

P.E.R.C. NO. 93-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Petitioner,

-and-

Docket No. SN-93-25

TEANECK PBA LOCAL NO. 215,

Respondent,

-and-

TEANECK SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable contract proposals that Teaneck PBA Local No. 215 and the Teaneck Superior Officers Association seek to include in successor collective negotiations agreements with the Township of Teaneck. The proposed "Hours of Work" provisions do not expressly preserve management's right to deviate from seniority bidding when necessary and they subject shift assignments to binding arbitration.

P.E.R.C. NO. 93-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Petitioner,

-and-

Docket No. SN-93-25

TEANECK PBA LOCAL NO. 215,

Respondent,

-and-

TEANECK SUPERIOR OFFICERS  
ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, P.A.,  
attorneys (M. Joan Foster, of counsel)

For the Respondents, Loccke & Correia, P.A., attorneys  
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On September 10, 1992, the Township of Teaneck petitioned for a scope of negotiations determination. The Township seeks a declaration that successor contract proposals of Teaneck PBA Local No. 215 and Teaneck Superior Officers Association are not mandatorily negotiable. Those proposals seek to retain provisions entitled "Hours of Work" in the parties' predecessor contracts.

An affidavit, exhibits, and briefs have been filed.<sup>1/</sup>

These facts appear.

---

<sup>1/</sup> We grant the respondents' motion to file their brief nunc pro tunc.

The PBA represents the Township's 68 patrol officers and the Association represents the Township's 22 superior police officers. The most recent Township-PBA and Township-Association collective negotiations agreements expired on December 31, 1991. Article VII of each contract was entitled "Hours of Work." Section K provided:

K: The patrol work schedule shall not rotate. All persons in patrol shall work a fixed, one shift, work schedule.

The following rules shall apply:

1. No Employee covered by this Agreement shall be required to rotate.

2. Each Employee shall work a steady designated shift which shall either be day shift, afternoon shift or night shift.

3. Employees shall have the right to request on a seniority basis for their individual choice of steady shift position.

4. The Chief of Police shall have the right to deny an Employee the selected steady shift for just cause.

In the event that a dispute arises over a denial of a shift selection then the Employee shall bring said matter to the Chief, or his designee's attention within three (3) calendar days. If the Chief, or his designee, is not able to resolve the dispute within three (3) calendar days, the Employee may present the dispute directly to the Township Manager who shall have five (5) calendar days to respond. Disputes which remain unresolved may proceed directly to arbitration pursuant to Article IX, Step 4 of the contract.

5. Once an Employee has bid for and has been designated a steady shift then said Employee shall thereafter continue in said steady shift position unless said Employee elects to

be placed in a different shift which exchange shall require voluntary mutual exchange with an Employee of equal rank from that other shift. All changes are subject to the approval of the Chief of Police.

6. All steady shift assignments shall be subject to a review of the request procedure, as is defined above, on an annual basis which shall occur during the first week of October each year with the new annual steady shift designations to be effective on the next January 1st.

7. The power of the Chief of Police to assign, transfer and reassign personnel pursuant to law is recognized.

During successor contract negotiations, the PBA and the Association proposed retaining these provisions in any successor contracts. The Township asserts that these provisions are illegal and has proposed replacing them with this language:

Except as set forth below, the patrol work schedule shall not rotate and all persons in patrol shall work a fixed, one shift, work schedule. The following rules shall apply:

1. No employee covered by this Agreement shall be required to rotate except as may be needed on a temporary basis for training, supervision, filling minimum manpower requirements, and dealing with emergencies.

2. Each employee shall work a steady designated shift which shall either be day shift, afternoon shift or night shift.

3. Employees shall have the right to request on a seniority basis their individual choices of steady shift positions. The Chief of Police shall honor such requests in order of seniority except as he in his discretion deems it necessary to deny such requests to insure adequate staffing, supervision, presence of employees with required qualifications, and

efficient and effective delivery of police services on all shifts. Nothing herein shall prevent the Chief of Police from changing job or shift assignments as necessary to meet the needs of the Department.

4. Once an employee has bid for and has been designated on a steady shift, then said employee, unless otherwise reassigned by the Chief pursuant to Paragraph 3, shall thereafter continue in said steady shift position unless said employee elects to be placed on a different shift, which exchange shall require voluntary mutual exchange with an employee of equal rank from that other shift. All changes are subject to the approval of the Chief of Police.

5. All steady shift assignments shall be reviewed and requests for changes entertained on an annual basis, which shall occur during the first week of October each year with the new annual steady shift designations to be effective on the next January 1st.

The parties are engaged in interest arbitration proceedings.

The Township's police chief has filed an affidavit. It contains the following facts and assertions.

The police department is separated into a patrol division, investigative division, and service division. The patrol division provides around-the-clock coverage and consists of one captain, six lieutenants, five sergeants, and 45 patrol officers. The patrol division is divided into 12 squads: squads 1, 2, and 3 work the 12-8 shift; squads 4, 5, and 6 work the 8-4 shift; and squads 7, 8, and 9 work the 4-12 shift. Two of each of the three squads are on duty at any time; for example, on the 12-8 shift, either squads 1 and 2 or squads 2 and 3 or squads 1 and 3 are "on" and the other

squad is off. Officers in squads 1-9 work a "6-3" schedule (six days on and three days off) over a 27 day period.

The remaining three squads (A, B and C) work the 7-3, 3-11, and 11-7 shifts. Officers in these squads work a "5-2" schedule, with five days on and two days off.

The police chief asserts that the current provisions preclude him, absent "just cause," from assigning, transferring, and reassigning personnel based upon individual qualifications, training and supervision needs, staffing requirements, and emergencies. He feels that this limitation "places an overwhelming burden on me to justify each move I make." He cites as an example a grievance challenging the emergency transfer of two officers from the steady day shift to the evening shift to meet minimum staffing requirements. The chief also asserts that "adherence to strict seniority has resulted in supervision and training problems since the most senior employees select the day shifts, leaving the least senior supervisors to oversee the newest patrol officers on the night shift. He cites as an example the night shift, which is staffed with the least experienced lieutenants and sergeants supervising the least experienced patrol officers. He adds that "[o]fficers with the most job maturity and best training skills have selected the day tours, where they are underutilized since the younger and less experienced officers work nights. Individuals most in need of schooling and training in areas such as shooting practice and breathalyzer operation are often unavailable since these

sessions are generally scheduled during daytime hours, and these officers work nights."

According to the chief, police recruits who work rotating shifts do not receive adequate supervision and training because the seniority system precludes him from assigning mentors to recruits and transferring and reassigning officers based upon qualifications. He asserts that each tour should have a qualified breathalyzer operator, radar detector operator, and "print and mug" expert; but qualified officers select the day tours. Thus, for example, the night tour -- when most drunk driving arrests occur -- is without a breathalyzer operator.

The chief also believes that the current provisions prohibit the involuntary transfer of officers to the summer tour of 6:00 p.m. to 2:00 a.m. and inhibit him from transferring officers out of speciality units (e.g., detective bureau) when their abilities could best be used elsewhere.

The chief also asserts that under the current provisions, officers do not handle a variety of assignments. He asserts that the day tour typically requires officers to handle service-related calls, interact with the business community, control traffic, and respond to bank alarms and robberies; the evening tour typically requires officers to respond to domestic disputes, crimes in progress and juvenile complaints; and the night tour typically requires officers to perform "watchman" functions and respond to

disturbances, bar fights, domestic disputes, bank alarms and burglaries. The chief believes that without serving on all three shifts, officers will lack exposure to various situations and will not gain the well-rounded experience necessary for promotion.

Finally, the chief asserts that the Township's proposal would maintain the officers' right to select steady shifts while expressly preserving management's non-negotiable rights. According to him, the Township's proposal would spell out the precise limitations on the seniority bidding system and would no longer subject managerial decisions to the "just cause" standard under the contract's grievance and arbitration provisions.

It has been long established that contractual provisions that dictate that shift placement for police be by seniority are not mandatorily negotiable. Middlesex Cty., P.E.R.C. No. 92-22, 17 NJPER 420 (¶22202 1991), aff'd, App. Div. Dkt. No. A-470-91T2 (12/1/92); Lacey Tp., P.E.R.C. No. 87-120, 13 NJPER 291 (¶18122 1987); Pennsauken Tp., P.E.R.C. No. 87-101, 13 NJPER 161 (¶18071 1987); Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983); Town of Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982). Nor are clauses that permit binding arbitration of claims that non-disciplinary assignments or transfers of police officers were without just cause. Essex Cty., P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990); City of Perth Amboy, P.E.R.C. No. 87-84, 13 NJPER 84 (¶18037 1986). Cf. Wayne Tp., P.E.R.C. No. 92-60, 18 NJPER 43 (¶23016 1991) (restraining binding arbitration over



non-disciplinary transfer of police officer from the detective bureau to the patrol division); State of New Jersey (Office of Employee Relations), P.E.R.C. No. 92-50, 17 NJPER 501 (¶22245 1991) (restraining binding arbitration over non-disciplinary transfers of state troopers from specialist positions to road-patrol positions).

By contrast, shift selection provisions for police are mandatorily negotiable if they expressly preserve management's right to act unilaterally when necessary -- for example, when special qualifications are needed for particular tasks, minimum staffing levels must be met, training is required, or emergencies occur. City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989), aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90); Bor. of Carteret, P.E.R.C. No. 88-145, 14 NJPER 468 (¶19196 1988); Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985). And also mandatorily negotiable are provisions that permit review of non-disciplinary transfers or assignments through the negotiated grievance process, provided binding arbitration is not authorized. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 93 N.J. 9 (1983); Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311 (1979).

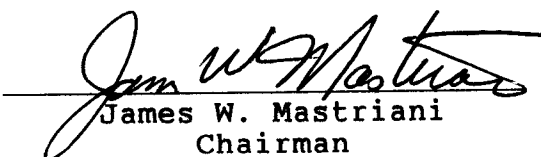
Under these precedents, Section K of Article VII is not mandatorily negotiable. This section does not expressly preserve management's right to deviate from seniority bidding when necessary and it subjects shift assignments to binding arbitration. We reject, however, the Township's suggestion that shift assignments may not be grieved short of binding arbitration.

The Township also suggests that we should declare that it has a non-negotiable right to implement the language it has proposed. That invitation is outside our jurisdiction -- we do not determine the terms of the parties' contract, we determine only the negotiability of disputed provisions. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). The Township's proposal is mandatorily negotiable. Asbury Park. Whether that proposal is adopted is a matter for the collective negotiations process.

ORDER

Section K of Article VII of the collective negotiations agreements between the Township of Teaneck and Teaneck PBA Local No. 215 and between the Township of Teaneck and the Teaneck Superior Officers Association is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Regan and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision. Commissioner Grandrimo was not present.

DATED: January 28, 1993  
Trenton, New Jersey  
ISSUED: January 29, 1993