

P.E.R.C. NO. 87-121

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BUTLER

Petitioner,

-and-

Docket No. SN-85-60

BUTLER POLICE ASSOCIATION

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain proposals submitted by the Butler Police Association to the Borough of Butler during successor contract negotiations. The Commission determines that a proposal to relieve police officers of extra non-police duties is mandatorily negotiable. The Commission further determines, however, that the following proposals are not mandatorily negotiable: limits on the Borough's right to require proof of illness; dress and work uniforms and transfer limitations.

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Appearances:

For the Petitioner, Mark S. Ruderman, Esq.

For the Respondent, Loccke & Correia, P.A.
(Richard D. Loccke, of counsel)

DECISION AND ORDER

On January 28, 1985, the Borough of Butler ("Borough") filed a Petition for Scope of Negotiations Determination.^{1/} The Borough seeks a determination whether certain proposals by the Butler Police Association ("Association"), the majority representative of the Borough's police officers, made during successor contract negotiations are mandatorily negotiable.^{2/}

The Borough has filed briefs and exhibits. The Association has not.

1/ The Borough requested that the Commission defer its petition during contract negotiations.

2/ Several disputed proposals were dropped or resolved during negotiations and on October 7, 1986 an interest arbitration award was issued. Four items from the prior contract are still in dispute.

In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire employees.^{3/}

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 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 policy-making 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]

The first sentence of Article X, Section 4 limits the Borough's right to require proof of illness to cases where the officer is out "for three or more consecutive working days." This restriction is not mandatorily negotiable. See City of Elizabeth,

^{3/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16(e)(4) provides for a permissive as well as a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).

P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985).

Sections 1 and 2 of Article XVI define dress and work uniforms. Since items addressed do not relate to employee safety or comfort, they are not mandatorily negotiable. See Cty. of Hunterdon, P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982); City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den., P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131 1979), aff'd in part, rev'd in part, App. Div. No. A-3966-78 (10/3/80); .

Article II, Section 4 allows a transfer to be "originated" by either the employee or the Borough. It is not mandatorily negotiable. Transfers and reassignments are managerial prerogatives. See Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144 (1978); Local 195.

Section 3(a) of Article XVII makes a Borough mechanic responsible for "under-hood" maintenance of police vehicles during the "#1 Watch". We read "under-hood" maintenance of police vehicles to mean more than simply checking fluid levels and tire pressure. To the extent that section 3(a) is designed to relieve police officers of such extra non-police duties it is mandatorily negotiable. See Byram Tp. Bd. of Ed. and Byram Tp. Ed. Ass'n, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977). However, if Section 3(a) also requires that police vehicle repairs be done by a Borough employee as opposed to

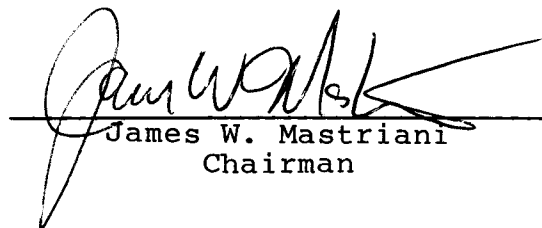
an outside contractor or garage, that requirement is not mandatorily negotiable. See Tp. of Mine Hill, P.E.R.C. No. 87-93, 13 NJPER ___ (¶ ___ 1987). Section 3(b) provides that during holidays, weekends and absences of the mechanic, the patrol division shall be responsible to check oil, tires and lights. It is not mandatorily negotiable. See Mercer Cty. Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980); cf. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-6, 10 NJPER 494 (¶15224 1984).

ORDER

A. Article XVII, Section 3(a), except to the extent it would require in-house repair of police vehicles, is mandatorily negotiable.

B. These provisions are not mandatorily negotiable: Article XVI, Sections 1 and 2; Article II, Section 4, Paragraph 4; Article XVII Section 3(b) and the phrase "for three or more consecutive working days," in the first sentence of Article X, Section 4 are not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987