

P.E.R.C. NO. 89-73

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BELMAR,

Petitioner,

-and-

Docket No. SN-88-34

BELMAR P.B.A. LOCAL NO. 50,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds that an overtime provision in an agreement between the Borough of Belmar and Belmar P.B.A. Local No. 50 is mandatorily negotiable. The Commission also finds that a provision requiring the employer to provide medical insurance coverage to retired negotiations unit members from a provider other than the New Jersey State Health Benefits Plan is not mandatorily negotiable and may not be submitted to interest arbitration.

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Appearances:

For the Petitioner, Crammer & Covelli, Esqs.
(Timothy M. Crammer, of counsel)

For the Respondent, Joseph N. Dempsey, Esq.

DECISION AND ORDER

On December 2 and December 14, 1987, the Borough of Belmar ("Borough") filed and amended a petition for Scope of Negotiations Determination. The Borough seeks a determination that two provisions of its January 1, 1985 to December 31, 1987 collective negotiations agreement with Belmar P.B.A. Local No. 50 ("PBA") are not mandatorily negotiable. It also seeks to restrain arbitration of a grievance filed by the PBA concerning one of these provisions. Both parties have filed briefs.

The Borough asserts that provisions of the agreement requiring the Borough to use regular police officers (rather than special police) for overtime assignments and prohibiting the Borough from using the New Jersey State Health Benefits Plan to provide post-retirement health insurance are not mandatorily negotiable and

cannot be submitted to interest arbitration. In addition the Borough seeks to restrain arbitration of a grievance filed after the Borough stated that it could not legally obtain the coverage except through the State Health Benefits Plan.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters:^{1/}

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 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 policy-making 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]

^{1/} 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 mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

We will consider only whether the overtime issue is mandatorily negotiable. Our policy is not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire 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). However, with respect to the health insurance issue, because grievance arbitration is involved, we will allow arbitration if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged is preempted or would substantially limit government's policy-making powers.

Article 12, section E(3) provides:

Management shall offer overtime to regular members of the department when the assignment is made to fill a vacant regular police post. For purposes of this section, a regular police post is one to which a regular police officer has been assigned by the existing work schedule, but shall not include any subposts, detective posts, or motorcycle posts. A vacant post is defined as one where an officer has been taken off because of the use of sick leave, accumulated compensatory time, or the use of a vacation day which is used other than during the officer's vacation time.

The Borough contends that the article impermissibly restricts its ability to make staffing decisions. It asserts that the use of special police for overtime will alleviate budgetary

problems by decreasing overtime costs. The Borough also relies on a municipal ordinance adopted pursuant to N.J.S.A. 40A:14-132 that limits the work time of police officers to 8 hour days and 40 hour weeks. The PBA contends that replacement of unit employees with non-unit employees is mandatorily negotiable.^{2/}

Preservation of unit work is mandatorily negotiable. Cty. of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979) aff'd in part App. Div. Dkt. No. A-3564-78 (6/19/80). This includes contract clauses that are designed to prevent overtime opportunities from being assigned to non-unit employees of the same employer. City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985). See also Tp. of Mine Hill, P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Washington Tp., P.E.R.C. No. 83-166, 10 NJPER 402 (¶14183 1983). The employer's argument that its ordinance adopted under N.J.S.A. 40A:14-134 preempts this clause is without merit. That statute does not apply in cases of "emergency," defined as including personnel shortages "caused by vacancies, sickness or injury or by the taking of accrued vacation or sick leave...." The Borough's economic argument for using special police officers is insufficient. A desire to save money does not render work preservation clauses non-negotiable. City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988); Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den.

^{2/} The recognition clause of the contract excludes special police.

P.E.R.C. No. 79-92, 5 NJPER 230 (¶10127 1979), aff'd App. Div. Dkt. No. A-3651-78 (1980); Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-486-81-T1 (1983). Thus Article 12, section E(3) is mandatorily negotiable.^{3/}

Article 19, section C(1) states that the Borough shall provide medical insurance coverage to retired negotiations unit members, but that such coverage "shall be obtained from a provider other than the New Jersey State Health Benefits Plan." The negotiability of the identical contract clause was considered in Bor. of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988), adopting H.E. 89-10, 14 NJPER 593 (¶19252 1988). We adopted the Hearing Examiner's conclusion that the clause was not enforceable through grievance arbitration because it is preempted by the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq., and the clause cannot be included in a successor agreement through interest arbitration because N.J.S.A. 34:13A-18 prevents an arbitrator from ruling on any change in health insurance coverage for employees of an employer participating in the State Health Benefits Program. See Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988); Lyndhurst Tp., P.E.R.C. No. 87-9, 12 NJPER 608 (¶17230 1986); Middlesex. The article thus cannot be the subject of

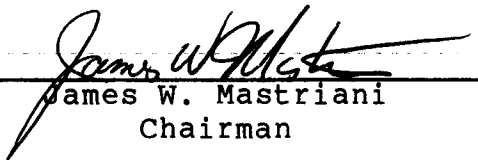
^{3/} Belmar PBA v. Bor. of Belmar, 89 N.J. 255 (1982) held only that it was legal for the Borough to hire special police to supplement its regular police force. No issue of negotiability was presented.

either binding grievance arbitration or compulsory interest arbitration.

ORDER

Article 12, section E(3) is mandatorily negotiable.
Article 19, section C(1) is not mandatorily negotiable and may not be submitted to interest arbitration. The Borough's request for a restraint of grievance arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
December 19, 1988
ISSUED: December 20, 1988