

P.E.R.C. NO. 99-93

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF HIGHLAND PARK,

Petitioner,

-and-

Docket No. SN-99-53

P.B.A. LOCAL NO. 64,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a portion of a provision in an expired collective negotiations agreement between the Borough of Highland Park and P.B.A. Local No. 64. The provision concerns expunging disciplinary materials from police officers' personnel files. The Commission finds that the provision is not mandatorily negotiable because it states that an officer is "entitled" to expungement upon request. The provision may not be submitted to interest arbitration for inclusion in a successor agreement.

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, Ruderman & Glickman, P.C., attorneys  
(Steven S. Glickman, on the brief)

For the Respondent, S.M. Bosco Associates, labor  
relations consultants (Simon M. Bosco, on the brief)

DECISION

On January 22, 1999, the Borough of Highland Park petitioned for a scope of negotiations determination. The Borough seeks a determination that a provision in an expired collective negotiations agreement with P.B.A. Local No. 64 is not mandatorily negotiable and may not be submitted, over its objection, to interest arbitration. The provision concerns expunging disciplinary materials from police officers' personnel files.

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

The PBA represents sergeants, lieutenants and patrol officers. The parties' most recent contract expired on December

31, 1998. The parties have engaged in successor contract negotiations and the PBA has petitioned for interest arbitration.

Article XXIII is entitled Personnel Files. Section D provides:

D. Officers shall, upon request, be entitled to have all records of disciplinary proceedings, including charges made in the Borough of Highland Park and charges made in other jurisdictions, transcripts or records of proceedings, letters, records or judgments, imposing or memorializing discipline or charges, expunged from their records in accordance with the following procedure.

1. Violations of police rules and regulations resulting in punishment not exceeding an oral or written reprimand may be expunged after the expiration of one (1) year from the date of disposition provided that there has been no subsequent violation within that year. If there has been a subsequent violation within the one (1) year period after the date of disposition of the first violation, then in that event, both matters may be expunged from the records after one (1) year from the date of disposition of the second offense, provided there has been no further violation.

2. All matters, except those which constitute a violation of state law or which involve the use of firearms, use of unlawful physical violence, violation of public trust, or a gross abuse of authority, which result in a disposition involving a period of suspension from duty in excess of thirty (30) days may be expunged after the expiration of seven (7) years from the date of disposition provided that there has been no subsequent offense within said seven (7) year period.

3. All other violations of police rules and regulations, other than those described in subparagraphs 1 and 2 thereof, may be expunged after the expiration of three (3) years from the date of disposition provided that there has been no subsequent violation during the three (3) year period thereafter. If there has been a subsequent violation within the three (3)

year period after the date of disposition of the first violation, then in that event both matters may be expunged from the records after six (6) years from the date of disposition of the second offense, provided there has been no further violation.

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]

In a case arising in the context of initial or successor contract negotiations, we will determine only whether a contract proposal is mandatorily negotiable since an employer need not negotiate over permissive proposals or agree to submit them to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

In Montgomery Tp., P.E.R.C. No. 99-19, 24 NJPER 452 (¶29209 1998), we recently held not mandatorily negotiable a contract provision mandating the removal of disciplinary materials from police officers' personnel files if two years passed without further disciplinary action. That decision sets forth our reasoning and governs this case. See also South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986). While the PBA asserts that this article merely permits a police officer to request expungement, the preface to Section D states that an officer is "entitled" to expungement upon request. Accordingly, Section D is not mandatorily negotiable.

ORDER

Section D of Article XXIII is not mandatorily negotiable.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: April 29, 1999  
Trenton, New Jersey  
ISSUED: April 30, 1999