its holders.

We agree with the PBA that proposals seeking a salary increase based on longevity are mandatorily negotiable. See, e.g., West Caldwell Tp., P.E.R.C. No. 97-55, 22 NJPER 414 (¶27226 1996); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985). Paragraph 5 of the proposal could be seen as a negotiable longevity clause were it not tied to the preceding paragraphs requiring the employer to create a higher-level supervisory position with increased supervisory and command duties. We thus view the entire proposal to be not mandatorily negotiable as written.

ORDER

The proposal of PBA Local 325 concerning the initial salary guide placement of investigators is mandatorily negotiable. The proposal of PBA Local 325 concerning the creation of a Senior Investigator/Detective title is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

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

ISSUED: September 28, 2006

Trenton, New Jersey