

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Petitioner,

-and-

Docket No. SN-2002-32

KEARNY F.M.B.A. LOCAL NO. 18,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of portions of existing contract articles and negotiations proposals made by Kearny F.M.B.A. Local No. 18 for inclusion in a successor collective negotiations agreement with the Town of Kearny. The Commission concludes that an article concerning conducting FMBA business on Town time is mandatorily negotiable; an article concerning the level of health benefits is mandatorily negotiable, but the identity of a carrier is permissively negotiable; the section of an article that would modify benefits under the State Health Benefits Program cannot be considered by an arbitrator; a proposal concerning shift exchanges is not mandatorily negotiable unless the contract also provides that exchanges are subject to the chief's approval, and an article which would establish a 30-month phase-out period for old uniforms is not mandatorily negotiable.

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.

P.E.R.C. NO. 2002-77

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Appearances:

For the Petitioner, Cifelli & Davie, attorneys
(Kenneth P. Davie, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Charles E. Schlager, Jr., on the brief)

DECISION

On February 13, 2002, the Town of Kearny petitioned for a scope of negotiations determination. The Town seeks a determination that portions of existing contract articles and negotiations proposals made by Kearny F.M.B.A. Local No. 18 are not mandatorily negotiable and may not be considered by an interest arbitrator for inclusion in a successor collective negotiations agreement.

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

The FMBA represents all firefighters, excluding the chief, captains and other supervisors/personnel. The parties' most recent agreement expired on June 30, 2000.

On January 9, 2002, the FMBA petitioned for interest arbitration. The Town's response to that petition was filed simultaneously with its scope petition on February 13, 2002. The scope petition contests the negotiability of several previous contract provisions which the FMBA would like to have included in the next contract and certain new FMBA proposals.

In Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, 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. [Id. at 92-93; citations omitted]

We consider only whether a contract proposal is mandatorily negotiable. It is our policy not to decide whether proposals, as opposed to grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to 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 III of the predecessor contract is entitled Conducting FMBA Business on Town Time. Section 3 provides:

The employer shall grant time off without loss of pay to the President of the FMBA and the legislative delegate of the New Jersey State FMBA, or their designees, to conduct FMBA business and to attend State FMBA functions which require their attendance. The employer further agrees that said officials shall be granted time off without loss of pay to attend, in an official capacity as representatives of the Kearny FMBA Local No. 18, funerals for any member of the Kearny Fire Department who dies while in active service and other Fire Fighters who have given their lives in the line of duty. Nothing herein shall prevent the Fire Chief from allowing said time off in his discretion for attendance at funerals of retired members of the Kearny Fire Department.

Leaves of absence and release time for representational purposes are mandatorily negotiable. See, e.g., Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); Town of Kearny, P.E.R.C. No. 81-23, 6 NJPER 431 (¶11218 1980). We found a nearly identical clause to be mandatorily negotiable in Town of Kearny, P.E.R.C. No. 2001-58, 27 NJPER 189 (¶32063 2001). We reject the

Town's argument that N.J.S.A. 11A:6-10 and N.J.S.A. 40A:14-177 invalidate this contractual provision; neither statute prohibits an agreement granting the leaves of absence called for by this provision. We hold that Article III, Section 3 is mandatorily negotiable.

Article VIII is entitled Medical Insurance Programs. Sections 1 through 3 provide:

1. The Town agrees to provide, at no cost to the employees, full Blue Cross and Blue Shield coverage, hospitalization by New Jersey State Health Benefits, including Rider "J" for all employees and their dependents as defined under the respective policies of insurance. The Town also agrees to provide major medical insurance to all employees and their dependents.
2. The employer further agrees to provide, at no cost to all retired employees who have been, prior to retirement, employees covered by this Agreement, and to their spouses and dependents, Blue Cross and Blue Shield coverage as above, as provided in Chapter III of Public Laws of 1973 et seq.
3. The employer shall continue the present dental program with the New Jersey Dental Plan, which plan shall be a 80/20 plan with a \$25.00 deductible per person and/or a maximum deductible of \$75.00 per family per annum. Effective January 1, 1989, employees who retire may remain in the group dental program at the sole expense of the employee.

The FMBA proposes adding "or widows" to Section 2 after "spouses."

The FMBA also proposes deleting the reference in Section 3 to "New Jersey Dental Plan" and replacing it with "Delta Dental."

The employer argues that N.J.S.A. 34:13A-18 prevents an interest arbitrator from ruling on any proposals that would modify

benefits under the State Health Benefits Program. It relies on cases that held that section 18 prohibited an interest arbitrator from awarding retiree health benefits. See, e.g., Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pt., rev'd in pt. 6 NJPER 338 (¶11169 App. Div. 1980). The FMBA does not respond to this argument. Absent any contrary argument, we will assume that section 18 covers these proposals and that they cannot be considered by the arbitrator.

Generally, the level of health benefits is mandatorily negotiable, but the identity of a carrier is permissively negotiable. See, e.g., State of New Jersey and Council of New Jersey State College Locals, 336 N.J. Super. 167 (App. Div. 2001); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). However, a change in the identity of a carrier may be challenged if that change in turn results in changing the level of benefits or the manner of administering the plan. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 97-104, 23 NJPER 178 (¶28089 1997); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). Section 1 is mandatorily negotiable to the extent it commits the employer to provide the level of benefits offered by the cited plans. It is not mandatorily negotiable to the extent it would prohibit a change in carriers.

Article XII is entitled Hours. Section 6 provides:

All employees, except those employees addressed in Section 7 below, covered by this Agreement shall be entitled to get another firefighter to "cover" (work) their shift pursuant to the

following schedule: two (2) covers for each month, January through May; seven (7) covers for each month June through August; six (6) covers for the month of September; and one (1) cover for each month, October through December.

The FMBA has proposed the following language:

All employees covered by this Agreement shall be entitled to get another firefighter to "cover" (work) their shift pursuant to the following schedule: forty (40) covers per year to be used by the employee in either twelve (12) or twenty-four (24) hour increments. An employee may not exceed seven (7) covers per month.

In Town of Kearny, P.E.R.C. No. 2001-58, we held that a similar provision on shift "covers" was not mandatorily negotiable because it did not condition tour exchanges on the chief's approval. We reaffirm that such a provision is mandatorily negotiable only if the contract also provides that such exchanges are subject to the chief's approval.

Article XVI is entitled Maintenance of Standards.

Section 3 provides:

In the event any change in duty uniform is effected, the Town agrees to do so over a thirty (30) month phase-out period during which time both old and new uniforms may be worn.

In Town of Kearny, P.E.R.C. No. 2001-58, we held that an identical provision was not mandatorily negotiable. We follow that precedent and hold that Article XVI, Section 3 is not mandatorily negotiable. The cost of uniform changes is a separate and generally negotiable issue.

ORDER

Article III, Section 3 is mandatorily negotiable.

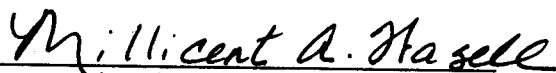
Article VIII, Section 1 is mandatorily negotiable to the extent it sets the level of health insurance benefits to be provided by the employer. It is not mandatorily negotiable to the extent it would prohibit a change in carriers.

The FMBA's proposals to modify Sections 2 and 3 of Article VIII cannot be submitted to interest arbitration.

Article XII, Section 6 and the FMBA's proposal to modify that section are not mandatorily negotiable unless the contract also provides that exchanges are subject to the chief's approval.

Article XVI, Section 3 is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: June 27, 2002
Trenton, New Jersey
ISSUED: June 28, 2002