

P.E.R.C. NO. 86-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEEHAWKEN,

Petitioner,

-and-

Docket No. SN-85-76

WEEHAWKEN FMBA LOCAL #26,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that a collective negotiations proposal of Weehawken FMBA Local #26 is not mandatorily negotiable as worded. The proposal would require that any employee subject to disciplinary charges receive a copy of the charges in writing within 72 hours of the discovery of the offense. The Commission holds the proposal is not mandatorily negotiable unless modified to allow the Township to show good cause for delay.

P.E.R.C. NO. 86-81

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEEHAWKEN,

Petitioner,

-and-

Docket No. SN-85-76

WEEHAWKEN FMBA LOCAL #26,

Respondent.

Appearances:

For the Petitioner, Mark S. Ruderman, Esq.

For the Respondent, Loccke & Correia, P.A.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On March 14, 1985, the Township of Weehawken ("Township") filed a Petition for Scope of Negotiations Determination. The petition seeks a determination whether a collective negotiations proposal of Weehawken FMBA Local #26 ("FMBA") is mandatorily negotiable. The FMBA seeks to include the following provision in a successor collective negotiations agreement:

"...any employee subject to disciplinary charges shall be presented with a copy of same in writing within 72 hours of the discovery of the offense by the employer preferring said charge.

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

The Township is a Civil Service community. The FMBA is the majority representative of the Township's fire personnel below the

rank of deputy chief. The parties entered a collective negotiations agreement effective from January 1, 1983 through December 31, 1984. Article XXXI, Section I, entitled Discipline, contained the sentence quoted in the first paragraph. The FMBA has sought to include this sentence in a successor contract and the Township filed this petition.^{1/}

The Township argues that City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983) ("Jersey City") governs this case. It asserts that 72 hours is insufficient time to investigate an offense.

The FMBA contends that the time period for bringing charges is a mandatorily negotiable disciplinary procedure and is not preempted by Civil Service law or other statutes.

City of Paterson v. Paterson PBA Local No. 1, 87 N.J. 78 (1981), sets forth the standards for determining the negotiability of a subject affecting police officers or firefighters:

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

^{1/} The parties have reached agreement on all contractual issues except this one.

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 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)

In determining the negotiability of a contract proposal affecting such employees, we consider only whether the proposal is mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1982). That is because a public employer is not required to negotiate over a permissive subject of negotiations.

In City of Jersey City, P.E.R.C. No. 84-24, 9 NJPER 591 (¶14249 1983), we held non-negotiable a proposal which would have required the police department to bring disciplinary charges within 30 days from the date of the alleged infraction or the discovery of such infraction. We ruled that such a clause would "...impermissibly limit the City in its establishment of evaluative and disciplinary criteria." Id at 594. We did not, however, discuss the amendment to section 5.3 making disciplinary review procedures mandatorily negotiable.^{2/}

^{2/} This amendment provides:
In addition, the majority representative and designated representatives of the public employer shall meet at

We agree with the FMBA that a time period for bringing disciplinary charges can safeguard important employee interests in having charges speedily heard and determined. We also believe that limitations periods do implicate disciplinary review procedures. Nevertheless, we agree with the Township that the instant proposal sets too short a time for bringing charges and could compromise the Township's ability to investigate and make disciplinary determinations in the first instance. Further, the

2/ Footnote Continued From Previous Page

reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

* * *

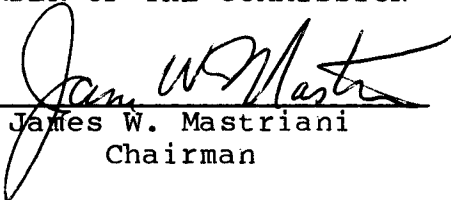
Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review 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. (Emphasis supplied).

limitations period is absolute and does not permit the employer to show good cause for a delay in bringing charges. Compare City of Newark, P.E.R.C. No. 86-___, 11 NJPER ___ (¶ ___ 1985), also decided today (nine month limitations period is mandatorily negotiable if employer given opportunity to show good cause for delay). In addition, the clause requires presentation of charges within 72 hours of the discovery of the offense and thus may not allow sufficient time to investigate who committed the offense.^{3/} Accordingly, the proposal, as now worded, is not mandatorily negotiable.

ORDER

The proposal of FMBA Local #26, as now worded, is not mandatorily negotiable.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

Chairman Mastriani, Commissioners Johnson, Suskin and Wenzler voted in favor of this decision. Commissioner Hipp was opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
 December 12, 1985
 ISSUED: December 13, 1985

^{3/} We distinguish a clause which merely requires prompt and written presentation of charges once an employer knows it will bring charges against a certain officer; such a clause would appear to present procedural and mandatorily negotiable issues.