

P.E.R.C. NO. 90-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOPATCONG PBA, LOCAL NO. 149,

Petitioner,

-and-

Docket No. SN-90-52

BOROUGH OF HOPATCONG

Respondent.

Appearances:

SYNOPSIS

The Public Employment Relations Commission finds that a "fully bargained" clause which the Borough of Hopatcong seeks to retain in a successor collective negotiations agreement with Hopatcong PBA Local No. 149 is mandatorily negotiable except to the extent it would eliminate the duty to negotiate changes in rules governing working conditions.

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Appearances:

For the Petitioner, Loccke & Correia, attorneys
(Richard D. Loccke, of counsel)

For the Respondent, David A. Wallace, attorney

DECISION AND ORDER

On March 2, 1990, Hopatcong PBA, Local No. 149 petitioned for a scope of negotiations determination. The PBA seeks a declaration that a "fully bargained" clause which the Borough of Hopatcong seeks to retain in a successor collective negotiations agreement is neither legal nor mandatorily negotiable.

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

The PBA represents the Borough's regular police officers, except the chief. The Borough and the PBA entered into a collective negotiations agreement effective from January 1, 1988 to December 31, 1989. Article XXII is entitled Fully-Bargained Provisions and Future Negotiations. Paragraph A provides:

This Agreement represents and incorporates the complete and final understanding and settlement

by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

The Borough wishes to retain this language in the next contract, but the PBA asserts that this provision contravenes its right to negotiate under N.J.S.A. 34:13A-5.3.

N.J.S.A. 34:13A-5.3 provides, in part: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." This statutory command preempts any contractual provision that on a blanket basis eliminates the duty to negotiate over changes in rules governing working conditions. South Orange Village Tp., P.E.R.C. No. 90-57, 16 NJPER 37 (¶121017 1989); Mountainside Bor. P.E.R.C. No. 83-94, 9 NJPER 81 (¶14044 1982); Ocean Tp., P.E.R.C. No. 81-133, 7 NJPER 333 (¶12149 1981). Contrast Somerville Bor., P.E.R.C. No. 84-14, 9 NJPER 558 (¶14232 1983) (management rights clause addressing specific subjects is mandatorily negotiable) and State of New Jersey, P.E.R.C. No. 86-64, 11 NJPER 723 (¶16254 1985) (variety of factors clearly proves waiver of right to negotiate over specific subject). Given Section 5.3 and our case law, the second sentence of paragraph A is preempted to the extent it would eliminate the duty to negotiate over changes in rules governing working conditions.

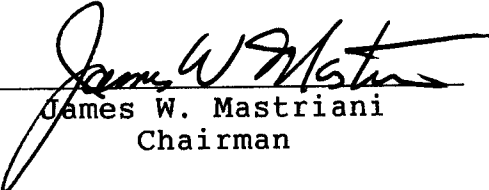
The first sentence of paragraph A stands on different footing. Rather than broadly waiving a future right to negotiate, it confirms that the past recourse to negotiations has not yielded any contractual undertakings beyond those expressly contained in the contract.

ORDER

The first sentence of Article XXII Paragraph A is mandatorily negotiable.

The second sentence of Article XXII Paragraph A is mandatorily negotiable except to the extent it would eliminate the duty to negotiate changes in rules governing working conditions.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
May 14, 1990
ISSUED: May 15, 1990