

P.E.R.C. NO. 92-36

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-91-92

WAYNE PBA, LOCAL NO. 136,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain proposals during successor collective negotiations between the Township of Wayne and Wayne PBA, Local No. 136. The Commission finds that a provision requiring the filling of temporary vacancies is not mandatorily negotiable; a provision adding minor discipline to the definition of grievances is not mandatorily negotiable to the extent it would permit binding arbitration of suspensions and fines which may be appealed to the Superior Court; and a provision requiring the Township to provide shotguns is not mandatorily negotiable.

P.E.R.C. NO. 92-36

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-91-92

WAYNE PBA, LOCAL NO. 136,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, attorneys  
(M. Joan Foster, of counsel)

For the Respondent, Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On June 13, 1991, the Township of Wayne petitioned for a scope of negotiations determination. The Township seeks a declaration that two provisions in its predecessor contract with Wayne PBA, Local No. 136 and one successor contract proposal are not mandatorily negotiable.

The parties have filed exhibits and briefs.<sup>1/</sup> These facts appear.

The PBA represents the Township's regular, full-time police officers excluding the chief, deputy chief, special police dispatchers and certain other employees. The parties entered into a

---

<sup>1/</sup> The PBA's brief was late, but we accept it given the certification of the PBA's attorney.

collective negotiations agreement effective from January 1, 1989 to December 31, 1990. During successor contract negotiations, the Township demanded the deletion of predecessor contract proposals concerning vacancies and shotguns and the PBA proposed expanding the grievance procedure to cover minor discipline. The Township asserted that the predecessor contract provisions and the PBA's proposal were not mandatorily negotiable. The PBA petitioned for interest arbitration. This petition ensued.

The scope of negotiations for police officers and firefighters is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers:

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. In a case involving police and firefighters, 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. [87 N.J. at 92-93; citations omitted]

We consider only whether the challenged provisions are mandatorily negotiable. It is our policy not to decide whether negotiations proposals, as opposed to grievances, are permissively negotiable since an employer has no duty 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).

Article 21, Section 1 of the predecessor contract states, in part:

In the event that a vacancy in a permanent authorized position of rank higher than Patrolman exists for longer than thirty (30) consecutive days, the Township shall have them assign the individual to fill the rank temporarily and then fill the rank one hundred and eighty (180) consecutive days after the vacancy.

Section 2 specifies that employees working in a higher rank for 30 days or more shall receive the pay due an employee in that higher rank. The Township challenges the first section only. That section is not mandatorily negotiable. Paterson; Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981).

Article 22 of the predecessor contract states, in part:

At least two (2) marked vehicles shall be equipped with twelve (12) gauge shotguns and cages. Shotguns should be issued only to those Officers who are Shotgun Qualified.

The Township objects to negotiating over providing shotguns. That portion is not mandatorily negotiable. Nutley Tp., P.E.R.C. No.

88-90, 14 NJPER 254 (¶19095 1988); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985).

Article 16 of the predecessor contract sets forth a grievance procedure ending in binding arbitration. That article defines a "grievance" as:

"any complaint, difference or dispute between the Employer and any Employee with respect to the interpretation, application, or violation of any of the provisions of this Agreement or any applicable rule or regulation or policies, agreements or administrative decisions affecting any Employee(s) covered by this Agreement."

The PBA has proposed adding minor discipline to this definition.

Its proposal defines "minor discipline" as:

"those circumstances where the [employee's] penalty is five (5) days of suspension, or equivalent fine or any lesser penalty."

The PBA's proposal is not mandatorily negotiable to the extent it would permit binding arbitration of suspensions and fines which may be appealed to the Superior Court pursuant to N.J.S.A. 40A:14-150. See also N.J.S.A. 40A:14-147. That statute provides an alternate statutory appeal procedure which preempts binding arbitration of these disciplinary disputes. N.J.S.A. 34:13A-5.3. See Bor. of River Edge, P.E.R.C. No. 91-50, 17 NJPER 2 (¶22001 1990); Town of Secaucus, P.E.R.C. No. 89-97, 15 NJPER 256 (¶20105 1989). But the PBA's proposal is mandatorily negotiable to the extent it would permit review of minor disciplinary determinations through the lower-level steps of the grievance procedure or binding

arbitration of minor disciplinary determinations not covered by  
N.J.S.A. 40A:14-147. Montclair Tp., P.E.R.C. No. 90-44, 16 NJPER 1  
(¶21000 1989); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER  
363 (¶17138 1986).

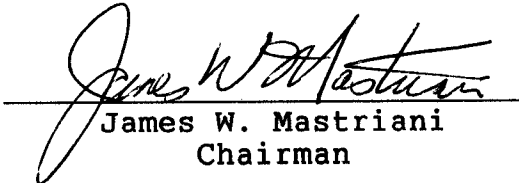
ORDER

Article 21, Section 1 is not mandatorily negotiable.

Article 22 is not mandatorily negotiable to the extent it  
concerns providing shotguns.

The PBA's proposal to amend the grievance procedure is not  
mandatorily negotiable to the extent it would permit binding  
arbitration of suspensions and fines.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo,  
Regan, Smith and Wenzler voted in favor of this decision. None  
opposed.

DATED: September 30, 1991  
Trenton, New Jersey  
ISSUED: October 1, 1991