

P.E.R.C. NO. 2007-35

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BROOKDALE COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-2006-020

F.O.P. LODGE 79,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of an article in an expired collective negotiations agreement between Brookdale Community College and F.O.P. Lodge 79. The article addresses calling in outside help. The Commission finds that the allocation of overtime is mandatorily negotiable. However, the article, as written, is not mandatorily negotiable because it provides that police officers will be given priority for all overtime work over other employees of the department, regardless of the nature of the work and could be used to prevent the employer from seeking assistance from other police forces when necessary. The Commission concludes that the FOP's proposed modification to the article providing for the assignment of work to off-duty employees within a specific job classification is mandatorily negotiable.

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, The Murray Law Firm, LLC, attorneys  
(Robert E. Murray, on the brief)

For the Respondent, Klatsky, Sciarrabone & DeFillippo,  
attorneys (David J. De Fillippo, on the brief)

DECISION

On August 15, 2005, Brookdale Community College petitioned for a scope of negotiations determination.<sup>1/</sup> The College seeks a determination that an article in its expired collective negotiations agreement with F.O.P. Lodge 79 and a proposed revision to that article are not mandatorily negotiable.<sup>2/</sup>

The parties have filed briefs and exhibits. The FOP has submitted the certification of its president, Sergeant Chris Morgan. These facts appear.

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1/ This petition was held in abeyance pending settlement efforts. Those efforts were unsuccessful and on October 6, 2006, the College requested that processing be resumed.

2/ A dispute over Article 9.10 is now moot because the FOP has agreed to have it removed from the contract.

The FOP represents certain full-time personnel in the College police department including sergeants, police officers, security guards, and civilian dispatchers. The parties' collective negotiations agreement expired on June 30, 2005. On July 14, 2005, the FOP petitioned for interest arbitration. This petition ensued.

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]

No statute or regulation is asserted to preempt negotiations.

Article 4 is entitled Working Conditions. Article 4.4 provides:

In the event of outside help being called in to work, each off-duty officer of the bargaining unit must first have been asked to work the detail before the work is given to an outside department, special officers, other personnel within the department, or student safety officers.

The FOP has proposed modifying this clause (to be discussed later) and the College has proposed deleting it.

The College argues that the current Article 4.4 is not mandatorily negotiable because it unduly restricts its ability to subcontract police services and to decide when to assign security guards instead of police officers to duties that do not require a police officer's presence. The FOP responds that Article 4.4 is a negotiable overtime allocation provision and that it preserves police officers' unit work.

Allocation of overtime among qualified employees is, in general, mandatorily negotiable. See City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982); see also Town of Kearny, P.E.R.C. No. 98-22, 23 NJPER 501 (¶28243 1997), aff'd 25 NJPER 400 (¶30173 App. Div. 1999); cf. Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980); Rutgers, The State Univ., P.E.R.C. No.

82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1983) (grievances asserting employer assigned work to non-unit personnel to avoid paying overtime are arbitrable).

However, Long Branch explains that there are limitations on the negotiability of overtime allocation. For example, the employer may deviate from a negotiated overtime allocation system if an urgent need for increased staffing arises, or if an employer needs a particular employee with special skills and qualifications, or if an employee is unqualified or physically incapable of doing the required work.

Article 4.4 is not mandatorily negotiable as written because it provides that police officers will be given priority for all overtime work over other employees of the department, regardless of the nature of the work. The article could also be used to prevent the employer from seeking assistance from other police forces when necessary. See, e.g., Denville Tp., P.E.R.C. No. 2005-23, 30 NJPER 421 (¶138 2004).<sup>3/</sup> And it could prohibit the department from using security guards to perform services that are within their job classification and traditional work and that the department does not believe should be provided by a police officer.<sup>4/</sup>

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<sup>3/</sup> The Article does not appear to cover contracting with private organizations.

<sup>4/</sup> Because this negotiations unit includes both police officers  
(continued...)

The FOP has proposed this replacement for Article 4.4:

Unit work preservation will be maintained for all titles covered by this Agreement. In the event additional work becomes available within a specific job classification, each off-duty member of the bargaining unit within that specific job classification must be asked to work before asking any other member of the bargaining unit to work.

The employer argues that this proposal would interfere with its prerogative to assign a police officer when it believes the duties necessitate the assignment of a security guard. However, the proposal does not appear to implicate that concern because it is limited to circumstances where "additional work becomes available within a specific job classification." If the additional work is police officers' work, then police officers have a negotiable interest in having that overtime opportunity allocated to off-duty police officers. Kearny. The same applies to security guards. Should the proposal be awarded and the FOP seek to arbitrate a grievance challenging the employer's determination that a particular overtime assignment should be given to a security guard rather than a police officer, the employer may file a scope petition and seek a restraint of binding arbitration.

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4/ (...continued)  
and security guards, there is no issue of preserving unit work. Contrast City of Passaic, P.E.R.C. No. 2000-8, 25 NJPER 373 (¶30162 1999).

ORDER

Article 4.4 is not mandatorily negotiable. The proposed replacement for Article 4.4 is mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: December 14, 2006

Trenton, New Jersey