

P.E.R.C. NO. 2015-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BEDMINSTER,

Petitioner,

-and-

Docket No. SN-2015-018

BEDMINSTER TOWNSHIP PBA LOCAL 366,

Respondent.

SYNOPSIS

The Commission Chair issues an expedited scope of negotiations ruling on a disputed proposal in a pending interest arbitration proceeding between the Township of Bedminster and Bedminster Township PBA Local 366. The ruling finds that a PBA proposal concerning the use of an independent hearing officer, rather than a Township-appointed official, to hear disciplinary grievances is not mandatorily negotiable. The order provides that the PBA's proposal may not be submitted to compulsory interest arbitration for inclusion in a successor collective negotiations agreement.

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, Apruzzese, McDermott, Mastro & Murphy, attorneys (Jonathan F. Cohen, of counsel)

For the Respondent, Alterman & Associates, LLC, attorneys (Matthew R. Dempsey, of counsel)

DECISION

This decision is issued under the Commission's Pilot Program to make expedited scope of negotiations rulings on disputed proposals in a pending interest arbitration proceeding.^{1/}

On September 10, 2014, the Bedminster Township Policemen's Benevolent Association Local No. 366 (PBA) submitted a petition to initiate compulsory interest arbitration to resolve a negotiations impasse with Bedminster Township over the terms of a

^{1/} N.J.A.C. 19:16-5.7(i) gives interest arbitrators jurisdiction to make negotiability determinations in their awards, "[u]nless the Commission Chair directs otherwise." See State of New Jersey, P.E.R.C. No. 2014-21, 40 NJPER 210 (¶81 2013). The exception allows expeditious resolution of negotiability disputes that are unresolved at the start of interest arbitration, under a pilot program described at: http://www.perc.state.nj.us/perc/Pilot_Program_Notice.pdf

successor collective negotiations agreement (CNA) between the parties.

On September 23, 2014 the Township filed a petition for scope of negotiations determination asserting that a PBA proposal providing that the parties would agree on an independent hearing officer, rather than a Township-appointed official, to hear grievances as part of the disciplinary review process, was not mandatorily negotiable and could not be submitted to an interest arbitrator for inclusion in a successor CNA. The Township also requested that its petition be decided under the Commission's expedited procedure for resolving scope of negotiations disputes arising during interest arbitration. It submitted a brief along with its request. On October 1, 2014, the use of the expedited process was approved. On October 3, 2014, the PBA filed a brief.^{2/}

The Township and the PBA are parties to a CNA effective from January 1, 2008 through December 31, 2013. The grievance procedure ends in binding arbitration of disputes involving the terms of the CNA.^{3/} Article 3 provides, inter alia, that the

2/ We have not accepted any additional briefs that the parties submitted or sought to file.

3/ The pre-arbitration steps of the procedure provide that a grievance shall be presented to the immediate supervisor, the Chief, the Administrator and the Township Committee.

Township may "suspend, demote, discharge, or take other disciplinary action for good and just cause according to law."

Under Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), a subject is mandatorily negotiable if it is not preempted by statute or regulation and it intimately and directly affects employee work and welfare without significantly interfering with the determination of governmental policy.

The Township asserts that it has a managerial prerogative to designate the hearing officer in disciplinary cases. It cites Borough of Mt. Arlington, P.E.R.C. No. 95-46, 21 NJPER 69 (¶26049 1995) and Borough of Sayreville, P.E.R.C. No. 98-58, 23 NJPER 631 (¶28307 1997). The PBA agrees that the Township has a prerogative to designate its grievance representatives. However, it asserts that its proposal is an additional procedural aspect of the disciplinary review process and as such is mandatorily negotiable. The PBA compares the effect of the new language to a legislative body's confirmation of a nomination and contends that its proposal does not conflict with either Mt. Arlington or Sayreville. Alternatively, it argues that if its proposal is found to be not mandatorily negotiable, it can be included in a successor agreement as a permissively negotiable subject.^{4/}

^{4/} As the Township does not consent to the proposal, permissive negotiability is not relevant, Mandatory negotiability is the only issue. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Acting pursuant to my delegated authority, I conclude that the proposal is not mandatorily negotiable and may not be submitted to interest arbitration. In so concluding, I find that Mt. Arlington and Sayreville are applicable precedents and reflect Commission policy on this issue.^{5/}

ORDER

The PBA's proposal for a mutually-agreed upon, independent hearing officer to hear disciplinary grievances is not mandatorily negotiable and may not be submitted to compulsory interest arbitration for inclusion in a successor collective negotiations agreement.

P. Kelly Hatfield
Chair

ISSUED: October 15, 2014

Trenton, New Jersey

^{5/} As the final step of the parties' grievance procedure for review of discipline is binding arbitration by a Commission-appointed arbitrator, the absence of the language proposed by the PBA from a new CNA does not affect its ability to obtain a binding decision from a neutral person as to whether discipline was imposed for just cause.