

P.E.R.C. NO. 98-85

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WAYNE,

Petitioner,

-and-

Docket No. SN-97-108

AFSCME COUNCIL 52, LOCAL 2274,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of several predecessor contract provisions that AFSCME Council 52, Local 2274 seeks to retain in a successor contract with the Township of Wayne. The Commission finds not mandatorily negotiable provisions relating to verification of sick leave; portions of a provision relating to filling positions, to the extent it could be read to require the Township to keep on posting a position it has decided not to fill; a provision relating to which employees will receive a promotion; and portions of a provision relating to employee training.

The Commission finds mandatorily negotiable a provision relating to providing the Union with an updated seniority roster; a portion of a provision relating to promotions except to the extent it permits disputes over promotional denials to be submitted to binding arbitration; and a portion of a provision relating to reimbursement for training.

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, John J. McKniff, Assistant Township Attorney

For the Respondent, Kathleen Mazzouccolo, attorney

DECISION

On April 29, 1997, the Township of Wayne petitioned for a scope of negotiations determination. The Township seeks a declaration that several predecessor contract provisions that AFSCME Council 52, Local 2274 seeks to retain in a successor contract are not mandatorily negotiable.

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

Local 2274 represents blue collar workers employed in the Township's Department of Public Works and its Department of Parks and Recreation. The parties' predecessor contract expired on December 31, 1996. During successor contract negotiations, the Association sought to retain certain provisions in the predecessor contract and the Township asserted that these provisions were not

mandatorily negotiable. The parties subsequently executed a successor contract, but agreed that the Commission should determine the negotiability of the disputed provisions.^{1/}

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets forth the standards for determining whether a contract proposal is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

We consider only whether a contract proposal is mandatorily negotiable, not whether it is wise or reasonable. In re Byram Tp. of Bd., 152 N.J. Super. 12, 30 (App. Div. 1977).

Article VII of the predecessor contract is entitled Holidays. Section C states:

The Employer may request a doctor's certificate for sick days taken before or after a holiday or vacation. Such request will not be made arbitrarily.

^{1/} We will do so, but we emphasize that we do not order any provisions to be retained in or deleted from a successor contract.

Article VIII is entitled Sick Leave and Light Duty.

Section 1 provides:

Sick leave is paid leave that may be granted to each full time employee who is unable, through sickness or injury, to perform the duties of his position,.... All employees covered by this Agreement shall, if said illness continues into the fourth (4th) successive work day, be required to obtain a doctor's certificate indicating proof of the need for sick leave. [Emphasis added]

Section C and the underlined sentence in section 1 are in dispute.

The employer asserts that it has a managerial prerogative to adopt a sick leave verification policy. Local 2294 does not disagree. We so hold. See, e.g., Borough of Bradley Beach, P.E.R.C. No. 89-116, 15 NJPER 284 (¶20125 1989); Piscataway Tp. Bd. of Ed. P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982). Local 2274 asserts that these provisions could be modified to address negotiable issues such as notice requirements, procedures and costs of visits to doctors; but we decline to address the negotiability of hypothetical changes and simply rule that the provisions before us are not mandatorily negotiable.

Article XIII is entitled Seniority, Layoffs and Recall.

Section 5, entitled Seniority Roster, provides:

The Shop Steward shall maintain an accurate seniority roster showing each employee's date of hire, rate of pay and classification. Such lists will be made available to the Union Secretary by July 1st of each year.

The Shop Steward shall promptly advise the appropriate Union representative of any changes which necessitate amendments to the seniority list.

The Township asserts that section 5 deals with union business rather than the employment relationship and should be in union by-laws rather than the contract. Local 2274 asserts that while the language may be unclear, the employer must make the list available to the Union secretary who then transmits it to the shop steward. We hold that this section is mandatorily negotiable, although clarifying language may be appropriate. An accurate and updated seniority roster is necessary for determining an employee's rights in the event of layoffs, overtime assignment, and other personnel actions. See Wayne Tp., P.E.R.C. No. 97-74, 23 NJPER 42 (¶28029 1996), app. pending App. Div. Dkt. No. A-002795-96T1. The employer may agree to maintain an accurate and updated seniority roster and may agree to provide its list to Local 2274 and to make corrections brought to its attention by union officials.

Article XIV is entitled Filling Positions, Temporary Vacancies, Transfers. Section 1A provides, in part:

In the event a vacancy occurs, a new position is created, or an opportunity for a promotion to a higher classification occurs within the bargaining unit, such position availability shall be posted for five (5) days.... If no employee within the unit makes written application for such position within these five (5) days, the Township may withdraw the offer and attempt to fill the position in another manner.... If the Township is unable to fill the position within three (3) calendar months from the date of posting, the procedure will be repeated....
[Emphasis added]

The underlined sentence is the only one in dispute. The employer argues that it has a managerial prerogative not to fill a vacancy. Local 2274 does not disagree. We hold that Article XIV is not mandatorily negotiable to the limited extent, if any, it could be read to require the Township to keep on posting a position it has decided not to fill. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981).

Section F of Article XIV provides:

The right, if any, to a promotion should be subject to the grievance procedure but no back pay awards will be issued as a result of processing such a dispute.

The employer asserts that it has a prerogative to determine what employees will receive promotions. We agree. See, e.g., Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Assn., 91 N.J. 38 (1982); State v. State Supervisory Employees Assn., 78 N.J. 54, 90 (1978); Rutgers, the State Univ. and AAUP, 256 N.J. Super. 104 (App. Div. 1992), aff'd 131 N.J. 118 (1993); contrast North Bergen Tp. Bd. of Ed., P.E.R.C. No. 96-87, 22 NJPER 245 (127129 1996) (trial period for qualified senior employee is negotiable). Employees, however, may seek a contractual right to grieve a promotion denial short of binding arbitration. Teaneck Tp. Bd. of Ed v. Teaneck Teachers Assn., 94 N.J. 9 (1983); Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Assn., 79 N.J. 311 (1979). Section F is mandatorily negotiable except to the extent it permits disputes over promotional denials to be submitted to binding arbitration.

Article XVIII is entitled Training and Education

Program. Sections A through I provide:

- A. The Employer retains the right to discontinue any training program.
- B. The training program will depend on job requirements.
- C. A minimum and maximum training period will be agreed upon by the Union and the Employer.
- D. Specialized schooling shall be credited to training period. The Employer has the right to decide if specialized schooling merits can be credited to Township final rating.
- E. Employees in the training program shall be rated by the Employer.
- F. Training for certain positions may require that the applicant have certain minimum requirements in education. Applicants may also be required to have a physical examination and aptitude tests. The prerequisite, if required by the Employer, shall be defined for each classification by the Employer, and shall not be subject to grievance procedure. Applicant's practical experience and actual performance previous to schooling and training shall also be used in determining the ratings and final assignments of applicant.
- G. An employee shall not be placed into a training program against his will.
- H. An employee refusing to enter into a training program for a particular position shall lose his claim to that position when the vacancy occurs.
- I. The employer shall pay for courses taken by the employee that will benefit his work. Work related courses shall be paid for only with Department Head recommendation.

The employer has a prerogative to decide which employees will be trained, how they will be trained, and how long they will be

trained. See, e.g., Borough of Dunellen, P.E.R.C. No. 95-113, 21 NJPER 249 (¶26159 1995); Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982). Based on these precedents, Sections A through H are not mandatorily negotiable. However, an employer may agree to reimburse employees for tuition payments for work-related courses. Dunellen; Hackettstown; Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989). Based on these precedents, Section I is mandatorily negotiable.

ORDER

A. These provisions are mandatorily negotiable:

1. Article XIII, Section 5.
2. Article XIV, Section 1A (underlined language) except to the extent, if any, it could be read to require the Township to keep on posting a position it had decided not to fill.
3. Article XIV, Section F except to the extent it permits disputes over promotional denials to be submitted to binding arbitration.
4. Article XVIII, Section I.

B. These provisions are not mandatorily negotiable:

1. Article VII, Section C.
2. Article VIII, Section 1 (underlined language).
3. Article XIV, Section 1A (underlined language) to the extent, if any, it could be read to require the Township to keep on posting a position it had decided not to fill.

4. Article XIV, Section F to the extent it permits disputes over promotional denials to be submitted to binding arbitration.
5. Article XVIII, Section A through H.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997