

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEEHAWKEN P.B.A., LOCAL 15,

Petitioner,

-and-

Docket No. SN-77-4

TOWNSHIP OF WEEHAWKEN,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the P.B.A., the Commission rules on the negotiability of a table of organization establishing manpower levels within the department. The Township had failed to maintain the manpower specified in the table of organization that was included in the collective negotiations agreement between the parties for the calendar year 1972 that has remained in effect ever since by agreement, pending the execution of a successor contract. In an award dated October 8, 1975, an arbitrator had ordered the Township, in apposite part, to comply with the contractual provision relating to the table of organization, but the Township refused to do so. The P.B.A. then filed in Superior Court seeking confirmation of the award, and Judge Kentz from the Chancery Division ruled that the matter relating to the table of organization be submitted to the Commission for a scope of negotiations determination.

The Commission determined, after a careful review of the record, that the dispute must be considered a Chapter 303 matter. The Commission therefore determined, given the standard or test for negotiability set forth by the Supreme Court in the Dunellen trilogy, that the disputed matter relating to the negotiability of a table of organization was not mandatorily negotiable. The Commission noted that in several previous cases in which it had found disputed matters contained in Chapter 303 agreements not to be mandatorily negotiable, it had restrained arbitration regarding these matters based on its analysis of Dunellen. The Commission concluded however that the instant case arose in a different context and that the Commission was not confronted with a request for a restraint of arbitration. The Commission stated that the question of enforcement of the arbitrator's award in this matter was before Judge Kentz.

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Appearances:

For the Petitioner, Schneider, Cohen & Solomon, Esqs.  
(Mr. David Solomon, of Counsel)

For the Respondent, George B. Campen, Esq.

DECISION

On August 6, 1976, the Weehawken P.B.A., Local 15 (the "P.B.A.") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the P.B.A. and the Township of Weehawken (the "Township") is within the scope of collective negotiations.<sup>1/</sup>

<sup>1/</sup> The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d), which states: "The Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." To implement the cited legislation the Commission has established administrative "scope of negotiations proceedings," and has promulgated rules of practice and procedure governing such proceedings. (See N.J.A.C. 19:13-1.1 et seq.)

The collective negotiations agreement between the parties for the calendar year 1972 has remained in effect ever since by agreement pending execution of a successor contract. Article 23 of that agreement contains a table of organization clause which reads as follows:

"The department shall comply with the Township's Ordinance #9-1970 One Chief of Police, One Deputy Chief, One Captain, Seven Lieutenants, Five Sergeants, Twenty-seven Patrolmen, and One Matron as the Township Committee decides."

The Township failed to maintain the manpower specified in the table of organization and the issue was submitted to arbitration. In an award dated October 8, 1975, the arbitrator ordered the Township to comply with the contract, but it refused to do so. The P.B.A. then filed suit in Superior Court seeking confirmation of the award, and Judge Kentz of Hudson County Chancery Division ruled that the matter be submitted to the Commission for a scope of negotiations determination.<sup>2/</sup>

We have previously rendered determinations regarding the negotiability of tables of organization and numbers of employees or levels of employment both overall and in given titles and have found that decisions relating to such matters are managerial prerogatives which are permissively but not mandatorily negotiable. In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976);

<sup>2/</sup> Consistent with past practice in scope of negotiations proceedings, the Commission will not interpret the parties' contract but passes only upon the negotiability of the disputed matter. All other matters are left to the Court for determination. See In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

In re Newark Fireman's Union of New Jersey, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976). Nothing has been presented to us in this case which leads us to modify those determinations and we hereby affirm them. However, each of those cases arose in the context of negotiations over the terms of successor agreements and subsequent to January 20, 1975, the effective date of amendments to the New Jersey Employer-Employee Relations Act contained in Chapter 123, Laws of 1974.

That date is important because of its effect on negotiability and arbitrability. Our Supreme Court ruled, prior to the passage of the Chapter 123 amendments, that arbitration of disputes was limited to items which are not predominantly managerial policies and which directly affect the personal and financial welfare of employees. Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973).

On the other hand, we have interpreted those amendments to the Act as expanding the areas of negotiability and arbitrability. It has been our position that a matter may be submitted to arbitration if it involves either a required or a permissive subject of negotiations, assuming the dispute to be one covered by the terms of a contract entered into after the effective date of Chapter 123. In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976).

The Appellate Division has held, in a decision that we have consistently followed, that the Chapter 123 amendments are

applicable only to contracts entered into after the effective date of those amendments. Board of Education of the Township of Ocean v. Township of Ocean Teachers Association, Docket No. A-3334-74 (App. Div., May 5, 1976, unreported). Thus, given our determination that the matter herein in dispute is a permissive subject of negotiations, this case turns on whether the applicable contract was entered into prior to January 20, 1975.

The last contract agreed to by the parties herein was for the calendar year 1972. Its final article provided that if the deadline for agreement for 1973 passed without a new contract, the 1972 agreement would continue until the signing of the new agreement. The P.B.A. argues that the 1972 contract has, by virtue of the above provision, been renewed on a yearly basis ever since and thereby has been ratified under Chapter 123. While the Commission is not entirely convinced of this assertion, it is unnecessary to make a ruling on that in order to decide this case.

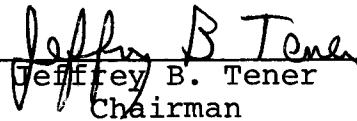
Assuming, arguendo, that the contract has been renewed each year, this dispute must still be considered a Chapter 303 matter. No date has been supplied as to when the Township ceased to observe the table of organization set forth in the contract; nevertheless it is clear that this happened at the latest in 1975 in light of the fact that the parties arrived at the stage of an arbitrator's hearing on May 21, 1975.<sup>3/</sup> Consequently, the latest

<sup>3/</sup> Under the contractual grievance procedure, the P.B.A. could request arbitration if a grievance was not settled within ten days.

contract under which the dispute could have arisen would be for the calendar year 1975. Chapter 123 was effective as of January 20, 1975, and as the 1972 contract was on a calendar basis, its automatic renewal by virtue of lack of a successor agreement, was "entered into" on January 1, 1975.<sup>4/</sup>

Having determined that the dispute before the Commission arose under a Chapter 303 contract and given the standard or test for negotiability set forth by the Supreme Court in Dunellen, supra, we conclude that the disputed matter relating to the negotiability of a table of organization is not mandatorily negotiable.<sup>5/</sup>

BY ORDER OF THE COMMISSION

  
 Jeffrey B. Tener  
 Chairman

Chairman Tener, Commissioners Forst, Hipp and Hurwitz voted for this decision.  
 Commissioner Hartnett abstained.  
 Commissioner Parcels was not present.

DATED: Trenton, New Jersey  
 May 12, 1977  
 ISSUED: May 13, 1977

<sup>4/</sup> If the P.B.A.'s argument as to yearly renewal of the contract is not accepted, then the applicable contract would be for 1972, unquestionably a Chapter 303 matter.

<sup>5/</sup> In several previous cases in which we have found disputed matters contained in Chapter 303 agreements not to be mandatorily negotiable, we have restrained arbitration regarding these matters based on our analysis of Dunellen, supra. However, this case arose in a different context and we are not confronted with a request for a restraint of arbitration. The question of enforcement of the arbitrator's award in this matter is before Judge Kentz. See also note 2 above.