

P.E.R.C. NO. 78-59

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSIDE,

Petitioner,

Docket No. SN-78-21

-and-

P.B.A. LOCAL #70,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, initiated by the Township, the Commission found all five issues presented to be required subjects of negotiations. They are: (1) a dental plan; (2) the requirement that police cars be cleaned inside and out weekly; (3) the requirement that the locker rooms be cleaned and fixed periodically; (4) the request for a piece of exercise equipment, and (5) a "prior practices clause" with respect to terms and conditions of employment in the collective negotiations agreement.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSIDE,

Petitioner,

-and-

Docket No. SN-78-21

P.B.A. LOCAL #70,

Respondent.

Appearances:

For the Respondent, Albert S. Parsonnet, Township  
Attorney

For the Petitioner, Michael T. Galloway, President,  
P.B.A. Local #70

DECISION AND ORDER

On January 17, 1978, the Township of Hillside (the "Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a determination as to whether certain matters in dispute are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (the "Act").

The issues presented were the negotiability of (1) a dental plan; (2) the requirement that police cars be cleaned inside and out weekly; (3) the requirement that the locker rooms be cleaned and fixed periodically; (4) the building of a gymnasium, and (5) the continued inclusion of a "prior practices" clause in the collective negotiations agreement.<sup>1/</sup>

<sup>1/</sup> This last issue was contained in a letter submission from the Township dated February 9, 1978.

In its petition, the Township contended that Hillside P.B.A. Local #70 (the "PBA") requested a "Dental Plan" without specification as to the exact plan sought. In addition, the Township asserted that reality required that a dental plan be extended to all Township employees, if adopted at all, due to financial feasibility. The PBA averred that a specific Dental Plan was mentioned and had received a "positive reaction" and that negotiations had in the past taken place regarding various medical and dental plans.

The Law Division of the Superior Court of New Jersey addressed this issue in New Jersey Civil Service Assn., Camden Council No. 10 v. The Mayor and the City Council of the City of Camden, 135 N.J. Super. 308 (1975).<sup>2/</sup> The court held that providing dental services is authorized by statute. N.J.S.A. 40A:9-13. In the alternative, the court found that a dental plan is a method of authorizing additional compensation under both N.J.S.A. 40:69A-29(a) and N.J.S.A. 34:13A-5.3. The provision for dental service "...is, in a sense, merely substituting the service or benefits for the payment of additional compensation." 135 N.J. Super. at 313. Therefore, as compensation is a term and condition of employment, so is a dental plan and as such, it is a required subject of negotiations. Financial feasibility does not change the obligation to negotiate

<sup>2/</sup> Though the agreement in this case predated the Chapter 123 amendment to N.J.S.A. 34:13A-8.1, it is the position of this Commission that the Chapter 123 amendment broadened the scope of negotiations and certainly did not restrict them. See In re Local 195 IFPTE and Local 518 SEIU and State of New Jersey, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), Appeal pending Docket No. A-3809-76.

in good faith with respect to terms and conditions of employment, but it is important to note, as we have done often, that the duty to negotiate in good faith is not tantamount to the duty to agree.

The second issue is a demand that police vehicles be cleaned weekly. The Township contends that this is not negotiable because the vehicles would have to be cleaned by employees in another department. That is immaterial. The proposal clearly relates to the working conditions of the employees represented by the PBA and, as such, is a required subject of negotiations.<sup>3/</sup>

The issue of locker room maintenance is concerned with the health and safety and the working conditions of employees. In In re Byram Twp. Bd. of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affirmed 152 N. J. Super. 12 (1977), this Commission found that well-lighted and clean restrooms relate to terms and conditions of employment, and, therefore, are a required subject of negotiations. On appeal to the Appellate Division, that court was satisfied that the Education Association's proposals<sup>4/</sup> did relate to terms and conditions of employment and were required subjects of negotiations. Again, the Township asserts that this proposal would require the work to be performed by other employees

<sup>3/</sup> In In re PBA Local 99, Roselle Police, P.E.R.C. No. 77-66, 3 NJPER 166 at 168 (1977), we determined that, "The issue of vehicle maintenance directly affects the safety of the Borough's police officers and as such is a required subject for collective negotiations."

<sup>4/</sup> The Education Association's proposals in addition to the clean restrooms were the installation of a pay telephone, a full-length mirror and an appropriately furnished air-conditioned teacher work area.

but that has no bearing on the negotiability of this proposal.

The Township also alleges that the PBA requested the Township to build a gym for them. The PBA maintains that the Township is "mistaken" and only requests that the Township provide a "universal gym", i.e., a piece of exercise equipment, which could be placed in the present locker room. There is certainly a nexus between being in good physical condition and performing as a police officer. Physical skill proficiency is required before certification as a police officer. N.J.A.C. 13:1-4.1. The request for a "universal gym" relates to the terms and conditions of employment and, as such, is a required subject of negotiations.

With respect to these four issues, it appears that the Township is confusing the negotiability of subjects and the wisdom of agreeing to them. These two things must be kept separate. The Township contends that it could agree to these items only at the expense of laying off some employees. But an employer must always consider the consequences of agreeing to proposals put forth by employee organizations. However, the fact that something would cost money does not mean that such a thing is not within the scope of collective negotiations. Our function is to determine whether the disputed matter is a term or condition of employment.

The final issue concerns a "prior practices" clause. The Township seeks the exclusion of the prior practices clause in the 1977 agreement and urges that any prior practices which either party wants to preserve should be specifically set forth and proposed for inclusion in the new agreement. It urges that a prior

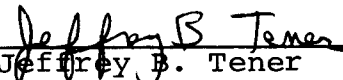
practices clause not be found to be mandatorily negotiable.

The New York Public State Employment Relations Board (the "Board") addressed this question recently in In re Local 294, IBT and City of Amsterdam, 10 PERB 3017 (1977) and In re Troy Uniformed Firefighters Assn., Local 2304, IAFF and City of Troy, 10 PERB 3031 (1977). In both cases, the Board found a "continuation clause" is a mandatory subject of negotiations. We agree. A prior practices clause is a continuation clause in that both provide that terms and conditions of employment will remain in full force and effect until and unless the parties agree to modify them. Once again, the duty to negotiate with respect to a "prior practices" clause does not necessitate that such a clause be agreed upon and included in any subsequent collective negotiations agreement. We find, however, that a "prior practices" clause with respect to terms and conditions of employment is a required subject of negotiations.

ORDER

Based upon the above discussion, the Public Employment Relations Commission hereby determines that the issues herein are required subjects for negotiations and the Township of Hillside is hereby ordered to negotiate in good faith with respect to these items upon demand of P.B.A. Local #70.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hipp, Hurwitz and  
Parcells voted for this decision. None opposed.

DATED: Trenton, New Jersey  
March 16, 1978  
ISSUED: March 20, 1978