

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX,

Respondent,

-and-

Docket No. SN-79-81

P.B.A. LOCAL 152, CORRECTION
OFFICERS OF MIDDLESEX COUNTY
WORKHOUSE,

Petitioner.

SYNOPSIS

In a scope of negotiations proceeding, the Commission finds the following subjects to be mandatorily negotiable and subject to compulsory interest arbitration as they are terms and conditions of employment: 1) binding grievance arbitration over terms and conditions of employment; 2) leaves of absence with pay for work-incurred injuries, to the extent that a contractual provision does not contravene the specific limitations and qualifications of N.J.S.A. 40A:9-7; 3) Blue Cross/Blue Shield hospitalization and medical benefits which currently active employees will receive at the time of their retirement; 4) a provision which protects against the shifting of unit work outside the unit by insuring that no position filed by a member of the unit is assigned to any other County personnel; and 5) the equipping of department vehicles, to the extent that it directly relates to employee health, safety and comfort, and the requirement that vehicles be kept in a good state of repair.

The Commission finds the following subjects to be permissively negotiable as they are managerial prerogatives: 1) binding arbitration of grievances over managerial decisions; 2) all aspects of the type of department vehicle to be purchased - i.e., make, model, color, engine size, etc. - which do not directly relate to employee health, safety and comfort, and the time at which new vehicles will be purchased. Accordingly, these subjects may be submitted to compulsory interest arbitration and if both parties agree.

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Appearances:

For the Petitioner, Osterweil, Wind & Loccke, Esqs.
(Mr. Richard Loccke, of Counsel)

For the Respondent, Louis J. Alfonso, Esq.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on March 2, 1979 by P.B.A. Local 152, Correction Officers of Middlesex County Workhouse (the "PBA") seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

The Petition was filed pursuant to an Order by Judge David D. Furman, Superior Court, Chancery Division, Middlesex County, directing that certain issues of an interest arbitrator's award,^{1/} presented to the Court for confirmation, be referred to

^{1/} The award was issued pursuant to the Police and Firemen's Arbitration Act, c. 85, P.L. 1977.

the Commission for appropriate scope of negotiations determination. The items listed in the Order are final and binding arbitration of grievances, work incurred injury, Blue Cross/Blue Shield for retirees, and replacement of unit members with other employees. The Petitioner has added the additional issue of departmental vehicles.

The PBA filed its brief along with the Petition on March 2, 1979, while the County of Middlesex (the "County") filed its brief on April 4, 1979.

The contractual provisions and proposals to the arbitrator relevant to these five issues are as follows:

(1) With regard to binding arbitration of grievances:

A grievance is defined as any dispute between the parties concerning the application or interpretation of final agreement reached through these negotiations or any complaint by an employee as to any action or non-action taken against him which violates any right arising out of his employment.

If the grievances are not settled by Steps A, B, C and D, then the Association within ten (10) working days after a written decision (Step D) shall have the right to submit only such grievances which are claimed violations, misinterpretations or misapplication of the terms of this agreement and the referenced policies directly affecting them (the Association) to an arbitrator appointed by the parties from the Arbitration Panel maintained by the New Jersey Public Employment Relations Commission. The Arbitrator appointed shall have full power to hear the grievance and make a decision, which decision shall neither modify, add to, nor subtract from the terms of the agreement and the referenced policies.

(2) WORK INCURRED INJURY:

Where an Employee covered under this Agreement suffers a work-connected injury or disability, the Employer shall continue such Employee at full pay,

during the continuance of such Employee's inability to work. During this period of time all temporary disability benefits accruing under the provisions of the Workers' Compensation Act shall be paid over to the Employer.

The Employee shall be required to present evidence by a certificate of a responsible physician that he is unable to work and, the Employer, may reasonably require the said Employee to present such certificates from time to time.

In the event the Employee contends that he is entitled to a period of disability, beyond the period established by the treating physician, or a physician employed by the Employer or by its insurance carrier or as to causal relationship, then, and in that event, the burden shall be upon the Employee to establish such additional period of disability by obtaining a judgment in the Division of Workers' Compensation or, by the final decision of the last reviewing court shall be binding upon the parties.

For the purpose of this Article, injury or illness incurred while the Employee is acting in an Employer authorized activity, shall be considered in the line of duty.

In the event a dispute arises as to whether an absence shall be computed or designated as sick leave or as an injury or duty, the parties agree to be bound by the decision of an appropriate Workers' Compensation judgment, or, if there is an appeal therefrom, the final decision of the last reviewing court.

(3) BLUE CROSS, BLUE SHIELD FOR RETIREES:

A program for paying the cost of Blue Cross, Blue Shield for employees retiring with twenty-five (25) years of service, who are sixty-two (62) years of age or older, will be formulated for the 1979 contract year.

(4) REPLACEMENTS:

No full time Employee covered by this Agreement shall be replaced by any non correction officer, part time or other personnel.

No post presently filled by a full time Employee covered by this Agreement shall be covered by any non correction officer, part time or other personnel.

(5) DEPARTMENT VEHICLES:

All Department vehicles purchased after the execution of this Agreement shall have the same or similar equipment as that vehicle purchased by the Employer and known as car number 341 and the Employer will make every effort to keep such equipment in a good state of repair.

The PBA initially raises the procedural argument of timeliness, contending that the County did not dispute the negotiability of any of the above items until after the arbitrator had rendered his award and just prior to the PBA's commencement of proceedings before the Court for confirmation of the award. Subsequently, the PBA agreed to submit the issues to the Commission on the merits, it now being inappropriate to raise the procedural question in light of the Court Order directing these issues to the Commission for scope of negotiations determination. Accordingly, the PBA having waived its procedural argument, the Commission will proceed to a consideration of the merits.

As to the first issue of binding arbitration of grievances, the PBA contends that, under N.J.S.A. 34:13A-5.3,^{2/} the issue of a grievance procedure is a mandatorily negotiable subject. The County, in its statement of position, appears to agree to binding arbitration, but contends that the contractual definition of grievance is too broad and allows the PBA to arbitrate matters which, being managerial prerogatives, are beyond

^{2/} This statement provides that: "Public employers shall negotiate written policies setting forth grievance procedure by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the

(continued)

the scope of mandatory negotiations. The County states that it would have no problem with the arbitrator's award on this issue if it were modified to narrow the definition of what is covered under the grievance procedure.

Initially the Commission wishes to clarify its function in scope of negotiations proceedings. The Commission deals only with the abstract question of whether certain issues in dispute are within the scope of negotiations. It has no authority to determine whether the parties, pursuant to N.J.S.A. 34:13A-16(f) (4),^{3/} agreed to submit a permissive subject to the arbitrator. N.J.S.A. 2A:24-7 provides that the courts shall confirm, vacate or modify an arbitration award upon commencement of a summary action. N.J.S.A. 2A:24-8(d) explicitly empowers the judiciary to vacate an award where an arbitrator has exceeded his or her powers.^{4/}

The Commission agrees with the position of the PBA that, pursuant to N.J.S.A. 34:13A-5.3, binding arbitration of grievances is a mandatory subject for negotiations. This conclusion is clearly supported by the Supreme Court decisions in

^{2/} (continued)

representative organization. Such grievance procedures may provide for binding arbitration as a means for resolving disputes. Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement."

^{3/} This statute provides that: "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 negotiation.

^{4/} In re Morris School District Board of Education, P.E.R.C. No. 79-61, 5 NJPER 120 (¶10070 1979).

West Windsor Twp. v. PERC, 78 N.J. 98 (1978) and State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), and the decision in Red Bank Bd of Ed v. Warrington, 138 N.J. Super. 564 (App. Div. 1976). However, under the Supreme Court decisions in Ridgefield Park Ed Ass'n v. Ridgefield Park Bd of Ed, 78 N.J. 144 (1978) and West Windsor Twp., supra, binding arbitration of grievances is a mandatory subject for negotiations only to the extent that it is limited to terms and conditions of employment. Since N.J.S.A. 34:13A-16(f)(4) specifically states that the parties may agree to submit permissive issues to the arbitrator, the extension of the grievance arbitration procedure to include grievances over managerial decisions is a permissive subject of negotiations which may be submitted to the arbitrator if both parties agree.^{5/}

On the second issue of work incurred injuries, the County contends that N.J.S.A. 40A:9-7,^{6/} vests governmental discretion in the Board of Freeholders to determine in each instance whether to grant injury leave. The PBA's position is that N.J.S.A. 40A:9-7 expressly grants to the Board of Freeholders the authority to negotiate over leaves of absence for work incurred injury. The Commission agrees with the PBA based on the

^{5/} We need not determine whether the definition of grievances in the instant matter includes managerial prerogatives.

^{6/} N.J.S.A. 40A:9-7 provides that: "The Board of chosen freeholders of any county, by resolution, or the governing body of any municipality, by ordinance, may provide for granting leaves of absence with pay not exceeding one year, to any of its officers or employees who shall be injured or disabled resulting from or arising out of his employment, provided that the examining physician appointed by the county or the municipality shall certify to such injury or disability.

decision in In re County of Morris, P.E.R.C. No. 79-2, 4 NJPER 304 (¶4153 1978). This decision deals with the identical statute and the employer advanced the same position as the County in the instant matter.

Initially the decision cites numerous Commission and Appellate Division opinions which hold that the issue of sick leave, or other leaves of absence, are terms and conditions of employment. Then, in response to the employer's position, the decision states:

N.J.S.A. 40A:9-7 provides that certain public employers, including the County, may provide for leaves of absence with pay not exceeding one year to employees who have employment related injuries. The duty to negotiate terms and conditions of employment and its relationship with this statute is one of first impression for this Commission. But this Commission, in numerous cases, has analyzed the relationship between the Act and other New Jersey statutes. We have held that N.J.S.A. 34:13A-8.1 is not a repealer of all non-pension statutes, but rather, means that only statutes placing specific limits on the authority of a public employer in regard to terms and conditions of employment may be a limitation on the duty created by the Act to negotiate all terms and conditions of employment.^{7/}

However, any negotiated provision may not contravene the specific limitations and qualifications placed on the County's authority by N.J.S.A. 40A:9-7. Accordingly, a contractual provision could not provide for sick leave beyond the one year limitation or alter the requirement of certification of injury or disability by the County's appointed physician.

On the issue of Blue Cross/Blue Shield for retirees, the County claims that this subject is related and intertwined with

^{7/} In re County of Morris, supra, at page 3.

public employee pensions and as such is an illegal subject for negotiations under the decision in State v. State Supervisory Employees Ass'n, supra. The PBA contends that this is a mandatory subject under the Commission decision in In re Piscataway Twp. Bd of Ed, P.E.R.C. No. 91, 1 NJPER 49 (1973). The Commission again agrees with the PBA for Piscataway states: "It is undisputed that hospitalization and medical coverage is a term or condition of employment." ^{8/} However, with regard to this benefit a clear distinction must be made between current employees and former employees who are already retired.^{9/} The County must negotiate with the PBA over what medical benefits its currently active employees will receive at the time of their retirement.^{10/} But, the County does not have to negotiate over this benefit for prior employees who are already retired from County service. These people are not considered "employees" nor is this benefit considered a "term and condition of employment." ^{11/}

On the issue of replacement of unit employees with non-unit personnel, the County contends that this proposal actually relates to transfers and reassignments which are managerial prerogatives not mandatorily negotiable. The PBA contends that

^{8/} In re Piscataway Twp. Board of Ed, supra, at 49.

^{9/} It is unclear whether the Blue Cross/Blue Shield contractual provision applies only to employees who will retire with 25 years of service and are 62 or older, or includes employees already retired who meet these qualifications.

^{10/} Timmus Optical Company, Inc., 205 NLRB No. 159, 84 LRRM 1245 (1973).

^{11/} Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 78 LRRM 2974 (1971).

this provision affects the safety of the employees in the unit by preventing the County from hiring unqualified, untrained personnel. In the first instance the Commission is not limited by the parties' characterization of the provision in dispute. Further, the consequential effect of a contractual provision, while relevant, is not the determining factor in a scope of negotiations proceeding. Rather, the key consideration is the subject matter dealt with in the disputed provision.

The Commission agrees with both the PBA and the County. Transfers and reassignments are managerial prerogatives not mandatorily negotiable,^{12/} while employee safety is a required subject for negotiations, being a term and condition of employment.^{13/} However, after a careful review of the language of this provision, the Commission finds that on its face it does not deal with transfers, reassignments or employee safety. The provision states, in effect, that unit members shall not be replaced by non-unit County personnel and that positions currently filled by unit members will not be filled with non-unit members. The Commission has consistently stated that the decision to shift unit work outside the unit is mandatorily negotiable.^{14/} The

^{12/} Ridgefield Park Ed Ass'n, supra, City of North Wildwood v. Wildwood P.B.A., Local 59, Superior Court, Appellate Division, Docket No. A-1101-77, February 22, 1979.

^{13/} In re Byram Twp. Bd of Ed, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affirmed 152 N.J. Super. 12 (1977), In re Twp. of Hillside, P.E.R.C. No. 78-59, 4 NJPER 159 (14076 1978), In re City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976), In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 157 (1977) and In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977).

^{14/} In re Piscataway Twp. Board of Ed, P.E.R.C. No. 78-81, 4 NJPER 246 (14124 1978), and In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (14023 1977).

Commission concludes that this provision deals with the subject of protecting unit work from encroachment by non-unit employees.

Both parties may have read too much into this provision. The County, in its brief, states: "Here, too, the County has in the past and intends in the future to assign and reassign members of the PBA to various tasks covered under their job duties and additionally, non correctional officers (CETA, part-times, etc.) are assigned and reassigned to do various jobs where a trained correctional officer is not needed." ^{15/} This provision, as the Commission interprets it, does not in any way inhibit the County from exercising its managerial right to assign PBA members to various tasks within their function as correction officers or to assign other employees to non-correctional duties. It merely protects the legitimate interest of the PBA that unit work is not assigned to non-unit employees. Within this area of concern the provision is mandatorily negotiable. ^{16/}

On the issue of departmental vehicles, the PBA asserts that, under the Commission decision, In re Middlesex County College Board of Trustees, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977), the impact of the use of equipment on terms and conditions of employment is a mandatory subject of negotiations and employee veto power over the use of such equipment is a permissive subject of negotiations. The County asserts that what type of vehicle it will purchase and when is a management prerogative. The

^{15/} County's brief at page 7.

^{16/} There is no question about the qualifications of the employees involved in this proceeding and represented by the P.B.A. to perform the work.

Commission first notes that the decision in Middlesex County College is not directly applicable to the instant petition. That case involved the effect which the use of audio/visual equipment in presenting courses of study would have on the College faculty's terms and conditions of employment. The current Petition, as it relates to police vehicles, necessitates a different analysis.

The equipping of police vehicles, to the extent that it directly relates to employee health, safety and comfort, is mandatorily negotiable, as these are working conditions. The Commission has consistently stated that matters of health and safety are mandatory subjects of negotiations.^{17/}

Further, the requirement that the vehicles be kept in a good state of repair is also mandatorily negotiable as it directly relates to employee safety.^{18/} All other aspects of the type of vehicle to be purchased, i.e., make, model, color, engine size, etc., and the time at which to purchase new vehicles are matters of managerial authority which, pursuant to N.J.S.A. 34:13A-16(f)(4), are permissive subjects of negotiation that the parties may agree to present to the arbitrator.

^{17/} See footnote number 13.

^{18/} In re PBA Local 99, Roselle Police, P.E.R.C. No. 77-66, 3 NJPER 166 (1977).

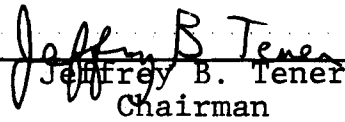
ORDER

The Commission finds the following to be mandatory subjects of collective negotiations and arbitration as they are terms and conditions of employment: (1) binding grievance arbitration over terms and conditions of employment; (2) leaves of absence with pay for work incurred injuries to the extent that a contractual provision does not contravene the specific limitations and qualifications of N.J.S.A. 40A:9-7; (3) Blue Cross/Blue Shield hospitalization and medical benefits which currently active employees will receive at the time of thier retirement; (4) a provision which protects against the shifting of unit work outside the unit by insuring that no position filled by a member of the unit is assigned to any other County personnel; and (5) the equipping of department vehicles, to the extent that it directly relates to employee health, safety and comfort, and the requirement that vehicles be kept in a good state of repair.

The Commission finds the following to be permissive subjects of collective negotiations and arbitration as they are managerial prerogatives: (1) binding arbitration of grievances over managerial decisions; (2) all aspects of the type of department vehicle to be purchased, i.e., make, model, color, engine size, etc., which do not directly relate to employee health, safety and comfort, and the time at which new vehicles will be purchased. Accordingly, pursuant to N.J.S.A. 34:13A-16(f)(4),

these permissive subjects may be submitted to the arbitrator only if both parties agree.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp and Parcels voted for this decision. Commissioner Newbaker concurred in part and dissented in part.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: May 1, 1979