

P.E.R.C. NO. 87-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF UNION

Petitioner

-and-

Docket No. SN-87-14

SUPERIOR OFFICERS ASSOCIATION

Respondent

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of certain proposals submitted by the Superior Officers Association to the Township of Union during contract negotiations. The Commission finds that the cost of purchasing and maintaining police equipment is mandatorily negotiable but that the issue of what equipment and uniform accessories are necessary is not mandatorily negotiable. The Commission further determines that a proposal concerning tour of duty exchanges not conditioned on management's prior approval are not mandatorily negotiable.

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Appearances:

For the Petitioner, Gerald L. Dorf, P.C.
(Lawrence Henderson, of counsel)

For the Respondent, Charles P. Kelley, Chief Negotiator

DECISION AND ORDER

On October 2 and 6, 1986, the Township of Union ("Township") filed a Petition and Amended Petition for Scope of Negotiations Determination. The Township seeks a determination that certain proposals made during successor contract negotiations by the Superior Officers Association ("Association"), the majority representative of the Township's police superior officers, are not mandatorily negotiable. The Township and the Association are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et seq.

Both parties have filed briefs.^{1/}

^{1/} The Association questions the petition's timeliness. It is timely. N.J.A.C. 19:16-5.5(c)

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 and firefighters.^{2/} 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 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 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.
[Id. at 92-93; citations omitted]

We consider only whether the proposals are mandatorily negotiable. It is our policy not to decide whether contract

^{2/} The scope of negotiations for police and fire employees is broader than for other public employees because P.L. 1977, c. 85 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

proposals, as opposed to contract 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).

Two articles are still in dispute.^{3/} Article III(B)

reads:

In addition to the foregoing, hardware items such as service hand guns, holsters and belts, handcuffs and cases, nightsticks, individual safety helmets and face shields, badges, mace, flashlights, flashlight batteries, whistles, and one ball-point pen per month shall be supplied by the Township and replaced when necessary.

The "foregoing" is Article III(A) (not in dispute) which reads:

Each police officer shall maintain his uniform in a clean and presentable condition at all times. If any part of an officer's uniform is damaged or destroyed in the line of duty, the Township will pay for the replacement or repair thereof upon voucher submitted therefore and approved by the Chief of Police. If an officer's personal property, other than his uniform is damaged in the line of duty, the Township, subject to the approval of the Chief of Police, shall pay for the replacement or repair thereof upon voucher submitted therefor (sic) in an amount not to exceed \$100.00 per incident, provided that under extraordinary circumstances this amount may be exceeded upon recommendation of the Chief of Police and approval of the Township Committee.

^{3/} The amended petition also includes Articles XIV(A)(B) and (F) and XIX(A)(B), but the Association has conceded that they are not mandatorily negotiable.

Section (B) addresses two issues: (1) what uniform accessories (i.e. equipment) are necessary; and (2) who will pay for the cost of purchasing and maintaining the equipment. The second issue is mandatorily negotiable. The negotiability of a demand for equipment turns upon whether the item is predominately concerned with employee safety or comfort rather than the method and means of delivering police services to the community which is a non-negotiable governmental policy determination. See Tp. of Egg Harbor, P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985); Cty. of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pertinent part, App. Div. Dkt. No. A-3564-78, 6 NJPER 338 (¶11169 1980); Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). The Township contends that among the items listed, handguns, holsters and belts, handcuffs and cases, nightsticks and mace are not mandatorily negotiable. We agree. The remaining items are not challenged by the Township and are not in dispute.

Article IX(B)(2) reads:

Any employee may be granted special leave with pay for any days on which he is able to secure another employee to work in his place, provided:

- a. Such substitution does not impose additional cost upon the Township,
- b. Such substitute shall be of equal rank, (or as authorized),
- c. The Officer-In-Charge of the tour of duty on which the substitution is to take place is notified as soon as possible by the Officer-In-Charge of the Department on the same tour.

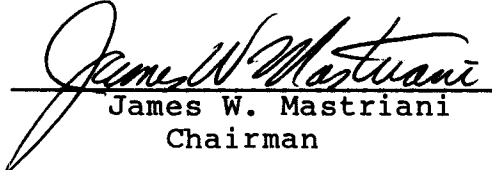
The Township argues that this proposal is not mandatorily negotiable because it requires only notice rather than prior approval before officers may exchange shifts. We agree. Proposals concerning tour of duty exchanges not subject to management's prior approval are not mandatorily negotiable. See Town of Kearny, P.E.R.C. No. 83-7, 8 NJPER 435 (¶13202 1982); Tp. of Teaneck, P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984); Paterson Police PBA.

ORDER

A. Article III(B) is mandatorily negotiable except to the extent that it mandates that police officers be equipped with service handguns, holsters and belts, handcuffs and cases, nightsticks and mace.

B. Article IX(B)(2) is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Smith voted in favor of this decision. None opposed. Commissioner Wenzler was not present.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987