

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Petitioner,

-and-

Docket Nos. SN-80-4 and
ID-80-1

SPRINGFIELD P.B.A. LOCAL #76,

Respondent.

SYNOPSIS

The Chairman of the Commission issues a decision in a scope of negotiations and issue definition matter. The Chairman concluded with regard to the scope of negotiations matter that work schedule proposals are mandatorily negotiable. However, to the extent that any work schedule would negate or contravene or otherwise necessitate modifications in a specified manning level determination of the public employer, such proposals are non-mandatory subjects for collective negotiations. With regard to the Capital Improvement Fund scope of negotiations issue, the Chairman concluded that communications facilities available to police officers while they are performing their jobs affect their terms and conditions of employment, specifically their safety. Negotiations proposals relating to communications facilities available to police officers as they relate to employee health, safety or comfort are mandatorily negotiable.

With regard to the issue definition determination, the Chairman concluded that all four items listed on the petition for issue definition determination are economic issues. All of these issues directly affect police officers' income, hours or economic benefits.

P.E.R.C. NO. 80-86

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For the Petitioner, Michael J. Klinger, Esq.

For the Respondent, Nichols and Blackman, Esqs.
(Mr. Robert B. Blackman, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination, Docket No. SN-80-4, was filed by the Township of Springfield (the "Township") with the Public Employment Relations Commission on July 16, 1979, disputing the negotiability of certain matters which the Springfield P.B.A. Local #76 (the "PBA") was seeking to negotiate. At the same time, a Petition for Issue Definition Determination, Docket No. ID-80-1, was filed by the Township with the Commission disputing the definition of certain items which the PBA classified as non-economic issues.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The Township filed a Memorandum on August 20, 1979 in support of its negotiability and issue definition contentions.

The PBA filed its brief relating to these matters on September 14, 1979.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute have previously been determined by the Commission and/or the State judiciary. The Rules provide for the Chairman to issue determinations regarding issue definition. N.J.A.C. 19:16-6.2(f).

The Scope of Negotiations Determination

The issues placed before the Commission for determination in this proceeding are the negotiability of the following proposals:

a) "A four and two work schedule", wherein every employee would work four days in a row followed by two days off.

-and-

b) "The Township will spend money from its Capital Improvement Fund for portable radios and new communication systems."

The 4/2 Work Schedule Issue

The Township contends that utilizing such a proposal -- the 4/2 work schedule -- will place limitations upon the ability of the employer to determine manning levels within the police department. The PBA notes that affording maximum coverage in every situation where warranted is an ever-present problem for employers.

In numerous prior decisions, the Commission has determined that minimum manning provisions, i.e., proposals relating to the number of employees on a shift or in a department or, more generally, the level of service to be provided by a governmental agency, are not required subjects for negotiations.^{1/}

Within the broad context of the minimum manning issue, the Commission has considered a group of related issues -- work schedules, time off, etc. In these decisions, the Commission has held that an employer has the right to unilaterally determine the number of employees that must be on duty at any given time. However, within the framework of these manning levels, an employer must negotiate over such matters as which employees may be off duty, at what time, the amount of consecutive time they may be off, the method of selecting those employees to be off, what hours during the day employees work and the schedules employees are required to work.^{2/}

^{1/} See e.g. In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977); In re Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978); In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978); In re Township of Maplewood (PBA), P.E.R.C. No. 78-92, 4 NJPER 247 (¶4135 1978); In re Township of Maplewood (FMBA), P.E.R.C. No. 78-89, 4 NJPER 258; and In re Cinnaminson Township, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978).

^{2/} In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (¶4207 1978); In re City of Orange, P.E.R.C. No. 79-10, 4 NJPER 420 (¶4188 1978); In re Township of Cinnaminson, P.E.R.C. No. 79-5, supra.; In re Township of West Orange, P.E.R.C. No. 78-93,

(continued)

Thus, employee work schedule proposals such as the one at issue are mandatorily negotiable. However, to the extent, if any, that a work schedule proposal -- such as the 4/2 schedule put forth herein -- would negate or contravene or otherwise necessitate modifications in a specified manning level determination of the public employer, such proposals are non-mandatory subjects for collective negotiations; they are only permissively negotiable. These proposals may not be insisted upon to the point of impasse, nor may they be submitted to compulsory interest arbitration absent mutual agreement of the parties. N.J.S.A. 34:13A-16(f)(4).

The Capital Improvement Fund Issue

The PBA asserts that police officer safety is in part dependant upon the equipment provided to them. Thus, the PBA contends that the effect of such expenditures by the Township relates

2/ (continued)

4 NJPER 266 (¶4136 1978); In re Township of Maplewood, supra.; In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (¶4127 1978), PERC revd App. Div. Docket No. A-5223-77, Pet. for Certif. pending Docket No. 16,565; and In re City of Northfield, supra. The Appellate Division in In re Town of Irvington, supra, reversed the Commission's determination that the decision that all officers in the Patrol Division work on full rotating around the clock shifts, e.g. two weeks on the morning shift, two weeks on the midnight shift, and two weeks on the afternoon shift, etc., in contrast to a system wherein one third of the employees in the Division worked the midnight shift on a steady basis, was a mandatory subject for collective negotiations. [See also In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (¶4207 1978), App. Div. Docket No. A-4450-78, PERC revd 12/12/79.] The Irvington and Garfield decisions are distinguishable inasmuch as they relate to the issue of the rotation of shifts while the instant matter concerning the 4/2 work week issue directly relates to the number of hours that a police officer would work in one day and the number of days that an officer would work in one week. As noted above a Petition for Certification in the Irvington matter is presently pending before the New Jersey Supreme Court.

to a term and condition of employment -- safety -- and is negotiable.

The Township contends that how funds are expended and the purpose for which funds are expended are basic policy determinations and are thus not mandatory subjects for negotiations.

The expenditure of funds by the Township for capital items -- when to expend funds, in what amounts, for what specific items -- are normally matters of managerial authority which are not mandatory subjects for negotiations.^{3/} Such proposals are only permissively negotiable. These proposals may not be insisted upon to the point of impasse, nor may they be submitted to compulsory interest arbitration absent mutual agreement of the parties. N.J.S.A. 34:13A-16(f)(4).

However, the Commission in the past has determined that employee job safety is a required subject for collective negotiations.^{4/} The communications facilities available to police officers while they are performing their jobs affect their terms

^{3/} In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979); In re City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979); Brookdale Community College Police v. Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977) (Appeal dismissed, App. Div. Docket No. A-3041-76); In re Borough of Roselle, P.E.R.C. No. 77-66, 3 NJPER 166 (1977); and In re Township of Hillside, P.E.R.C. No. 78-59, 4 NJPER 159 (¶4076 1978).

^{4/} Brookdale Community College Police, supra.; Byram Board of Education and Byram Tp. Education Assn, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd. 152 N.J. Super. 12 (App. Div. 1977); In re City of Jersey City, supra.; In re City of Newark, supra.; In re County of Middlesex, supra.; and In re Borough of Roselle, supra.

and conditions of employment -- specifically, their safety. Accordingly, negotiations proposals relating to communications systems and equipment such as portable radios for police officers, to the extent that such proposals directly relate to employee health, safety or comfort, are mandatorily negotiable, as these matters are terms and conditions of employment.

The Issue Definition Matter

In its Rules adopted to implement the Police and Fire Arbitration Act, the Commission established a procedure to resolve disputes as to whether issues are noneconomic or economic. That procedure is set forth fully at N.J.A.C. 19:16-6.1 et seq. The Rules provide that the Chairman or other designee of the Commission shall render a written determination which classifies the disputed issue or issues as economic or noneconomic within the meaning of N.J.S.A. 34:13A-16(f)(2). These determinations are deemed to be final administrative determinations not subject to review in any proceeding before the Commission.

The purpose of the procedure, therefore, is simply to provide a means for resolving disputes as to whether issues are economic or noneconomic. All issues must be classified as one or the other so that the final offers of the parties can be properly considered by the arbitrator who is to consider all economic issues as a package and all noneconomic issues on an item by item basis. The arbitration mechanism requires this classification of disputed issues.

Section 3 of the Police and Fire Arbitration Act, N.J.S.A. 34:13A-6(f)(2) defines economic issues as including "...those items which have a direct relation to employee income including wages, salaries, hours in relation to earnings, and other forms of compensation such as paid vacations, paid holidays, health and medical insurance, and other economic benefits to employees." (emphasis added). What is germane in classifying these issues is the effect on employees. Would the item, if agreed to by the parties, affect an employee's income, hours, or economic fringe benefits? 5/

The Petition for Issue Definition Determination herein lists four items, all of which the PBA identified as noneconomic issues on the Petition to Initiate Compulsory Interest Arbitration, and which the Township contends are economic issues. The four items, as set forth in the Petition to Initiate Compulsory Interest Arbitration, are as follows:

- (1) Time off with pay for the PBA President, Delegate and two convention delegates.
- (2) Time off with pay for the PBA elected officers for all PBA functions; time off with pay for all contract committeemen for all meetings and negotiations.
- (3) Time and one-half compensation for all court testimony.
- (4) Language change for reimbursement of college tuition and books as set forth below.

Generally, the PBA contended that all incidents of employment will affect an employee's income, but that giving such an

5/ See In re Township of Saddle Brook, P.E.R.C. No. 78-73, 4 NJPER 195 (¶4098 1978).

interpretation to Chapter 85 would negate the separation of economic and noneconomic issues as set forth in the statutory language. The PBA suggests that only those items which play a substantial part in determining employee income should be considered economic issues.

After careful consideration of the parties' submissions, the undersigned concludes that all four of the above-cited items relate to economic issues. All of these issues directly affect police officer's income, hours or economic fringe benefits.

More specifically, Items 1 ^{6/} and 2 request time off from regular work responsibilities for certain PBA officials without a corresponding reduction in pay -- essentially, they would receive the same amount of pay for working fewer hours. Pursuant to the definition set forth in N.J.S.A. 34:13A-16(f)(2), these are economic items. Item 3, time and one-half for all court testimony, is a request for increased compensation for one aspect of the duties performed by these employees. This is also an economic item.

Item 4 seeks to delete the phrase, "in the Chief's discretion," from the following provision in the parties' current agreement:

(a) Any policeman who attends school for the purpose of obtaining police education or any other degree in Police Science, (b) at the discretion of the Chief, shall be reimbursed the cost of his books and tuition (c) upon his successful completion of the semester.

^{6/} But see N.J.S.A. 11:26C-4 and Boro of Glassboro v. Patrolmen's Benevolent Assn, 149 N.J. Super. 254 (App. Div. 1977).

This provision now provides for reimbursement for certain educational costs -- an economic benefit -- if three "qualifications" (labeled a, b and c above) are met. The PBA proposal is to delete one of the qualifiers, (b), thus potentially expanding the applicability of this benefit to employees who would not have qualified to receive it in the past -- thus providing an economic benefit to those employees.

ORDER

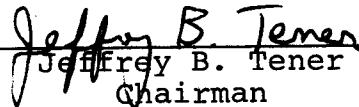
Scope of Negotiations: In accordance with the above discussion, IT IS HEREBY ORDERED that with respect to the issues we have determined to relate to required subjects of negotiations the Township of Springfield is ordered, upon demand of Springfield PBA Local #76, to negotiate in good faith with PBA Local #76. These proposals may be submitted to compulsory arbitration in accordance with N.J.S.A. 34:13A-14 et seq. (P.L. 1977, c. 85).

IT IS FURTHER ORDERED that with respect to the proposal we have determined to relate to a permissive subject for negotiations, PBA Local #76 is ordered to refrain from insisting to the point of impasse upon the inclusion of such proposal in a collectively negotiated agreement with the Township of Springfield. Such proposal may not be submitted to compulsory interest arbitration unless otherwise agreed to by the Township of Springfield.

Issue Definition: The Township of Springfield and Springfield PBA, Local #76, are hereby ORDERED to submit their

positions to the interest arbitrator appointed by the Commission to this matter in accordance with the above determinations as to whether disputed items are economic or noneconomic.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: January 7, 1980
Trenton, New Jersey