

P.E.R.C. NO. 89-116

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BRADLEY BEACH,

Petitioner,

-and-

Docket No. SN-89-28

PBA LOCAL 50,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several contract provisions of an expired collective agreement between PBA Local 50 and the Borough of Bradley Beach. The Commission finds not mandatorily negotiable part of a clause that interferes with the Borough's right to designate its negotiations representatives. It finds not mandatorily negotiable part of a clause that authorizes payment for required court appearances in civil actions in conflict with N.J.S.A. 40A:14-135. It finds not mandatorily negotiable part of a clause allowing shift exchanges without the chief's approval. It finds not mandatorily negotiable a clause restricting the Borough's right to verify sickness to instances of more than three days sick leave. It finds not mandatorily negotiable part of a clause requiring the Borough to provide AM/FM radios in police vehicles. It finds mandatorily negotiable a vacation clause allowing choice by seniority.

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Appearances:

For the Petitioner, Ruderman & Glickman, Esqs.  
(Mark S. Ruderman, of counsel)

For the Respondent, Joseph N. Dempsey, Esq.

DECISION AND ORDER

On November 30, 1988, the Borough of Bradley Beach ("Borough") filed a Petition for Scope of Negotiations Determination. The Borough seeks a determination that several provisions of an expired collective agreement with PBA Local 50 ("PBA") are not mandatorily negotiable.

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

The PBA is the majority representative of the Borough's patrol officers, sergeants, lieutenants and captains. The parties' collective agreement expired on December 31, 1987. They are engaged in interest arbitration proceedings.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.<sup>1/</sup> 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. [87 N.J. at 92-93; citations omitted]

We consider only whether the proposals are mandatorily negotiable. It is our policy not to decide whether negotiations proposals, as opposed to grievances, concerning police and fire employees are permissively negotiable since an employer has no obligation to

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<sup>1/</sup> 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).

negotiate on such proposals or to consent to their submission to interest arbitration. West New York Tp., P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Article 2

A. Collective bargaining with respect to rates of pay, hours of work or other conditions of employment shall be conducted by the duly authorized bargaining agents of each of the parties. The Police Commissioner of the Borough, the Chairman of the Association if he be from the Bradley Beach Police Department, Local 50 of the New Jersey State P.B.A., plus three (3) additional members of the Bradley Beach Police Department of the Association shall be respective negotiating agents for the parties. If, however, the Chairman of the Association be not a member of the Bradley Beach Police Department Local No. 50, then in such an event, there shall be a total of four (4) members of the Bradley Beach Police Department Section of the Association. Unless the Police Commissioner is present, no meeting shall take place, however, the Police Commissioner shall make a sincere effort to be available for said meeting.

The Borough contends that this article improperly restricts the employer's choice of negotiations representatives in violation of N.J.S.A. 34:13A-5.4(b)(2). The PBA responds that the authority vested in the Police Commissioner by Borough ordinances requires his presence at negotiations.<sup>2/</sup> It adds that the article does not prevent the Borough from having other representatives present during negotiations. Except for the first sentence, which merely

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<sup>2/</sup> The title "Police Commissioner" as used in the article apparently refers to the member of the Board of Commissioners who is in charge of the Department of Public Affairs and Public Safety.

paraphrases a portion of N.J.S.A. 34:13A-5.3, the article is not mandatorily negotiable because it would interfere with the Borough's right (and the PBA's right) to designate its negotiations representatives. An allegation that a party's representatives have not been given the necessary authority to engage in meaningful negotiations can be resolved in unfair practice proceedings. See East Brunswick Bd. of Ed., P.E.R.C. No. 77-6, 2 NJPER 279 (1976).

Article 8 - "Hours and Overtime"

D. All Court appearances, other than Municipal, excepting any matter wherein a civilian is complaining of or instituted suit against civilian or civilians, in a matter pertaining to civil litigation shall be construed to be work and applicable provisions of this Article as to overtime pay and minimum recall time of two (2) hours, shall be applied to Court appearances. Records for Court attendance shall be prescribed, supplied and maintained by the Borough.

To the extent this article would authorize payment for required court appearances in civil actions, it is not mandatorily negotiable because it conflicts with N.J.S.A. 40A:14-135 which bars payment for such appearances. Bor. of Moonachie, P.E.R.C. No. 83-45, 8 NJPER 605, 606 (¶13286 1982). To the extent it sets a rate of pay for required off-duty court appearances which may be compensated under N.J.S.A. 40A:14A-135, it is mandatorily negotiable.

Article 8 - "Hours and Overtime"

J. The Chief of Police or his designee, shall post the work schedule of the employee covered by this agreement in a prominent location, one month in advance of the time said schedule is to become effective.

Said advance scheduling requirement is specifically subject, however, to the absolute discretion of the Chief of Police to make reasonable changes in the advance schedule in the event of public emergency, disasters, schooling notices, etc.

Changes in days off occurring during the applicable scheduling period may be handled by the employees by changing with one another so long as the shift is covered and the Chief of Police or his designee is given written notice of the change within twenty-four (24) hours before the day off is to take effect. If there is a vacancy on a shift due to schools, etc., changes can be made with the agreement of the parties involved and with the aforesaid notice being given to the Chief of Police or his designee.

The Borough's only objection to this article is that it allows shift exchanges to be conditioned only on prior notice to the chief, rather than on his approval. The PBA argues that the advance notice requirement impliedly requires the Chief's approval. Unless modified to state that shift exchanges are subject to the chief's approval, the third paragraph is not mandatorily negotiable. See Teaneck Tp., P.E.R.C. No. 85-52, 10 NJPER 644 (¶15310 1984); compare Teaneck Tp., P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984).

#### Article 11 - "Sick Leave"

G. After three (3) days of sick leave, the Director may require a report from the attending physician or examination by the Borough physician to determine justification of sick leave claims. Refusal of any employee to comply with the instruction of his physician or to cooperate with the Borough physician may cause rejection of sick leave claim.

Since the disputed language restricts the Borough's right to verify sickness to instances of more than three days sick leave, it is not

mandatorily negotiable. See City of Elizabeth, P.E.R.C. No. 84-75, 10 NJPER 39 (¶15022 1983), aff'd 198 N.J. Super. 382 (App. Div. 1985).

#### Article 16 - "Vacation"

B. The choice of vacation time shall be based upon seniority in service and one man per week will be entitled to take a vacation during the months of June 15th through September 15th. Two men per week shall be permitted to take vacation during all other times. Vacation time allowed by seniority shall be such that there will be a maximum of two (2) weeks per man during the time of June 15th through September 15th. Vacation weeks may be taken consecutively.

Absent a specific staffing shortage, this provision is mandatorily negotiable. See Orange Tp., P.E.R.C. No. 89-64, 15 NJPER 26 (¶20011 1989); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); Marlboro Tp., P.E.R.C. No. 87-124, 13 NJPER 301 (¶18126 1987). The arbitrability of a grievance filed under this article can be assessed in light of any alleged staffing shortages when a vacation request is denied.

#### Article 21 - "Miscellaneous"

C. The Borough will provide Police Package Vehicles, to include air conditioning and also AM/FM radios.

The proposal does not specify which equipment is contained on the "police package vehicles." Generally only those features which are related to employee safety and comfort are mandatorily negotiable. See Egg Harbor Tp., P.E.R.C. No. 86-20 11 NJPER 518 (¶16181 1985). Air conditioning is mandatorily negotiable. Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985). An AM-FM radio is

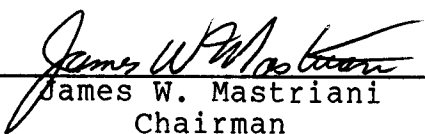
not. Town of Secaucus, P.E.R.C. No. 86-19, 11 NJPER 517 (¶16180 1985). These decisions and other cases they cite should guide the parties on the negotiability of other unspecified features of the package.

ORDER

A. These articles are not mandatorily negotiable: Articles 2A (except first sentence); 8D (except to the extent it sets a rate of compensation); 8J (third paragraph); 11G; 21C (except to the extent it addresses air conditioning and other vehicle features directly related to employee safety and comfort).

B. These articles are mandatorily negotiable: Articles 2A (first sentence only); 8J (first and second paragraphs); 16B. Any unresolved dispute with respect to these matters may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
April 28, 1989  
ISSUED: May 1, 1989