

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-81-13

STATE TROOPERS FRATERNAL ASSO-
CIATION OF NEW JERSEY, INC.,

Respondent.

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-81-14

STATE TROOPERS NCO ASSOCIATION
OF NEW JERSEY, INC.,

Respondent.

SYNOPSIS

The Commission decides a number of issues in a scope of negotiations proceeding filed by the State of New Jersey disputing the mandatory negotiability of numerous clauses of existing contracts and some new proposals in their negotiations with the State Troopers Fraternal Association and the State Troopers NCO Association. Relying on prior Court and Commission decisions particularly In re State and State Troopers NCO Assn, P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979) the Commission decides that a clause that indicates that an employee who must work on a Saturday or Sunday which had been scheduled as a day off will, to the extent possible, be granted another Saturday or Sunday off as compensatory time. The Commission also determines that a clause on the final step of grievance procedure on terms and conditions of employment is also mandatorily negotiable, as well as a past practices clause. The Commission decides that a provision in changes in rules not affecting working conditions and changes in the evaluation system not affecting terms and conditions is not mandatorily negotiable. Applying a recent Appellate Division decision, the Commission determines that a provision limiting the employer's ability to transfer or assign union officers is not mandatorily negotiable. Also applying prior decisions, the Commission distinguishes between criteria and procedures in determining the negotiability of the specific provisions of various clauses on promotions and transfers. Such items as notice, publication of promotional

tests where examinations have been used are mandatorily negotiable. Items like the decision to use examinations, points awarded in promotions and consideration of commutation transfers are all not mandatorily negotiable.

P.E.R.C. NO. 81-81

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STATE TROOPERS NCO ASSOCIATION
OF NEW JERSEY, INC.,

Respondent.

Appearances:

For the Petitioners, John J. Degnan, Attorney
General (Michael L. Diller, Deputy Attorney
General, of Counsel)

For the Respondents, Cerreto & LaPenna, Esqs.
(Jerome J. LaPenna, of Counsel)

DECISION AND ORDER

On August 28, 1980, two Petitions for Scope of
Negotiations Determination were filed with the Public Employment
Relations Commission (hereinafter "PERC" or "the Commission")
by the State of New Jersey (hereinafter "State") alleging that
several provisions of collectively negotiated agreements between
the State and the State Troopers Fraternal Association of New
Jersey, Inc. (hereinafter "Troopers") (SN-81-13) and the State

Troopers NCO Association of New Jersey (hereinafter "NCO") (SN-81-14), related to non-mandatory subjects of negotiations. In its petitions, the State indicated that the dispute had arisen in negotiations with both units for successor agreements to replace the ones which expired on June 30, 1980. In both instances, negotiations have reached an impasse. Interest arbitration has been initiated to decide the issues in dispute.

The State seeks removal of the contract provisions identified in its petitions and contends that the interest arbitrator may not issue any award with respect to the matters covered therein on the basis that they are alleged to be non-mandatory subjects of negotiations.^{1/} Also in dispute are certain proposals by the Associations seeking the maintenance of, and/or additions to, language in the present agreements, which the State contends are also non-mandatory subjects of negotiations.^{2/} The Associations argue that all of the provisions in dispute relate to mandatory subjects of negotiations and the interest arbitrator may issue rulings with respect thereto.

Briefs and reply briefs have been filed by both parties and oral argument was held before the Commission on December 10, 1980. In order to expedite the resolution of the negotiations

^{1/} N.J.S.A. 34:13A-16(f)(4) provides: "Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiations.

^{2/} The provisions in dispute are appended to this decision.

impasses through interest arbitration, the Commission has convened a special meeting in order to issue its decision in these consolidated cases.^{3/}

Before turning to a discussion of the issues, we note that many of the issues in dispute, or provisions substantially similar thereto, have been considered by us in prior scope of negotiations decisions, all of which were commenced by petitions filed by the State. Hence, in resolving the instant disputes we will apply, where relevant, the determinations in In re State and State Troopers NCO Ass'n, P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979); In re State and State Supervisory Employees Ass'n, et al., P.E.R.C. No. 80-19, 5 NJPER 381 (¶10194 1979), affmd in part, rev'd in part, App. Div. Docket Nos. A-463-79, A-409-79 (12/17/80); and In re State and Local 195, IFPTE, P.E.R.C. No. 80-85, 6 NJPER 32 (¶11017 1980), affmd in part, revd in part, App. Div. Docket No. A-2098-79-A (10/6/80), Pet. for Cert. pending.^{4/}

We now consider the issues in dispute; resolving first

^{3/} The convening of this special public meeting was announced at the Commission's December 10, 1980 open public meeting. Adequate notice of this meeting has been provided in accordance with the requirements of the New Jersey Open Public Meetings Law, N.J.S.A. 10:4-1 et seq.

^{4/} Our determinations herein shall be considered a ruling on the merits of the issues in dispute as neither party has asserted any of the prior proceedings are res judicata with respect to issues which have also arisen herein. However, we note that collateral estoppel may be asserted against a party which seeks to relitigate the same issue, where in a prior proceeding the issue was finally resolved on the merits against that same party. See, Bernhard v. Bank of America Nat. Trust and Savings Ass'n, 19 Cal. 2d. 807, 122 P. 2d. 892 (1942); State v. Gonzalez, 75 N.J. 186, 188-189 (1977), Andrew v. Mularchuk, 38 N.J. 156, 161 (1962). We intend, in future cases, to apply this doctrine, on an appropriate application and showing in order to forestall relitigation of issues previously determined.

those items which appear in both the existing Troopers and NCO contracts. The State has indicated it seeks only a determination as to whether the subject is mandatory or non-mandatory as it asserts it will not agree to the submission of any permissive topics to the interest arbitrator.

WORKWEEK AND COMPENSATORY TIME

Employees who are required to work on a Saturday or Sunday which had been scheduled as a day(s) off, will, to the extent practicable, be granted a Saturday or Sunday as compensatory time.

At oral argument, the State attempted to clarify its position with respect to this proposal. In its briefs, citing State v. State Supervisory Employees, 78 N.J. 54 (1978) it appeared to argue that provisions of Civil Service Laws, regulations and the Civil Service Personnel Manual preempted negotiations on this proposal. However, State Police are unclassified employees and are thus not governed by Civil Service Laws and regulations, State Troopers Frat. Ass'n v. State, 115 N.J. Super. 503, aff. 119 N.J. Super. 375, aff. 62 N.J. 302 (1973). Nonetheless, the State also relied on the provisions of the Civil Service Personnel Manual which governed the definition of regular or irregular workweeks and overtime and compensatory time compensation. Manual Section 7-4.101 et seq. However, at oral argument the State conceded that the provisions of the Manual were not preemptive. It argued that since State Police were classified as "NL" (i.e. employees without a typical workweek or work hours), the above contract provision should be deemed non-mandatorily negotiable as interfering with the State's prerogative to deploy

State Police.^{5/}

While the State's position with respect to the preemptive effect, if any, of the Civil Service Personnel Manual has been made less than clear to us, we find ourselves in agreement with the comments of the Associations in their reply memorandum which point out that the provisions of the Manual specifically regulate overtime pay and compensatory time off only with respect to those employees who work a regular work week and are silent with respect to the determination of similar matters for NL employees, including the State Police. Thus, even assuming their applicability, these regulations do not meet the conditions set down in State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-81 (1978) to qualify as preemptive.^{6/}

Since no statute or regulation specifically preempts the language in dispute, we must determine its negotiability. We do not agree that the provision significantly interferes with the State's needs to determine how large a force of State Police it needs on duty at any given time. It applies only to those individuals who had previously been scheduled to have a day off on a weekend and it does not mandate that the Trooper or NCO be given his choice as to which Saturday or Sunday he receives as a compensatory day. Rather, it recognizes that there is a

^{5/} The State, at argument, indicated that cash compensation at an overtime rate, in lieu of compensatory time off, posed no interference with managerial prerogatives and was mandatorily negotiable.

^{6/} We further note that the Supreme Court's decision accorded preemptive effect to Civil Service Laws (N.J.S.A. Title 11) and regulations (N.J.A.C. Title 4). The provisions of the Civil Service Personnel Manual at issue herein, appear in neither of those compilations and there has been no judicial decision as to whether the Manual has any preemptive power with respect to negotiations concerning the terms and conditions of employment. Given the State's modification of its position and our holding herein that it is not preemptive as to those employees, we need not reach that issue herein.

qualitative difference in the effect on the personal and financial welfare of an employee in having time off on weekends and time off during the week. For example, it is commonplace in labor agreements in both the public and private sector that weekend work is compensated at a premium rate of pay, particularly when it is worked as a day previously scheduled as a day off. Additionally, the desirability and possible implications on an employee's personal life of having one's days off on a weekend are numerous and obvious.

Balanced against the direct and intimate effect on the employees' work and welfare is the potential for a significant interference with the State's managerial prerogatives on the scheduling of officers. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978); Board of Education of Woodstown-Pilesgrove Sch. Dist. v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582, 589 (1980). As indicated, the provision appears to apply only to officers already scheduled to have time off on a weekend, and leaves to the State the determination of which future Saturday or Sunday to schedule as the compensation day. Moreover, the language of the clause contains explicit qualifying language (i.e. "to the extent practicable") designed to prevent a significant interference with the State's manning requirements. Applying the balancing test set forth in the above-cited cases, the Commission concludes that this particular provision does concern the well recognized terms and conditions of employment of work hours, time

off, premium pay for weekend work; and would not appear, given only the State's general arguments to the contrary, to pose a significant threat to managerial prerogatives relating to the determination of governmental policy. Therefore, it may be submitted to interest arbitration as a mandatorily negotiable subject.

Grievance Procedures

Both agreements contain a bifurcated grievance procedure which provides for final and binding resolution of the two types of grievances defined in the agreement: B1 grievances which allege a breach of the terms of the agreement may be submitted to arbitration to be conducted by one of four named arbitrators; and B2 grievances which allege a "violation, misinterpretation or misapplication of the written rules and regulations, policy or procedures affecting the terms and conditions of employment." The step for final and binding resolution of B2 grievances is at issue herein. The State urges that the underlined phrase in the following paragraph is not mandatorily negotiable.

If a grievance as defined in paragraph B.2. of this Article is not satisfactorily resolved, as provided in Section 3.a. above, the Association may, within seven (7) calendar days from receipt of the Superintendent's determination, or if no determination has been issued within twenty-seven (27) calendar days of the submission of the written grievance to the Superintendent, whichever applies, submit the matter, upon notice by certified mail to the Superintendent and the Director of the Office of Employee Relations to the Governor's Employee Relations Policy Council. The Council,

or a designee approved by the Association, shall conduct a hearing to determine the facts and the Council shall render a decision within thirty (30) calendar days of the submission of the matter, which shall be final and binding on the parties. In no event shall the Council's decision have the effect of adding to, subtracting from, modifying or amending the provisions of this Agreement.

The negotiability of grievance procedures was the subject of the Supreme Court's decision in TP. of West Windsor v. PERC, 78 N.J. 98 (1978). In that decision, the Court, construing the express language of N.J.S.A. 34:13A-5.3 providing that the parties "shall negotiate written policies setting forth grievance procedures" affecting terms and conditions of employment held:

Thus the particular procedural details of the grievance mechanism are subject to determination by the negotiated agreement of the parties. These details would cover items such as time restrictions, the number of steps in the grievance procedure, the forum for resolution at each step and the forum for final, binding determination.
78 N.J. at 105-106, emphasis added.

As the language of the contract provisions clearly indicate, the resolution of B2 grievances by the Policy Council or its designee, is by the agreement of the parties final and binding, as is resolution through arbitration for B1 grievances. Thus, the role of the Policy Council in this instance is to act as the arbiter of B2 grievances.

The Council fulfills that role as a result of the negotiated agreement between the State and the Association, just as the same parties negotiated to have B1 grievances resolved

through arbitration. The establishment of both of these forums for final grievance resolution was made in accordance with the method set forth in the Act and prescribed by the Supreme Court in West Windsor, i.e. bilateral negotiations. Hence, if B2 grievances are to be finally resolved in a forum other than the Policy Council, i.e. its designee, the selection of that forum is also mandatorily negotiable. Accordingly, we find that both parties may participate in negotiations over the selection of the person(s) or forum(s) who are to render final and binding decisions upon grievances. If the State seeks to remove the Associations' right of approval of the Policy Council designee, where the Council does not choose to hear the grievance itself, it must seek the Association's agreement in negotiations that they will forego such right of approval or propose to the interest arbitrator that such language be deleted. In the meantime, the Associations are free to propose that the provision remain as is, as the entire proposal, including the underlined language, is mandatorily negotiable.

Information and Special Provisions

Changes in the Rules and Regulations not affecting working conditions and changes in the evaluation system shall be made only after the Association has received fifteen (15) days written notice of such changes and only after Association representatives, not to exceed three (3) in number, have been given an opportunity to discuss the proposed changes.

While this provision may appear at first glance to be a notice provision, it, by its very terms, applies only to rules and

regulations not affecting working conditions. Such rules and the evaluation system are not terms and conditions of employment and therefore the State is correct in its assertion that the provisions are not mandatorily negotiable.

Association Security

It is recognized that Executive Board members and station representatives of the Association have a need for continuity in their assigned locations which exceeds that of other Troopers. It is, therefore, agreed that:

Station representatives of the Association will not, subject to the overriding operational requirements of the Division, be routinely transferred involuntarily, except that he is subject to normal rotational transfer to or from toll roads.

Executive Board members will not be involuntarily transferred from the Troop to which they are assigned when named to that office for the term of office but not exceeding two (2) years, providing such retention may be interrupted if emergency conditions warrant, and except that he is subject to normal rotational transfer to or from toll roads.

The President and Vice-President of the Association shall be given priority for the assignment of day jobs. Such priority will not apply where emergency conditions exist.

We previously considered contract language similar to these provisions in In re State of New Jersey, P.E.R.C. No. 80-19, supra, and found them to be mandatorily negotiable. While such a provision would place limits upon the State's ability to transfer shop stewards and Association officers, we found, on balance, that the need for continuity in the workplace of such

employees ^{7/} outweighed the managerial interests at stake, especially given the relatively small number of employees who probably occupied such positions.

However, following oral argument in the instant case, the Appellate Division issued its decision reviewing our determination in P.E.R.C. No. 80-19 and reversed our holding with respect to the similar provisions at issue therein. The Court commented:

While we can understand the reasons for the desirability of the provision from the viewpoint of the unions plainly they will limit the substantive right of management to transfer an employee. In the circumstances we hold the proposals to be non-negotiable. App. Div. Docket Nos. A-463-79 and A-509-79, slip opinion at p. 10.

In the instant case, the record is devoid of any facts or evidence which would tend to demonstrate that the provisions of the contracts at issue would not similarly limit management's ability to make transfers. Accordingly, we are compelled to follow the Appellate Division's decision, which is the law of the case in P.E.R.C. No. 80-19, and hold the provisions non-mandatorily negotiable.

Maintaining Status Quo

All terms to remain as is except as modified by these demands.

^{7/} In this regard, see Aeronautical Lodge v. Campbell, 337 U.S. 521, 24 LRRM 2173 (1949) and D'Amico v. NLRB, 582 F.2d. 820, 99 LRRM 2350 (3rd Cir. 1978).

Both Associations proposed that all contract provisions, except as modified by their specific proposals, carry over into the successor agreements. The State argues that this demand is not mandatorily negotiable to the extent the contract contain provisions relating to matters which are not terms and conditions of employment. The State's position is axiomatic. Obviously a proposal that the status quo be maintained is negotiable to the extent that the subjects comprising the status quo are mandatorily negotiable. We cannot determine the negotiability of such a proposal absent the knowledge as to which provisions of the expired agreements are alleged to be non-mandatorily negotiable. We assume that the State, in filing these petitions, has identified those contract articles which it believes do not relate to terms and conditions of employment, and we will continue to resolve the disputes concerning specific contract provisions.

* * *

The remaining items in dispute arise only with respect to negotiations with the Troopers, as many similar provisions of the NCO contract were previously considered in P.E.R.C. No. 79-68.

Promotions

The State contends that most of the provisions of Article VIII, Promotions, are not mandatorily negotiable. Almost all of the disputed provisions in the Troopers contract have a

counterpart in the NCO Promotion article which was reviewed by the Commission in P.E.R.C. No. 79-68. Hence, we will apply that ruling to the issues in dispute herein.

Initially we agree with the State that Section A.2.c. relates to criteria and is not mandatorily negotiable. See discussion of NCO contract Section A in P.E.R.C. No. 79-68. This reasoning applies to Article B1 of the Troopers' agreement which we also agree is not mandatorily negotiable.

Articles B2 and B3 relating to the development and content of promotional examinations are non-mandatorily negotiable for the reasons discussed in connection with section C1 of the NCO promotion article. Sections B4 and 7 correspond with Sections C3 and 6 of the NCO contract and are not mandatorily negotiable. Sections B5 and 6 of the Troopers' agreement track sections C4 and 5 of the NCO article and are mandatorily negotiable to the extent set forth in P.E.R.C. No. 79-68 at pages 13 (Section B, second sentence NCO article) and 15 (section C2 NCO article).

Section B8 is analogous to subsection C2 of the NCO contract and the discussion at page 15 of P.E.R.C. No. 79-68 (5 NJPER at 163) is relevant to the resolution of the negotiability of this section. As pointed out in that discussion, a commitment that a list is always available so that employees are aware of who is eligible for promotion is procedural. But the determination to use the list to select for promotion is not mandatorily negotiable as it goes to criteria for promotion. Nor is the determination that promotions will be made at all a mandatorily negotiable subject. Applying this discussion to section B8 herein, the first phrase

requiring that all promotions be made from Troopers on the list would not be mandatorily negotiable. However, the remainder of Section B8 providing that examinations be given to keep a list available is mandatorily negotiable, within the limitations set forth, as a procedural safeguard to apprise employees of their eligibility if the State determines to continue to use examination lists for making promotional decisions.

With respect to the Section B9 of the Troopers promotion article, the State has bracketed certain specified words and phrases, asserting that such matters, in accordance with the prior NCO decision, relate to non-mandatory subjects and therefore cannot be submitted to interest arbitration without mutual agreement. Consistent with our prior determination in the NCO decision, we find the bracketed words and phrases to be non-mandatory.

The intent of section B10 of the Troopers' article is similar to that of Section D2 in the NCO case which was determined to be mandatorily negotiable. The State proposes to delete the reference to medical condition in Section B10, a factor that was not considered in our prior case. However, given that the State has the prerogative to determine the necessary physical and health criteria for the positions it seeks to fill, a pledge to apply these criteria uniformly and equitably is mandatorily negotiable. Hence, if the State seeks removal of the bracketed phrase, it must seek resolution through negotiations or absent agreement, through interest arbitration.

Specialist Selection

The State disputes the mandatory negotiability of three provisions of Article IX, Specialist Selection and a proposal to

add some language to the Article by the Troopers. We find that Sections C and F, respectively, deal with the criteria for specialist assignment and the ability to transfer policy from one specialist assignment to another. Both subjects are non-mandatorily negotiable as is the Troopers' proposal that "The Division shall select from Troopers who apply, the most qualified for the position." The remaining article in dispute (D), providing for a statement of reasons to an applicant after specialist selection is made is mandatorily negotiable as it does not interfere with the State's right to select, transfer or deploy specialists.

Transfer

The remaining matters in dispute are contained in the Transfer article (XVIII) with the State maintaining that all but Section A thereof is non-mandatorily negotiable. The entire article reads:

- A. Transfer orders will be communicated to the affected Trooper as soon after their issuance as practical.
- B. No Trooper shall be transferred on less than ten (10) days notice to him of the proposed transfer, but this notice requirement does not apply to emergency assignments.
- C. The State agrees to continue its policy that where it is practicable and consistent with the efficiency of the Division, to give consideration to reducing the number of miles of commutation a Trooper must travel to his duty station.
- D. Any Trooper submitting a request for transfer or consideration for a particular assignment shall receive from Division Headquarters or the Troop Commander, whichever is appropriate, an acknowledgement and response, or acknowledgement with a notification when a response will be transmitted, within two (2) weeks from such submission. Such response and acknowledgement shall be in writing. To the extent possible and consistent with the Agreement, Division shall honor transfer requests.

E. After at least one (1) year of service, each Trooper can be expected to serve for a period of approximately eighteen (18) months on the Turnpike, Parkway or Atlantic City Expressway.

No Trooper shall involuntarily serve more than one (1) tour of duty unless all Troopers eligible for assignment within one (1) year or more of service have completed such tour of duty. However, a Trooper who has completed a tour of duty and is on another assignment may request to return to duty on the Turnpike, Parkway or Atlantic City Expressway for another tour of duty and shall be given preference by the Division. Paragraph E shall not apply to Troopers who are classified as Specialist** by the Division or to those Troopers with ten (10) or more years of service. The provisions of this Article are subject to the operational needs of the Division.

The negotiability of contract provisions relating to the transfer of employees has been treated by PERC and the Courts similarly to that of promotion, evaluation and assignment of personnel; that is procedural safeguards, such as notice, are terms and conditions of employment, but criteria and other substantive elements of the decision to transfer are non-negotiable matters. See State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90-91 (1978); Fair Lawn Board of Education v. Fair Lawn Education Ass'n, 174 N.J. Super. 554, 558 (App. Div. 1980). Recently the Appellate Division of the Superior Court affirmed this approach by PERC in a decision reviewing the negotiability of a transfer clause in a State collective negotiations agreement for certain non-police employees. In the Matter of Local 195,

IFPTE, AFL-CIO, supra.^{8/} With respect to this issue the Court states:

While Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) held that the substantive decision to transfer was an inherent managerial responsibility it did not rule that procedural aspect of a transfer are not terms and conditions of employment. We view the procedural processes of transfer as a term and condition of employment since promotional procedures though not promotional criteria are terms and conditions of employment. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 90-91 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26-27 (App. Div. 1977).
Slip opinion at pg. 15.

The State concedes that Section B of this Article, like Section A, is a notice provision but it argues that this clause "inhibits it from making the transfer before a particular period of time has passed and thus restricts management's personnel deployment prerogative unlawfully." If we were to sustain the State's reasoning it would follow that any advance notice provision would be non-negotiable. As the above-quoted language indicates, the Courts have reached the opposite conclusion. Moreover, the bare assertion that notice would somehow interfere with the deployment decision is too vague and speculative to counterbalance the direct effect on an employee's work and welfare such notice provides; particularly as the instant provision is

^{8/} This case has been approved for publication and was digested at 106 NJLJ 478 (1980).

neither applicable nor enforceable when emergency deployment is required.

Section C of this article exemplifies the difficulty in analyzing the effect on an employees' personal and financial welfare against the State's right to transfer employees to effectuate its governmental decisions. Since this case arises as a dispute over the continuation of a clause in a successor agreement, we are not presented with a specific factual context in which to evaluate the parties' assertions of negotiability. However, where the employer, as herein, has statewide jurisdiction, the direct and dramatic effect on an employee of a transfer which significantly increases the commutation mileage in terms of expense, time and safety are not difficult to hypothesize. However, it also cannot be denied that the proposal seeks to have the State use the consideration of the miles of commutation to a Trooper's duty station as a criterion in making the transfer decision.

Admittedly the clause is written to provide the State almost total discretion in applying this criteria, however, as discussed above, decisions issued since Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) by this Commission and the Courts have maintained the distinction between criteria and procedures in areas like transfer, evaluation and

promotion. Based upon these decisions, we must find this clause non-negotiable.^{9/}

The last sentence of Section D, in our view could interfere with management's right to make transfers to meet its personnel needs and is accordingly non-mandatorily negotiable. The preceding sentences, however, are similar in language and intent to Article (IX)D which we have today held mandatorily negotiable. Finally, subsection E impinges upon the management prerogative to transfer and make duty assignments and is not mandatorily negotiable.

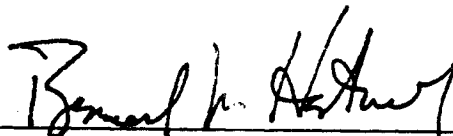
ORDER

A. With respect to those contract provisions and negotiations proposals determined herein to relate to mandatorily negotiable terms and conditions of employment, The State of New Jersey is hereby ordered to negotiate in good faith with the State Troopers Fraternal Association of New Jersey, Inc. and the State Troopers NCO Association of New Jersey, Inc., respectively and to submit any unresolved disputes thereon to interest arbitration in accordance with N.J.S.A. 34:13A-14 et seq.

^{9/} In Ridgefield Park, supra, the Supreme Court conceded that a transfer decision does affect a teacher's work and welfare, but held that this was far outweighed by a board's need to deploy teachers to best meet the needs of students. In the instant case where arguably, the transfer could be across State rather than across Town, the choice might not be as obvious. However, given the ample precedent, we do not believe it appropriate for us to create an exception by speculating on hypothetical situations. We do, however, differentiate the negotiability of this clause from one which proposes an additional stipend or reimbursement based upon commutation mileage.

B. With respect to those contract provisions and negotiations proposals determined to relate to non-mandatory subjects of negotiations, the State Troopers Fraternal Association of New Jersey Inc., and the State Troopers NCO Association of New Jersey Inc., are hereby ordered, in their respective negotiations with the State of New Jersey to refrain from insisting to the point of impasse upon inclusion of such items in their successor agreements with the State and are prohibited from submitting any unresolved disputes with respect to such items to interest arbitration in accordance with N.J.S.A. 34:13A-14 et seq., absent the express agreement of the State of New Jersey.

BY ORDER OF THE COMMISSION



Bernard M. Hartnett, Jr.
Acting Chairman

DATED: Trenton, New Jersey
January 7, 1981
ISSUED: January 8, 1981

The Commission voted on an issue by issue basis based on the issue headings in the decision. The vote was as follows:

Work Week and Compensatory Time: Commissioners Graves, Hartnett, Hipp, Newbaker and Parcells voted for this issue, none opposed.

Grievance Procedure: Commissioners Graves, Hartnett, Hipp, Newbaker and Parcells voted for this issue, none opposed.

Information and Special Provisions: Commissioners Hartnett, Newbaker and Parcells voted for this issue, Commissioner Graves voted against this issue, Commissioner Hipp abstained.

Association Security: Commissioners Hartnett, Newbaker and Parcells voted in favor of this issue, Commissioners Hipp and Graves voted against this issue.

Maintaining Status Quo: Commissioners Hartnett, Hipp, Graves, Newbaker and Parcells voted in favor of this issue. None opposed.

Promotions: All subsections except for Section B-10:
Commissioners Graves, Hartnett, Hipp, Newbaker and
Parcells voted in favor of this issue. None opposed.

Section B-10: Commissioners Graves, Hipp and Parcells
voted in favor of this issue; Commissioners Hartnett
and Newbaker voted against this issue.

Specialist Selection: Section D: Commissioners Hartnett,
Hipp, Newbaker and Parcells voted in favor of this
issue; Commissioner Graves abstained.

Sections C & F: Commissioners Hartnett, Newbaker and
Parcells voted in favor of this issue; Commissioners
Hipp voted against these issues; Commissioner Graves
abstained.

Transfer: Sections A & B: Commissioners Graves, Hartnett,
Hipp, Newbaker and Parcells voted in favor of these
issues. None opposed.

Section C: Commissioners Hartnett, Newbaker and Parcells
voted in favor of this issue; Commissioners Graves and
Hipp voted against this issue.

Sections D & E: Commissioners Graves, Hartnett, Hipp,
Newbaker and Parcells voted in favor of these issues.
None opposed.

Chairman Mastriani did not participate in the discussion or vote
in this decision.

APPENDIX "A"

P.E.R.C. No. 81-81

Proposals pertaining to both the Troopers and NCO units

WORKWEEK AND COMPENSATORY TIME

Employees who are required to work on a Saturday or Sunday which had been scheduled as a day(s) off, will, to the extent practicable, be granted a Saturday or Sunday as compensatory time.

GRIEVANCE PROCEDURES

If a grievance as defined in paragraph B.2. of this Article is not satisfactorily resolved, as provided in Section 3.a. above, the Association may, within seven (7) calendar days from receipt of the Superintendent's determination, or if no determination has been issued within twenty-seven (27) calendar days of the submission of the written grievance to the Superintendent, whichever applies, submit the matter, upon notice by certified mail to the Superintendent and the Director of the Office of Employee Relations to the Governor's Employee Relations Policy Council. The Council, or a designee approved by the Association, shall conduct a hearing to determine the facts and the Council shall render a decision within thirty (30) calendar days of the submission of the matter, which shall be final and binding on the parties. In no event shall the Council's decision have the effect of adding to, subtracting from, modifying or amending the provisions of this Agreement.

INFORMATION AND SPECIAL PROVISIONS

Changes in the Rules and Regulations not affecting working conditions and changes in the evaluation system shall be made only after the Association has received fifteen (15) days written notice of such changes and only after Association representatives, not to exceed three (3) in number, have been given an opportunity to discuss the proposed changes.

Association Security

It is recognized that Executive Board members and station representatives of the Association have a need for continuity in their assigned locations which exceeds that of other Troopers. It is, therefore, agreed that:

Station representatives of the Association will not, subject to the overriding operational requirements of the Division, be routinely transferred involuntarily, except that he is subject to normal rotational transfer to or from toll roads.

Executive Board members will not be involuntarily transferred from the Troop to which they are assigned when named to that office for the term of office but not exceeding two (2) years, providing such retention may be interrupted if emergency conditions warrant, and except that he is subject to normal rotational transfer to or from toll roads.

The President and Vice-President of the Association shall be given priority for the assignment of day jobs. Such priority will not apply where emergency conditions exist.

Maintaining Status Quo

All terms to remain as is except as modified by these demands.

APPENDIX "B"

P.E.R.C. No. 81-81

Proposals pertaining solely to the Troopers' Association

PROMOTIONS

c. The following factors are considered in promotion to Trooper I and Trooper II:

- (1) Total length of service in the State Police.
 - (a) Minimum of nine (9) years creditable service required for promotion to Trooper II.
 - (b) Minimum of twelve (12) years creditable service required for promotion to Trooper I.
 - (c) Creditable time in service commences with enlistment after graduation from the New Jersey State Police Academy and will not include time lost during suspensions(s) nor time lost between resignation and reinstatement.
 - (d) Years of service shall be computed only on the following anniversary dates: January 1, April 1, July 1 and October 1.
 - (e) Date of enlistment to one (1) of the above anniversary dates, less time lost during suspension(s) or time lost between resignation and reinstatement, shall determine length of creditable service to qualify for promotion to Trooper I and II.
- (2) Performance rating.
- (3) Record of conduct.
- (4) Ability to perform in the next higher rank or grade.

B. Promotions and Reclassifications to Sergeant

1. Promotions and reclassifications of Troopers to the rank of Sergeant shall be predicated in part on a written examination and in part on related experience, length of service, evaluation of performance, record of conduct, and ability and job knowledge to perform in the next higher rank.

2. The examination shall be either a pass-fail type which will determine eligibility for promotional consideration or alternatively shall be numerically scored and weighted

thirty-four (34%) percent in the total promotional decision, or a combination thereof, to be mutually agreed upon by the parties.

3. During the term of this Agreement the Department of Civil Service will develop the written examinations, the purpose of which is to predicate promotions and reclassifications of Troopers to Sergeants to a greater extent on objective considerations in order to identify the most qualified employee for promotion and reclassification.

4. All Troopers with seven (7) years service in the Division of State Police, determined by the date of the Academy class graduation, as of the date of the announcement of the examination shall be eligible to take the examination. There will be no other eligibility requirement for taking the examination.

5. There shall be a thirty (30) day period between the date of the announcement of the examination and the date it is given. There shall be a make-up examination for those Troopers who, for legitimate reasons, miss the regular examination.

6. The results of the examination will be posted within ninety (90) days of the original announcement.

7. The examination results will remain in effect for one (1) year from the date of the posting of results or until the list is exhausted.

8. All promotions will be made from Troopers on the list and examinations will be given so that there is always an available list from which promotions can be made.

* 9. Position vacancies for Sergeants will be announced via teletype specifying the appropriate criteria to be met by applicants. At the time the vacancy is announced, or prior thereto, the Division will state the (percentage each) criterion to be considered in making the promotion (is worth, i.e.), (how much of management's sixty-six (66%) percent each criterion is worth.) Said announcements shall be posted for at least seven (7) days on bulletin boards throughout the Division and copies thereof will be sent to the President of the Association. (All vacancies will be filled within one hundred and twenty (120) days of their announcement.) (The number of points assigned to each of management's criterion shall remain constant as to each vacancy for the same position, unless an adjustment is (sought) by the Division. (In such case the Division shall present its position, in advance of any proposed change, to the Association.) (Agreement to such adjustments by the Association shall not be unreasonably withheld.)

*10. The (eligibility) requirements for all promotional consideration under this Article, (inclusive of medical condition), shall be uniformly and equitably applied to all eligible Troopers.

SPECIALIST SELECTION

C. Infractions of the rules and regulations of the Division which do not bear on the particular assignment under consideration shall not be given undue weight in evaluating the Trooper for the position.

D. When requested by a Trooper applicant, the Division will provide reasons for the selection which has been made. If specifically requested, such response will be made in writing. Either request must be made within thirty (30) days of the selection. If a Trooper fails to request the reasons for the selection, the Trooper shall waive the right to proceed through the grievance procedure.

F. The Division may transfer any Trooper who is a Specialist to any other Specialist position which has functional duties which are similar to those performed in the Specialist positions by the Trooper being transferred. Until the Specialist positions with similar functional duties are agreed upon in writing by the S.T.F.A., no transfers from one (1) category of Specialist to another will be permitted unless paragraph A of this Article is complied with.