

P.E.R.C. NO. 93-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-92-113

PBA LOCAL 3,

Respondent.

SYNOPSIS

The Public Employment Relations Commission issues a scope of negotiations decision addressing certain provisions of an existing collective negotiations agreement which PBA Local 3 seeks to have retained in a successor contract with the City of Newark. With respect to existing provisions concerning health benefits for retirees, the Commission is not persuaded that either N.J.S.A. 40A:10-23 or Bernards Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988), precludes a successor agreement from maintaining current health benefits. Given the limited nature of that contention and the absence of any proposals to change the current benefits, the Commission does not have jurisdiction in this case to consider whether Newark's health benefits system for employees and retirees, assembled over the course of 15 years, should be invalidated. The City may seek a declaratory judgment from the Superior Court if it wishes to present any broader arguments or seek broader relief. The Commission also holds mandatorily negotiable a provision requiring discussion of police work schedules and a provision permitting four officers to take union leave.

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Appearances:

For the Petitioner, Michelle Hollar-Gregory, Corporation Counsel (Oliver W. Cato, Assistant Corporation Counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak, attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On June 8 and 9, 1992, the City of Newark filed a petition and amended petition for scope of negotiations determination. The City asserts that existing contract articles concerning retirement benefits are preempted by statute and may not be continued in any successor agreement. The City also disputes the negotiability of a PBA work schedule proposal and of a contract provision granting leave to four officers to conduct union business.^{1/}

^{1/} The petition also challenged the negotiability of a proposal to incorporate holiday pay into base salary. Since then, the PBA and the City have both submitted proposals to interest arbitration including holiday pay in base pay after 23 years of service. The City has therefore dropped its negotiability challenge.

The parties have filed exhibits and briefs.^{2/} These facts appear.

On January 22, 1992, Newark PBA Local 3 became the majority representative of the City's police officers and detectives. The PBA assumed the obligations of a January 1, 1989 through December 31, 1991 agreement between the City and FOP Lodge 12, the prior majority representative. Article 10 of that agreement contains retiree health coverage provisions providing that upon retirement, current employees will receive basic hospitalization, major medical, prescription and dental coverage. Article 29, Section 5 of the agreement provides that the majority representative may have four full-time police officers assigned to conduct union business. The PBA has proposed retaining these provisions in any successor contract. It has also submitted this new proposal:

Effective January 1, 1993, a Special Committee comprised of the City Personnel Department, the Police Director and Police Administration and representatives of the PBA (PBA President and his designee) shall meet and confer within thirty (30) days for the purpose of implementing the 4/4 work schedule and any modifications which may be necessary in accordance with the Police Director Management Analysis of the Four On Four Off Plan.^{3/}

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- 2/ Both the City and the PBA also rely upon exhibits and briefs filed in SN-92-59 and SN-92-110 which involve other uniformed employees of Newark.
 - 3/ The Police Director ordered that the Field Operations Bureau form a committee to review the PBA's proposal to implement a four on, four off work schedule. This study, prepared by a captain and a sergeant, was the result.

The PBA had originally proposed that the four-on, four-off schedule be implemented. But it modified its proposal and advised the interest arbitrator that it was no longer seeking to require the City to implement that work schedule.

During negotiations for a successor agreement, the City asserted that the retiree health care provisions and the holiday pay proposals are illegal.^{4/} It also contested the negotiability of having four officers assigned to union leave and the work schedule proposal.^{5/} On May 28, 1992, the PBA petitioned to initiate interest arbitration. This petition ensued.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officer and 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

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- ^{4/} Article 10, which consists of 14 separate sections, addresses health and life insurance coverage. The sections in dispute are those which address health benefits for employees upon retirement.
- ^{5/} The City's petition also raised an issue concerning a gas allotment for City owned vehicles. Since it has presented no argument on that issue, we need not address it.

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]

We consider only whether the PBA's proposals are mandatorily negotiable since permissively negotiable subjects cannot be submitted to interest arbitration without the employer's consent.

Retiree Health Benefits

This issue is identical to the one raised in a companion case involving the Newark Firemen's Union (SN-92-59). The parties' arguments are the same as those made in SN-92-59. We incorporate our discussion of this issue in that decision and conclude that N.J.S.A. 40A:10-23 and Bernard Tp., P.E.R.C. No. 88-116, 14 NJPER 352 (¶19136 1988) do not preclude a successor contract from maintaining the current benefit for retirees. City of Newark, P.E.R.C. No. 93-57, ___ NJPER ___ (¶_____ 1992).

Work Schedule

The PBA originally included in its economic proposal a change to a "4/4" work schedule consisting of four, ten-hour days on duty, followed by four days off duty. The City asserted that this proposal, if adopted, would create staffing problems, increase overtime and equipment costs, and conflict with the tour system for

superior officers.^{6/} Subsequently the PBA withdrew its demand that the schedule be implemented and substituted a new proposal which it asserts is a non-economic "meet and confer" proposal. The City did not reply that the new proposal was not mandatorily negotiable.

In City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26, 30 (¶17010 1985), we held mandatorily negotiable a provision requiring that the City discuss proposed changes in departmental rules, even if some rules concerned non-mandatory subjects. See also Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17 (1973); Local 195, IFPTE v. State, 88 N.J. at 393 (1982). Accordingly, we hold that this discussion provision to be mandatorily negotiable. We make no ruling at this time on the negotiability of the work schedule itself since the PBA has stated that the City would not be obligated to implement it. The negotiability of police work schedules must be determined case by case. See In re Mt. Laurel Tp., 215 N.J. Super. 108 (App. Div. 1987).

Union Business Leave

The City asserts that the assignment of four officers to union business interferes with its managerial prerogative to deploy personnel and that it should have the right to change the personnel assigned to the union office to meet staffing requirements. We considered this issue in City of Newark, P.E.R.C. No. 90-122, 16

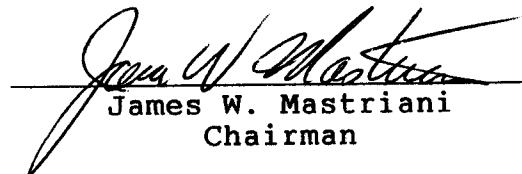
^{6/} The Field Operations analysis of the schedule specifically addresses some of these contentions.

NJPER 394 (¶21164 1990), and found the provision to be mandatorily negotiable. That decision applies here. As we said in Newark, the City retains the power to use all its employees to respond to a specific law enforcement emergency. But this reserved power does not render the contract provision non-negotiable. If a dispute arises about a particular assignment, a scope of negotiations petition may be filed and we can decide that question in a specific factual setting. Cf. New Jersey Sports & Exposition Auth., P.E.R.C. No. 87-94, 13 NJPER 129 (¶18057 1987).

ORDER

Article 29, Section 5, the retiree health care portions of Article 10, and the work schedule proposal are mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: December 17, 1992
Trenton, New Jersey
ISSUED: December 18, 1992