

P.E.R.C. NO. 81-147

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEEHAWKEN,

Petitioner,

-and-

Docket No. SN-81-48

WEEHAWKEN P.B.A. LOCAL NO. 15,

Respondent.

SYNOPSIS

In a scope of negotiations decision, the Commission determines to be mandatorily negotiable numerous contract articles in dispute between the Township and the PBA which relate to grievances, contract reopeners, employment security, compensatory time and preservation of unit work. The Commission also finds permissively negotiable certain clauses relating to minimum manning security, employment qualifications and promotions.

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Appearances:

For the Petitioner, Dorf and Glickman, P.C.
(Mark S. Ruderman, of Counsel)

For the Respondent, Schneider, Cohen, Solomon
& DiMarzio, Esqs.
(David Solomon, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on December 19, 1980 by the Township of Weehawken (the "Township") seeking a determination as to whether certain matters in dispute between the Township and the Weehawken P.B.A. Local No. 15 (the "PBA") were within the scope of collective negotiations.

In the present dispute, the PBA seeks to submit to compulsory interest arbitration on a successor agreement, certain provisions in the current collective negotiations agreement as well as new proposals. The Township contends that fifteen (15) provisions submitted by the PBA are not mandatorily negotiable and therefore cannot be submitted to compulsory interest arbitration. The PBA maintains that all items are mandatorily

negotiable. The disputed provisions numbered 1 through 15 are attached hereto as Appendix A, and shall be considered individually below.

As to the first disputed clause entitled Grievance Procedure, the Township asserts that the provision is impermissible because it expands the statutory definition of grievance found in N.J.S.A. 34:13A-5.3 (the "Act").^{1/} However, it fails to state how the provision expands the statutory definition. The PBA correctly cites the New Jersey Supreme Court in Twp. of West Windsor v. PERC, 78 N.J. 98 (1978), which held the scope of mandatory grievability under Section 5.3 of the Act to include disputes over terms and condition of employment specifically covered by the collective agreement as well as matters not included in the agreement, but which "bear directly upon the employment relationship." (At p. 111).

After review of the disputed contract clause, we find that all items enumerated as grievable (work conditions, light, heat, sanitary facilities, safety, workload and supervisory

^{1/} N.J.S.A. 34:13A-5.3 provides in part as follows: "Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreement and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization."

attitude) relate to "terms and conditions of employment" and the scope of grievability is within the limits set out in West Windsor.^{2/} Therefore, we find the grievance procedure is mandatorily negotiable.

Clause number two (2) entitled Manpower requires submission of a joint scope petition to determine negotiability of a "minimum complement" provision. The Township argues that the clause relates to "minimum manning" which is a permissive subject of negotiations and may be submitted to impasse proceedings only upon mutual agreement of the parties.^{3/} The PBA argues that this clause merely requires submission to arbitration and is not an agreement to certain staffing levels. The Township has submitted the clause for a determination that the underlying staffing provision is a permissive subject of negotiations, which may not be submitted to impasse proceedings without mutual agreement. We find no merit to the PBA's argument that only a joint

^{2/} See also, In re Township of Weehawken, P.E.R.C. No. 81-104, 7 NJPER (¶ 1981); Bernards Twp. Bd of Ed v. Bernards Twp. Ed Ass'n, 79 N.J. 311 (1979). In In re Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980), the Commission determined that it would not rule upon issues without the benefit of argument by the petitioner. In the instant dispute the Township failed to specify how the grievance procedure exceeded permissible limits.

Additionally, we are uncertain what is meant by grievances concerning "supervisory attitude." In the absence of discussion from the parties concerning the meaning of this phrase and without the benefit of an actual dispute, we cannot determine whether a grievance on this subject could be submitted to binding arbitration. Accordingly, we hold the clause as written is mandatorily negotiable but this determination will not affect the ability of the Township to seek a determination as to the negotiability of a grievance on this subject when an actual grievance is presented.

^{3/} See, In re City of Perth Amboy, P.E.R.C. No. 79-86, 5 NJPER 205 (¶10117 1979); In re Township of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979); Borough of Roselle v. Roselle Borough PBA Local No. 99, Inc., App. Div. Docket No. A-3329-79, aff'g P.E.R.C. No. 80-137; and Irvington PBA v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979).

scope petition is required under the clause. We find that clause number two (2) is a permissively negotiable minimum manning provision. Irvington and Roselle.

Similarly, clause number twelve (12) requiring the Township to follow the Police Department table of organization established by ordinance, also stipulates the minimum complement of personnel for a regular duty tour. This clause concerns staff levels and is a permissively negotiable minimum manning clause.

Clause number three (3) provides the PBA with an option to reopen negotiations on salary and benefits in the event that Township employees not covered by this collective bargaining agreement receive greater benefits in the years 1979 and 1980. The Township argues that this is an illegal parity clause under In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978), and urges reconsideration of our decision in Township of Weehawken, P.E.R.C. No. 79-39, 5 NJPER 42 (¶10027 1979).

There is no reason at this time to reconsider the 1979 Weehawken decision. In Plainfield the disputed clause provided for predetermined results and the automatic conferral of a benefit to the members upon the employer's grant of increased benefits or rights to other employees, thereby "chilling the free exchange between a public employer and employee organization by permitting a third employee organization, not a party to the negotiations, to have impact on those negotiations." (Plainfield at 256). We agree with the PBA that the instant clause, unlike the clause in

Plainfield, requires negotiation between the parties upon the happening of a specific event.^{4/} The contested reopener clause is mandatorily negotiable.

The fourth contested proposed clause entitled Employment Security protects Police Officers from replacement by non-police employees. The Township argues that this clause is a permissive minimum manning provision, not subject to interest arbitration proceedings without mutual assent. The PBA argues the provision prohibits the replacement of unit members with non-unit members and is mandatorily negotiable.

In In re Middlesex County College Board of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1978), we decided that the determination of the number of employees in the employer organization is a non-negotiable management prerogative but "[the] demands relating to the replacement of unit members with adjuncts [non-unit members] are mandatorily negotiable." More recently, in In re County of Middlesex, 5 NJPER 194 (¶10111 1979)^{5/} the Court, agreeing with PERC, found mandatorily negotiable a provision prohibiting replacement of full-time employees by non-correction officers, part-time employees or other personnel.

^{4/} See also, In re Township of Weehawken, P.E.R.C. No. 81-104, supra. where the Township negotiated a clause providing compensatory time to the FMBA members whenever other Township employees were excused by executive order of certain officials.

^{5/} In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part (preservation of positions), rev'd in part (on other grounds), App. Div. Docket No. A-3564-78 (6/19/80).

The Appellate Division found that the clause "on its face, [did] not deal with transfers, reassignments or employee safety, but rather with the subject of protecting unit work from encroachment by non-unit members." (At page 4, unpublished.) Essentially, clause number 4 also protects bargaining unit positions and is therefore mandatorily negotiable.

Similarly, clause number 13, which provides that the radioroom and switchboard be manned only by police officers also protects bargaining unit positions and is therefore mandatorily negotiable (In re Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979); aff'd 6 NJPER 340 (¶11170 1980), App. Div. Docket No. A-3651-78 (7/1/80).

Disputed clause number five (5), which provides for filling vacancies within a delineated period of time is, as the Township argues, permissively negotiable. The Commission has held in numerous cases that such clauses relate to permissive subjects of collective negotiations.^{6/}

Clause numbers six (6) and nine (9) are considered here together. Both clauses prohibit the Township from imposing unrelated duties on employees in the collective negotiations unit.^{7/} The Township contends the clauses are permissive because the

^{6/} In re City of Newark, P.E.R.C. No. 80-111, 6 NJPER 138 (¶11068 1980); In re City of Cape May, P.E.R.C. No. 80-39, 5 NJPER 414 (¶10210 1979); In re City of Paterson, P.E.R.C. No. 80-16, 5 NJPER 369 (¶10189 1979); appeal pending App. Div. Docket No. A-257-79; In re State of New Jersey, P.E.R.C. No. 79-61, 5 NJPER 120 (¶10070 1979); and In re City of Paterson, P.E.R.C. No. 80-99, 6 NJPER 91, (¶11046 1980).

^{7/} Clause number six (6) prohibits performance of firemen functions; clause number nine (9) prohibits performance of duties unrelated to the police department or normal police duties.

subject matter relates to management prerogatives to determine police duties and to make assignments. The PBA argues that the clauses really relate to safety and performance of non-police duties.

The New Jersey Superior Court, in In re Byram Twp. Board of Education, 152 N.J. Super 12 (App. Div. 1977), said that required performance by teachers of non-teaching duties which ordinarily would be performed by maintenance personnel "would intimately and directly affect the work and welfare of the teachers." (Byram Twp. at p. 26). Further, the Court held that the clause prohibiting the performance of non-teaching duties related to matters which "constitute mandatorily negotiable terms and conditions of employment within the meaning of the Act." (At 26). We find Byram dispositive of the instant dispute. The clauses herein do not impinge on the management's right to determine what are police duties; they prohibit imposing non-police duties on police officers^{8/}

^{8/} The clauses do not relate to management's right to make assignments of duties within the work of the unit; therefore, In re Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1980) does not apply.

Additionally, the specific prohibitions on performing maintenance duties such as changing tires contained within clause 6 cannot be read to apply to emergency repair responsibilities when garage people may not be on duty. As we held in In re Mercer County Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980), a clause that would be interpreted to mean that an officer would not have to perform "normal housekeeping duty" such as changing a tire on his or her own vehicle while on patrol, absent some unreasonable safety hazard, would not be mandatorily negotiable since it would effectively remove the vehicle from service. We do not interpret this clause in that manner. Rather, we interpret it to mean that police officers cannot be routinely assigned to do the maintenance work on the Department's and Township's vehicles instead of their police work, or in addition to it. With that interpretation, we hold it mandatorily negotiable and consistent with our earlier determination.

In applying these two clauses as well as the earlier one (clause 4) on the use of non-unit employees to do unit work, it is important to recognize certain limitations and assumptions which are implicit in our finding that these deal with mandatorily negotiable subjects.^{9/}

Our analysis assumes that these clauses do not apply to emergency situations. Byram Township, supra. held that even if a matter relates to a term and condition of employment, a contract clause cannot be so broad as to prohibit a public employer from responding to the needs of an emergency. 152 N.J. Super at 24-25. Similarly, the limitation on assigning police officers doing non-police work must be interpreted as relating to situations where the Township's motivation does not relate to governmental policy judgments on the nature of police functions. This is to be contrasted, for example, to a decision motivated by a desire to save money by having police perform duties during their regular working hours which otherwise might have to be performed by other employees on overtime. See In re Rutgers, supra.

In clause number seven (7), the Township contests a specific requirement to replace police vehicles after 50,000 miles, is an illegal infringement on management's right to determine the

^{9/} These clauses are before us as proposals for inclusion in a contract unrelated to any specific fact pattern. N.J.S.A. 34:13A-5.4(d). Therefore their effect on employees or on the Township's managerial prerogatives can only be hypothesized. The Township, of course, suggests the broadest reading and implications for the clauses on its governmental responsibility, while the P.B.A. suggests that the clauses only relate to employees' work and welfare. It is therefore necessary that we indicate the interpretations we have given the clauses, which are essential to our holdings.

time to purchase vehicles. The PBA argues that the clause relates to safety matters, and is therefore mandatorily negotiable. It distinguished In re County of Middlesex, cited by the Township wherein the requirements of the clause related to the type of car and date of purchase.^{9/} Therefore, we find clause number seven (7) is permissively negotiable as to the specific requirement for vehicle replacement. The parties have not submitted the part of this clause which requires safety inspections and therefore it is not in dispute.

Clause number eight (8) concerning safety and welfare, the Township contends, is really a permissive minimum manning clause, under In re City of Perth Amboy, supra. The PBA argues that the balance test set out in Woodstown-Pilesgrove Board of Education v. Woodstown-Pilesgrove Ed Ass'n, 81 N.J. 582 (¶11039 1980) be construed in favor of negotiability.^{10/} The disputed

^{9/} It is clear that in County of Middlesex, the Court reviewed the disputed clause in the context of a submission to binding grievance arbitration. The issue in the instant dispute arises in the context of an impasse proceeding under Chapter 85 of the Act which allows submission to compulsory interest arbitration of permissive subjects by mutual agreement of the parties.

^{10/} The Court stated in Woodstown-Pilesgrove:supra:

The nature of the terms and conditions of employment must be considered in relation to the extent of their interference with managerial prerogatives. A weighing or balancing must be made. When the dominant issue is an educational goal, there is no obligation to negotiate and subject the matter, including its impact, to binding arbitration.

(At. p. 591).

* * *

It is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions. State v. State Supervisory Ass'n, 78 N.J. at 67. We do not find such a transgression in this case.

(At p. 593).

clause herein provides in part for a minimum of two (2) patrol cars at all times and minimum staffing levels for each tour of duty.

We agree with the Township that the clause in the present case is analogous to the disputed clause in In re City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶111195 1978) setting out the minimum number of paid firemen and fire vehicles required to service a community. In East Orange we found the disputed provision to be a permissive subject of negotiations. Likewise, we find the minimum manning clause in the present case permissively negotiable.

Clause number ten (10) relates to the definition and application of seniority. The Township argues that In re State of New Jersey (State Troopers NCO Association), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979), controls because the instant disputed clause relates to criteria which is permissively negotiable. The PBA argues the clause is procedure not criteria and therefore mandatorily negotiable.^{11/} Neither argument is entirely correct. The requirement of the provision for the Board to discuss employee transfers with the PBA representative is procedural notice, a mandatorily negotiable subject. The remainder of the clause is a

^{11/} In In re Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980), Article 14, Section 5 of the contract established preference by seniority for overtime assignments; Section 6 of the same article required preparation of a master seniority list. Both sections were found mandatorily negotiable. Section 5 included a definition of seniority by rank and was found mandatorily negotiable.

permissive subject for negotiation as it relates to criteria for transfer. See Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education, 78 N.J. 144, 156 (1978).

The portion of the clause dealing with seniority as it relates to lay-off and recall must be considered non-negotiable. In State v. State Supervisory Employees Ass'n, 78 N.J. 59 (1978), the Supreme Court held seniority as a criteria for these subjects to be a term and condition of employment but that its negotiability was preempted by Civil Service statutes and regulations where applicable. In this case, the Township has not indicated whether Weehawken police are covered by civil service; however, a review of our recent decision involving the Township and its firefighters, P.E.R.C. No. 81-104 supra, indicates that Weehawken is a Civil Service municipality. There we held a much more detailed clause on seniority to be illegal as it related to lay-off and recall, unless it could be amended to be consistent with civil service law. Here also the clause, including the definition of seniority, must be considered illegal unless understood to incorporate the Civil Service statutes and regulations.

Clause number eleven (11) granting compensatory time off for Police Department employees when other municipal employees are granted an additional day off by special executive order is mandatorily negotiable. This clause is exactly the same as the compensatory time provision in the contract between the Township and FMBA Local 26, which we found mandatorily negotiable in our Weehawken decision issued March 1980, P.E.R.C. No. 81-104. That decision is controlling on the issue here.^{12/}

^{12/} See also, In re Borough of Watchung, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981).

In clause number fourteen (14), the parties acknowledged the employer's right to maintain and enforce reasonable rules and regulations but required the Township to "sit down" with the PBA to modernize and update the existing rules and regulations. The Township is under a statutory mandate set out in N.J.S.A. 34:13A-5.3 to negotiate before implementation of changes to existing rules. ^{13/} Clause number 14 is consistent with the statutory requirement and is a mandatory subject of negotiation. Changes or modifications to existing rules governing terms and conditions of employment are mandatorily negotiable.

The last disputed clause, number fifteen (15), requires maintenance of standards for entrance to the patrol officer position. The Township argues that the clause is permissive under Middlesex County Park Commission, supra, because it specifies qualifications for employment. Since this clause does involve substantive criteria, we find it to be permissively negotiable. We agree with the PBA that under Cape May Board of Education, P.E.R.C. NO. 78-86, 4 NJPER 254 (¶4129 1978), changes in procedural criteria are mandatorily negotiable. However, the instant clause does not specify whether procedural matters are involved.

ORDER

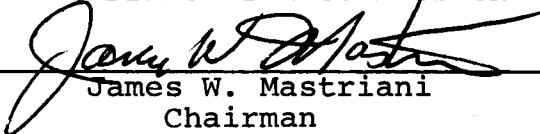
A. With respect to those matters which have been determined to be permissive subjects of negotiation, PBA Local 15 is ordered to refrain from insisting to the point of impasse upon inclusion of such matters in the collective negotiations agreement with the Town of Weehawken and may not submit any unresolved

^{13/} N.J.S.A. 34:13A-5.3 provides in pertinent part that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

disputes on such topics to interest arbitration absent agreement of the Town of Weehawken.

B. With respect to those matters which have been determined herein to be mandatory subjects of negotiation, the Town of Weehawken is ordered to negotiate with PBA Local 15 with respect thereto. Any unresolved disputes on such matters may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Hipp, Newbaker, Parcels and Suskin voted in favor of this decision. Commissioner Graves was not present. Commissioner Hipp dissents from the portion of the Commission's decision which found that all or part of the following proposals were either permissive or illegal subjects of negotiations: Manpower; Table of Organization; New Hires; Promotions and Details; Apparatus Inspection; Safety and Welfare; Seniority and Qualifications of Employment. Commissioner Newbaker dissents from the finding on the proposal for compensatory time.

DATED: Trenton, New Jersey
June 9, 1981
ISSUED: June 11, 1981

APPENDIX A

1. ARTICLE VIII - GRIEVANCE PROCEDURE

SECTION 1. Definition of a Grievance. A grievance is a complaint, a view, or any opinion, pertaining to conditions or relationships between an employee regarding employment. Grievances are concerned with work condition, light, heat, sanitary facilities, safety, work load, and attitude of Supervisors. This grievance procedure in no way effects any Civil Service action which the employee or employer may decide to take.

2. ARTICLE XXIII - MAN-POWER

SECTION 1. The parties shall submit a joint scope petition on the issue of whether the employee is entitled to a manning provision which provides "A minimum complement of five (5) patrolmen and two (2) superiors shall constitute adequate personnel for a tour of duty."

3. ARTICLE XXXII - REOPENER

SECTION 1. In the event that any other group of employees receives for the years 1979 and 1980 either higher salaries and/or greater benefits than provided for herein, then, and in that event, the P.B.A. shall have the option to reopen this contract for further negotiations.

4. PROPOSAL #5 - EMPLOYMENT SECURITY

During the term of this agreement, no Police Officer or Probationary Police Officer shall be deprived of his employment as was a Weehawken Police Officer by reason of the replacement of Police with non Police employees.

5. PROPOSAL #1 - NEW HIRES, PROMOTIONS AND DETAILS

SECTION #1. The parties agree that all vacancies in the Department shall be made by the "EMPLOYER" in accordance with prevailing Civil Service Laws.

SECTION #2. The "EMPLOYER" agrees that all vacancies or Promotions will be filled not more than thirty (30) days from the effective date of said vacancy if budgetary appropriations are available. The "EMPLOYER" agrees on promotions not to discriminate because of religion, age, race, color, or politics, or for personal reasons unrelated to the job.

6. PROPOSAL #4 - NON-POLICE DUTIES

No member will be required to perform Fireman functions or duties. No member shall be required to assist in an attempt to control a fire, near fire or any other disorder by the use of hose streams or otherwise. No member will be required to perform any mechanical or maintenance work such as changing tires, and washing and cleaning motor vehicles.

7. PROPOSAL #5 - APPARATUS INSPECTION

All motor vehicle apparatus will comply with State inspection standards. Any vehicle which does not so comply irrespective of whether it has a current sticker, will be put out of service and not operated by any employee until said vehicle meets inspection standards. All Police Department vehicles that reach 50,000 miles on the odometer will be put out of service and replaced by a new vehicle.

8. PROPOSAL #7 - SAFETY AND WELFARE

SECTION #1. There will be a minimum of two (2) patrol cars on patrol at all times for the safety of the employee. While patrolling, all patrol cars will be at all times manned by two (2) men from 4:00 pm to 8:00 am and at all other times, when manpower is available, for the general safety of the Township residents and the welfare of the Police Department employees.

SECTION #2. There will be not less than one (1) Lieutenant and one (1) Sergeant assigned to desk and patrol duty during each tour of duty.

9. PROPOSAL #11 - ASSIGNMENTS

No employee of the Police Department will be assigned to perform any duty which is unrelated to police duties as described in the rules and regulations of the police department. No such employee shall be assigned any duty which is unrelated to the normal daily performance of his police duties.

10. PROPOSAL #12 - SENIORITY

Except where otherwise specified in this agreement, traditional principles of seniority will apply to employees covered by this agreement. Such principles will apply to lay off, recall or any other similar acts. Seniority is defined to mean the accumulated length of service with the Department. Time in service by date of appointment will apply. An employee's

10. PROPOSAL #12 - SENIORITY (continued)

length of service shall not be reduced by time loss due to an injury or illness in the line of duty. Any transfers may be discussed with the PBA representative and the Chief, where possible, seniority and ability to do the job will be considered.

11. PROPOSAL #14 - COMPENSATORY TIME OFF

Whenever Township or any other Municipal employees are excused by executive order of the President, Governor, Mayor or Legislative Body, the employees covered by this agreement will be granted a compensatory day off, whether or not they are on duty. Said time shall not accumulate at end of year.

12. PROPOSAL #15 - TABLE OF ORGANIZATION

The department will comply with the Townships Ordinance establishing the Police Department Table of Organization. A minimum complement of five (5) patrolmen and two (2) superiors will constitute adequate personnel for a regular tour of patrol duty.

13. PROPOSAL #18 - RADIO ROOM

Radio and switchboard will be manned by police officers only.

14. PROPOSAL #20 - RULES AND REGULATIONS

The PBA agrees that the employer has the right to maintain and enforce a reasonable set of rules and regulations covering the actions of the police officers and the operation of the Police Department. The employer agrees in order to modernize and update the existing rules and regulations governing the Department, the employer will sit down with PBA upon settlement of this agreement to achieve this goal.

15. PROPOSAL #23 - QUALIFICATIONS OF EMPLOYMENT

All standards presently in effect for entrance to the position of patrolman shall be maintained.