

P.E.R.C. NO. 2000-22

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MONTCLAIR,

Petitioner,

-and-

Docket No. SN-99-93

PBA LOCAL 53,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal made by PBA Local 53 during negotiations for a successor agreement with the Township of Montclair is mandatorily negotiable. The proposal requires one week's notice of work schedule changes, except in the case of illness, injury or emergency.

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, Genova, Burns & Vernioia, attorneys  
(Robert C. Gifford, on the brief)

For the Respondent, Ross & Hirsh, P.C., attorneys  
(Donald B. Ross, Jr., on the brief)

DECISION

On May 20, 1999, the Township of Montclair petitioned for a scope of negotiations determination. The Township seeks a determination that a contract provision requiring one week's notice of work schedule changes is not mandatorily negotiable and may not be submitted to interest arbitration for inclusion in a successor collective negotiations agreement with PBA Local 53.<sup>1/</sup>

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

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<sup>1/</sup> The Township also asserted that two other articles are not mandatorily negotiable. The PBA does not contest that assertion.

The PBA represents all police officers below the rank of sergeant. The Township and the PBA are parties to a collective negotiations agreement that expired on December 31, 1998. The parties are in negotiations for a successor agreement and the PBA has petitioned for interest arbitration.

Article XXV is entitled Schedules. It provides, in part:

A. With the exception of "safe posts" the Employer shall publish work schedules assigning each officer to his/her regularly scheduled shifts at least two months in advance. One copy of such schedule shall be posted on the bulletin board and each officer shall be given a copy of such schedule on the day it is published, or as soon thereafter as is reasonably practicable.

B. Once published, work schedules shall not be changed without at least one (1) week's notice, except in the case of illness, injury or emergency. In the event at least one week's notice is given, then the provisions of Section C below shall not apply.

C. The Employer shall have the right to change an Employee's scheduled shift hours on any day which is a scheduled working day for the Employee in order to provide necessary manpower coverage. In the event such change requires that an Employee report to work or remain on duty at a time or times when such hours are part of scheduled days off, the Employee will be paid at the rate of time and one-half for the hours worked which are scheduled time off.

The Township asserts that the underlined sentence is not mandatorily negotiable because it allegedly does not allow schedule changes for training or using special skills. It does not contest the negotiability of the other parts of Article XXV.

The PBA responds that the article gives the Township the right to change the schedule to provide for training or special skills, as long as employees have one week's notice.

The scope of negotiations for police and fire employees 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. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a 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]

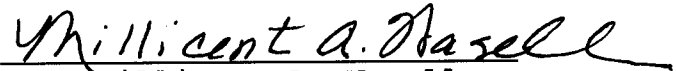
We will consider only whether the work schedule proposal is mandatorily negotiable. We do not decide whether contract proposals concerning police officers are permissively negotiable since the employer need not negotiate over such proposals or consent to their submission to interest arbitration. Town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

Notice provisions are, in general, mandatorily negotiable. City of Vineland, P.E.R.C. No. 84-58, 10 NJPER 8 (¶15005 1983); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981). This provision generally requires one week's notice of a work schedule change and thus protects the employees' interest in being able to make personal and family plans. An employer should generally be able to make its plans for training or assignments that far in advance. However, if an emergency arises, the employer can deviate from the notice provision -- thus, for example, the employer may assign an employee with special skills to a special task despite this provision if it was not possible to provide the requisite notice. On balance, the effect of this provision on employees' lives outweighs any interference with governmental policymaking.

ORDER

The first sentence of Article XXV, Section B is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn and Ricci voted in favor of this decision. Commissioner Madonna abstained from consideration. Commissioner Muscato was not present.

DATED: September 30, 1999  
Trenton, New Jersey  
ISSUED: October 1, 1999