

P.E.R.C. NO. 94-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Petitioner,

-and-

Docket No. SN-93-99

PBA LOCAL NO. 109,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of contract proposals of Hudson County PBA Local No. 109 in successor negotiations with the County of Hudson. The Commission finds mandatorily negotiable a provision providing that an employee working overtime for a court appearance may not be retained for the purpose of obtaining the minimum of four hours if the appearance requires less time. The Commission finds not mandatorily negotiable a provision concerning when officers shall be armed.

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Appearances:

For the Petitioner, Genova Burns, attorneys
(Stephen E. Trimboli, of counsel; Joseph Licata, on the
brief)

For the Respondent, Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On April 26, 1993, the County of Hudson petitioned for a scope of negotiations determination. The County seeks a declaration that two successor contract proposals of Hudson County PBA Local No. 109 are not mandatorily negotiable.

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

Local No. 109 represents all corrections officers below the rank of sergeant who are assigned to the County's Division of Corrections. The parties entered into a collective negotiations agreement which expired on December 31, 1991. The parties engaged in successor contract negotiations and Local No. 109 petitioned to

initiate interest arbitration. The County then filed this petition. It asserts that two predecessor contract provisions, which Local No. 109 seeks to include in the successor contract, are not mandatorily negotiable.

Paterson Police P.B.A. No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters. It states:

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 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. [87 N.J. at 92-93; citations omitted]

When a negotiability dispute arises over a contract proposal, we consider only whether the proposal is mandatorily negotiable since permissively negotiable proposals cannot be submitted to interest arbitration without both parties' consent. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Article XXIII, Section 7 of the previous contract provides:

a. Court Appearance. The County shall pay all employees for appearance in Municipal Court, County and Superior Court, Juvenile Court, Grand Jury and A.B.C. proceedings, on their own time at time and one-half (1-1/2) with a (4) hour minimum. Employees shall submit, in writing, all time spent in Court to the Officer in Charge.

b. Employees may not be retained for purpose of attaining the minimum of four hours if the appearance requires less time.

We consider only the negotiability of Section 7b as 7a is not in dispute.

In City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448, 449-450 (¶13211 1982), we held that an employer has a prerogative to determine the staffing levels necessary for the efficient delivery of governmental services. This prerogative applies to determining the number of employees on staff and on duty. We further recognized that these determinations may dictate the amount of overtime that will be worked. Id.; see also Willingboro Bd. of Ed., P.E.R.C. No. 85-74, 11 NJPER 57 (¶16030 1984). However, in these earlier cases, the employer needed to require overtime to avoid a shortage in staffing or to respond to an emergency.

The issue here is different. It concerns an employer's ability to assign overtime work for the sole purpose of having employees work during a period -- the remainder of a four hour minimum -- for which they would otherwise be entitled to receive compensation. That compensation issue is mandatorily negotiable because it is significantly tied to the relationship between the

rate of pay and the number of hours worked. See Woodstown-Pilesgrove Reg. Sch. Dist. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582, 591 (1980).

Apparently the employer seeks to assign additional overtime work if an appearance requires less than four hours. If it does not believe the current provision is susceptible to such an interpretation, it remains free to seek changes in the provision through the collective negotiations process.

Article XXXI of the previous contract provides:

Section 1. Any officer in charge of any detail that leaves this institution, or goes anywhere on County business while in uniform shall be armed, only if qualified, for his or her own personal protection.

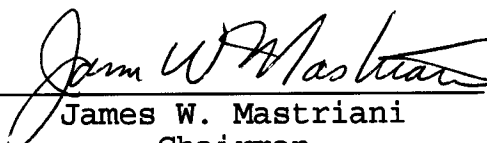
Section 2. All permanent Correction Officers who are qualified shall be armed coming to and leaving work while in uniform.

In Hudson Cty., P.E.R.C. No. 93-37, 19 NJPER 3 (¶24002 1992), we considered a similar provision and held that the decision whether or not to arm employees is not mandatorily negotiable. See Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977). Although Local No. 109 argues that we should reconsider our past decisions, as important health and safety issues are involved, no evidence suggests that these concerns outweigh managerial interests. See Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983). Therefore, Article XXXI is not mandatorily negotiable.

ORDER

Article XXIII, Section 7b is mandatorily negotiable. Article XXXI is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Grandrimo and Wenzler voted in favor of the entire decision. Commissioner Goetting voted against the decision with respect to Article XXIII and for the decision with respect to Article XXXI. Commissioners Bertolino and Smith voted for the decision with respect to Article XXIII and against the decision with respect to Article XXXI. Commissioner Regan was not present.

DATED: February 16, 1994
Trenton, New Jersey
ISSUED: February 17, 1994