

P.E.R.C. NO. 2002-44

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GLOUCESTER COUNTY PROSECUTOR,

Petitioner,

-and-

Docket No. SN-2002-18

SUPERIOR OFFICERS ASSOCIATION OF
THE GLOUCESTER COUNTY PROSECUTOR'S
OFFICE,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by the Superior Officers Association of the Gloucester County Prosecutor's Office for inclusion in a successor collective negotiations agreement with the Gloucester County Prosecutor. The proposal is entitled senior officer differential. The Commission finds that the proposal is a mandatorily negotiable proposal to increase compensation and does not address whether such compensation is creditable for pension purposes. That issue is for the Division of Pensions. The Commission also concludes that the proposal does not usurp the Prosecutor's managerial authority in that it creates new salary grades, not new ranks.

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, Andrew N. Yurick, Prosecutor
(Keith M. Warburton, 1st Assistant Prosecutor, on the
brief)

For the Respondent, George F. O'Brien, labor relations
consultant, New Jersey State Policemen's Benevolent
Association

DECISION

On November 15, 2001, the Gloucester County Prosecutor petitioned for a scope of negotiations determination. The petition seeks a determination that two successor contract proposals of the Superior Officers Association of the Gloucester County Prosecutor's Office are not mandatorily negotiable. One proposal is entitled Job Security. The other is entitled Senior Officer Differential.

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

The SOA represents sergeants, lieutenants and captains. The parties' most recent agreement expired on December 31, 2000. The SOA has petitioned for interest arbitration.

The SOA has withdrawn the "Job Security" proposal. We therefore do not consider that issue.

The SOA has proposed a new article entitled Senior Officer Differential. It provides:

Effective January 1, 2001, there shall be implemented a Senior Officer Differential benefit. The Senior Officer Differential will be a base wage position on the salary schedule for persons of all ranks who have completed fifteen (15) years of service to the County.

Upon attaining Senior Officer status, the employee would have his/her base rate of pay increased by one-half (1/2) the amount between his/her current salary and the next rank base pay.

For example, a Sergeant, upon completion of fifteen (15) years of service, would receive a base rate of pay equal to a Sergeants base plus one-half (1/2) of the difference between the Sergeants rate and the Lieutenants rate base.

The petitioner asserts that this proposal seeks a salary increase in anticipation of retirement and is contrary to N.J.A.C. 17:4-4.1. The petitioner also asserts that under N.J.S.A. 34:13A-18, an arbitrator cannot issue any order or finding regarding any aspects of any pension system. Finally, the petitioner argues that the proposal would create a new rank, thus undermining its authority to determine the organization and structure of its office.

The SOA responds that Commission case law permits negotiations over proposals to increase compensation so long as questions of pension credit are left to the Division of Pensions. The SOA also responds that the proposal does not create, modify or

alter any rank in the Prosecutor's office. It would merely increase compensation for proven leaders with a minimum of fifteen years of service.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters.^{1/} 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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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. [Id. at 92-93; citations omitted]

^{1/} The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as a mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

We consider only whether the proposal is mandatorily negotiable. It is our policy not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

We have often addressed the argument that a proposed form of compensation is not negotiable because it is preempted by pension statutes. See, e.g., City of Orange, P.E.R.C. No. 2002-4, 27 NJPER 323 (¶32115 2001); Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999). Those cases recognize that there is a fundamental difference between a proposal concerning salary and other forms of compensation and a proposal specifying whether a form of compensation is creditable for pension purposes. See Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998) (pension statute defining base salary for pension purposes did not address, and did not preempt, negotiations over how base salary is defined for purposes of calculating terminal leave payments; employer could agree to provide that compensation, but Division of Pensions had jurisdiction over whether payments were creditable for pension purposes); Paramus Bor., P.E.R.C. No. 86-17, 11 NJPER 502, 506-507 (¶16178 1985) (pension regulation barring certain pre-retirement increases in salary did not preempt negotiations over proposal to increase longevity payments during police officers' 23rd year of service; Division of Pensions could decide

whether the payments were creditable for pension purposes). The cases cited by the Prosecutor involve determinations of the Division of Pensions as to whether certain payments are creditable for pension purposes. They do not hold that employees may not receive such payments as a form of compensation.


We also find that the proposal does not usurp the Prosecutor's managerial authority. It creates new salary grades, not new ranks. The proposal affects only compensation and says nothing about the relative authority of an employee with senior officer status. Ridgewood Village, P.E.R.C. No. 93-87, 19 NJPER 216 (¶24104 1993). The proposal does not interfere with the employer's prerogative to determine the organization or command structure of the Prosecutor's office.

We conclude that the SOA's proposal for a senior officer differential is mandatorily negotiable.

ORDER

The SOA proposal labeled "Senior Officer Differential" is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman all voted in favor of this decision. None opposed.

DATED: January 31, 2002
Trenton, New Jersey
ISSUED: February 1, 2002