

P.E.R.C. NO. 2000-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LONG HILL,

Petitioner,

-and-

Docket No. SN-99-62

P.B.A. LOCAL NO. 322,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of three proposals which P.B.A. Local No. 322 has proposed for inclusion in a successor collective negotiations agreement with the Township of Long Hill. The Commission finds mandatorily negotiable a proposal to maintain current work schedules; a proposal that schedules for duty be guaranteed, and a proposal concerning employees' rights to take contractually guaranteed time off.

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, Courter, Kobert, Laufer & Cohen,
P.C., attorneys (Stephen E. Trimboli, on the briefs)

For the Respondent, Fox & Fox, LLP, attorneys
(David I. Fox, of counsel; Stacey B. Rosenberg, of
counsel and on the brief)

DECISION

On March 1, 1999, the Township of Long Hill petitioned for a scope of negotiations determination. The Township seeks a declaration that three proposals made by P.B.A. Local No. 322 are not mandatorily negotiable and may not be included in a successor collective negotiations agreement.^{1/}

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

The PBA represents all patrol officers in the Township. The Township and the PBA are parties to a collective negotiations

^{1/} The Township originally contested the negotiability of six other proposals, but those proposals have since been withdrawn and need not be considered. This case was held pending settlement discussions.

agreement that expired on December 31, 1998. They are involved in negotiations for a successor agreement and the PBA has petitioned for interest arbitration.

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 revised proposals are 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).

Article XII of the expired agreement is entitled Work Period and Schedule. Paragraph two on page 7 states:

The Chief of Police shall determine manning levels, that is, the exact number of sergeants and patrol officers for each of the two shifts and four platoons that are necessary for the 3/3 12 schedule. In addition, the Chief of Police shall have the managerial right to alter said manning levels, from time to time, as he deems appropriate and necessary to insure the efficient operation of the department and/or where said adjustments shall be in the best interest of the department. Minimum manning levels must be met or the Chief of Police has the managerial right to cancel the 3/3 schedule if the stated manning levels are not met.

PBA proposal no. 11 would modify Article XII. It states:

The 3/3 twelve-hour schedule is to be maintained and any references such as at page 7 of the contract to the right to change the schedule are to be deleted.

The Township asserts that the PBA is seeking to eliminate the Township's managerial prerogative to set and alter the work schedule to meet staffing requirements. The PBA responds that it simply seeks to remove language giving the chief the right to change or terminate the schedule.

A proposal to maintain a current work schedule is mandatorily negotiable unless an employer advances reasons justifying a claimed need to control work hours unilaterally. In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987). See also Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). The PBA has proposed maintaining the current schedule and the employer has not identified any problems with that schedule. That proposal is mandatorily negotiable.

The PBA also seeks to delete the contractual language permitting the chief to change that schedule if minimum staffing levels are not met or for other operational reasons. Mt. Laurel and other cases recognize an employer's reserved managerial prerogative to change police department work schedules when necessary to meet governmental policy needs. See, e.g., City of North Wildwood, P.E.R.C. No. 97-83, 23 NJPER 119 (¶28057 1997); City of Jersey City, P.E.R.C. No. 94-30, 19 NJPER 542 (¶24256 1993). Whether this employer is also accorded a contractual right paralleling its reserved managerial prerogative to change schedules when necessary is a mandatorily negotiable question -- the law does not insist that such language be contractually included or excluded. The critical point is that eliminating the contract language permitting schedule changes would not eliminate the employer's right to act when governmental policy considerations require it to act. If the PBA's proposal is adopted and a dispute arises over the negotiability of a work schedule change, the employer may file another scope of negotiations petition and that question can be decided on the facts then presented.

PBA proposal no. 12 states:

Schedules for any duty are to be guaranteed for twelve weeks.^{2/}

The Township asserts that this proposal does not recognize its prerogative to change assignments where special skills, abilities or experience are needed. The PBA asserts that its proposal would increase from six to twelve weeks the time in which approved leave time would be guaranteed and that the parties can negotiate over this issue since it involves the mandatorily negotiable subjects of work hours and contractual leave time.

The scheduling of time off is, in general, a mandatorily negotiable subject. See, e.g., Town of West New York, P.E.R.C. No. 89-131, 15 NJPER 413 (¶20169 1989); City of Elizabeth, P.E.R.C. No. 82-100, 8 NJPER 303 (¶13134 1982), aff'd NJPER Supp.2d 141 (¶125 1984). The parties may thus agree that a 12-week scheduling period rather than a 6-week period should be used for purposes of scheduling leave time. However, any agreed-upon system cannot prevent the employer from exercising its reserved managerial prerogatives to set and meet staffing levels, respond to emergencies, assign employees with special skills to

^{2/} The PBA's brief rephrases this proposal as "Schedules for duty (including leave time) are to be guaranteed for 12 weeks" (p.2) and states that its purpose is to ensure that officers can rely on a work schedule specifying their approved time off -- e.g., vacations, holidays, personal days, and compensatory time. Despite the Township's objection, we accept this rephrasing for purposes of deciding this petition. Having taken this position here, however, the PBA cannot take an inconsistent position in interest arbitration.

special tasks, or meet other governmental policy needs. See, e.g., Town of West New York; Newark Bd. of Ed., P.E.R.C. No. 80-93, 6 NJPER 53 (¶11028 1980). We thus hold that the PBA's scheduling proposal is mandatorily negotiable, but we also reaffirm the employer's right to deviate from that schedule (if adopted) when necessary for governmental policy reasons. If an arbitration demand arises over such a deviation, the employer may file another scope-of-negotiations petition and that question can then be decided on the facts presented.

PBA proposal no. 44 states:

Allowed to take off contractually guaranteed time, at any time, in accordance with minimum manning.

The Township asserts that this proposal precludes it from assigning officers to meet special needs or emergencies. The PBA asserts that this proposal protects the employees' right to take vacations, personal days and other time off due under the agreement.

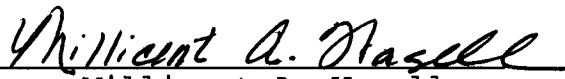
In Borough of Rutherford, P.E.R.C. No. 97-12, 22 NJPER 322 (¶27163 1996), we stated that the scheduling of vacations and other time off is mandatorily negotiable so long as an agreed-upon system does not prevent an employer from fulfilling its staffing requirements. We added that an employer may deny a requested vacation day to ensure that it has enough employees to cover a shift, but it may also legally agree to allow an employee to take a vacation day even though doing so would require it to pay

overtime compensation to a replacement employee. The thrust of the instant proposal is consistent with Rutherford. However, we add that the parties' contract presupposes that officers will seek approval of leave time requests and that the employer retains its prerogative to deny such requests or revoke approvals when necessary to meet governmental policy needs. If an arbitration demand arises over such a denial or revocation, the employer may file another petition and that question can then be decided on the facts presented.

ORDER

PBA proposals 11, 12 and 44 are mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: November 15, 1999
Trenton, New Jersey
ISSUED: November 16, 1999