

P.E.R.C. NO. 2001-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. SN-2001-34

HILLSBOROUGH TOWNSHIP
P.B.A. LOCAL NO. 205,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission determines, under the limited facts of this case, that a proposal made by Hillsborough Township P.B.A. Local No. 205 to modify vacation language is mandatorily negotiable and may be submitted to an interest arbitrator for inclusion in a successor collective negotiations agreement with the Township of Hillsborough. The proposal requires the employer to negotiate before changing the vacation policy unless there is an operational emergency. The Commission concludes that the language is not preempted by N.J.S.A. 40A:14-118. The Commission also concludes that provisions setting the number of employees permitted to be on vacation are mandatorily negotiable, absent specific staffing shortages.

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, S.M. Bosco Associates
(Simon M. Bosco, on the brief)

For the Respondent, Eric M. Bernstein & Associates,
L.L.C., attorneys (Eric M. Bernstein, on the brief)

DECISION

On December 28, 2000, Hillsborough Township P.B.A. Local No. 205 petitioned for a scope of negotiations determination. The PBA seeks a determination as to the negotiability of language it seeks to submit to an interest arbitrator for inclusion in a successor collective negotiations agreement with the Township of Hillsborough. The language limits the employer's ability to modify the vacation policy.

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

The PBA represents all police officers below the rank of lieutenant. The PBA and the Township have reached agreement on a

contract for the period from January 1, 2000 through December 31, 2003. The parties have also reached a side-bar agreement governing vacation and personal time. The parties disagree, however, on language the PBA seeks to have included in the contract. To resolve that dispute, the parties have agreed as follows:

The parties agree to submit the following non-economic proposal to PERC to determine whether or not such is a mandatorily negotiable item:

Future vacation policy modification may not be implemented by the Chief of Police or designee without negotiations with the PBA absent operational emergency.

If PERC determines this to be [a] non-mandatorily negotiable item, all issues will be resolved and all matters as to vacations will be ended. If PERC determines this to be mandatorily negotiable, the language above will be submitted to an interest arbitration for a single issue determination on the non-economic language in question as to whether it should or should not be added to the collective bargaining agreement.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the scope of negotiations analysis for police officers and firefighters:

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 will consider only whether a proposal is mandatorily negotiable.

We do not decide whether contract proposals concerning police are permissively negotiable since the employer need not negotiate over such proposals or consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The PBA asserts that time off policies and procedures are mandatorily negotiable. It adds that this proposal must be read together with two other vacation provisions. Article IX, Section E provides, in part:

The Chief of Police shall allot vacation periods in order to assure orderly operation and adequate continuous service, but will grant vacations so far as possible in accordance with the desires of the employees in order of their seniority rank....

Section F provides, in part:

If an employee is required by the Chief of Police to work during his vacation period in

the event of an emergency and a mutually acceptable rescheduled vacation period cannot be agreed upon, the employee shall be permitted to carry over to the following year that portion of his vacation which he was unable to take....

The Township asserts that the proposed language impacts on its managerial prerogatives and that the language is at least partially preempted by N.J.S.A. 40A:14-118 which gives the chief of police the responsibility for the efficient operation of the police department. The Township maintains that the requirement of further negotiations or an "operational emergency" before the police chief can modify any vacation schedules would undermine its efforts to ensure a well-staffed police presence.

We reject the Township's preemption argument. A statute or regulation will not preempt negotiations unless it speaks in the imperative and fixes an employment condition specifically, expressly, and comprehensively. See, e.g., Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978); State Council of New Jersey College Locals, 336 N.J. Super. 167 (App. Div. 2001). N.J.S.A. 40A:14-118 is a general statute providing for the creation of a municipal police department. It does not address the issues raised by the contract proposal and is not preemptive. Borough of West Paterson, P.E.R.C. No. 2000-62, 26 NJPER 101, 102-103 (¶31041 2000).

A public employer has a managerial prerogative to decide the number of employees on duty at any one time. Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). Time off is mandatorily negotiable to the extent it does not cause staffing levels to fall below an employer's minimum requirements. City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303, 305 (¶13134 1982).

The contract currently provides that the chief shall allot vacation periods to assure orderly operations and adequate continuous coverage and that the chief may require an employee to work during a vacation in an emergency. The side-bar agreement on vacation and personal time appears to set the number and rank of employees permitted to be off at certain times. The disputed proposal requires the employer to negotiate before changing that policy unless there is an operational emergency.


Under these limited facts, we find the proposal to be mandatorily negotiable. The employer has not identified any operational problems with the policy it recently agreed to. We have often held that, absent a specific staffing shortage, contract provisions setting the number of employees permitted to be on vacation are mandatorily negotiable. See, e.g., Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989); see also South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶21017 1989) (paying overtime to cover for absent personnel does not raise minimum staffing issue).

Should the proposed language be included in an successor contract and a non-emergency staffing shortage necessitate a change in the vacation policy, the legal arbitrability of a grievance filed under the provision can be assessed at that time.

ORDER

The Vacation Policy Modification language proposed by the PBA is mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: March 29, 2001
Trenton, New Jersey
ISSUED: March 30, 2001