

P.E.R.C. NO. 87-101

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PENNSAUKEN,

Petitioner,

-and-

Docket No. SN-87-21

F.O.P. GARDEN STATE LODGE #3

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal that cardiac failure be compensated as injury leave submitted by F.O.P. Garden State Lodge No. 3 to the Township of Pennsauken during contract negotiations is mandatorily negotiable. The Commission further holds, however, that a proposal applying seniority to shift vacancies and requests for shift transfers or exchanges is not mandatorily negotiable because it would not sufficiently preserve the Township's ability to staff shifts with officers it deemed best suited to work on a particular shift.

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Appearances:

For the Petitioner, Pachman & Glickman, Esqs.  
(Steven S. Glickman, of counsel)

For the Respondent, Colflesh and Burris, Esqs.  
(Ralph Henry Colflesh, Jr., of counsel)

DECISION AND ORDER

On October 27, 1986, the Township of Pennsauken ("Township") filed a Petition for Scope of Negotiations Determination. The Township questions the negotiability of a section of its most recent collective negotiations agreement with F.O.P. Garden State Lodge #3 ("FOP") and of new contract language proposed by the FOP.

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

The FOP is the majority representative of the Township's rank-and-file police officers, including detectives. The Township and the FOP are engaged in collective negotiations and interest arbitration for an agreement to succeed their July 1, 1984 through June 30, 1986 contract.

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 fire fighters.<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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking 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 proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the

<sup>1/</sup> 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).

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).

Article XV of the agreement concerns injury leave. Section H reads:

Cardiac failure on or off the job shall be construed as occurring on the job for any purpose including compensation. All compensation checks realized by the Police Officer during such time as the Police Officer is receiving full salary from the Township shall be endorsed over to the Township. The Township's maximum liability under this section shall be one (1) year's salary. However, in no event shall a Police Officer be entitled to any Workmen's Compensation from any source other than the Township's Workmen's Compensation insurance company. Any decision by the Workmen's Compensation court, or if an appeal, the Appeals court, shall be binding on both the Township and the Police Officer.

The Township proposes to delete this language. It contends that the presumption that cardiac failure is an on-the-job injury, and thus eligible for injury leave, interferes with its prerogative to require injury leave verification. It relies on 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) and Barnegat Tp. Bd. of Ed., P.E.R.C. No. 84-123, 10 NJPER 269 (¶15133 1984).

The FOP responds that a verification policy, the purpose of which is to curb abuse of sick leave, is not implicated in the case of an officer with a heart attack who is unquestionably sick or disabled. The FOP states that the language recognizes the stress of police

work and the difficulty of ascertaining whether a heart attack is job-related.

This clause is mandatorily negotiable. Article XV.A provides up to a year of full pay injury leave for work-related injuries or illnesses. Section H establishes that heart attacks will be treated as work-related. That treatment does not violate any applicable statute since N.J.S.A. 40A:14-137 allows a municipality to provide for such leaves for officers "who shall be injured, ill or disabled from any cause." (emphasis supplied) Therefore, even if the heart attack was not related to work, injury leave would nevertheless remain mandatorily negotiable.

The FOP has proposed an article labeled "Seniority". Section A.1 of the proposal reads:

When and if the current practice, policy or procedure of this Department is the implementation of and or use of steady shifts or steady days off, then assignment of Police Officers to these shifts or steady days off shall be made according to the Police Officer's primary preference with the first assignment being given to the most senior Police Officer as determined in Section B of this article.

Subsequent paragraphs of Section A set forth rules for applying seniority to shift vacancies and requests for shift transfers or exchanges.

The Township asserts that the proposal would interfere with its ability to staff shifts on the basis of police officers' training, experience and special qualifications. It relies on Town of Phillipsburg, P.E.R.C. No. 83-122, 9 NJPER 209 (¶14098 1983).

The FOP argues that its proposal is distinguishable from the one in Phillipsburg because all it does is establish a preference for making assignments if steady shifts are adopted.

While the FOP proposal does not mandate a change from rotating to steady shifts, the language establishing that shift assignments would be made by seniority would not sufficiently preserve the Township's ability to staff shifts with officers it deemed best suited to work on a particular shift. Kearny PBA Local #21, P.E.R.C. No. 82-43, 7 NJPER 614 (¶12274 1981). Thus, section A of the Seniority proposal is not mandatorily negotiable.

ORDER

Article XV.H is mandatorily negotiable and may be submitted to binding interest arbitration in accordance with N.J.S.A. 34:13A-14 et. seq.

Section A of the FOP's "Seniority" proposal is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
February 6, 1987  
ISSUED: February 9, 1987