P.E.R.C. NO. 2009-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and- Docket No. SN-2009-023

UNITED CONSTRUCTION TRADES &
INDUSTRIAL EMPLOYEES INTERNATIONAL
UNION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a contract provision that the United Construction Trades & Industrial Employees International Union seeks to include in a successor contract with the Township of Maplewood. The disputed provision concerns minimum staffing levels and the Commission finds it is not mandatorily negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Genova, Burns & Vernoia, attorneys (Kristina E. Chubenko, on the brief)

For the Respondent, Law Officers of Stephen Goldblatt, P.C., attorneys (Stephen Goldblatt, on the brief)

DECISION

On October 31, 2008, the Township of Maplewood petitioned for a scope of negotiations determination. The Township seeks a declaration that a provision in its expired collective negotiations agreement with the United Construction Trades & Industrial Employees International Union is not mandatorily negotiable and therefore may not be included in a successor agreement. The disputed provision concerns minimum staffing levels. We find that the clause is not mandatorily negotiable.

The parties have filed briefs and exhibits. The Township has filed a certification from its public works director. The Union has filed a certification from a public works department employee. These facts appear.

The Union represents all blue-collar employees in the Department of Public Works. The parties' collective negotiations agreement expired on December 31, 2006. The parties are in negotiations for a successor agreement.

Article XIII is entitled Health and Safety. The Township seeks removal of Section 13.5, which provides:

> Except where an exceptional emergency exists, for the purposes of furthering the safety of the employees, at least two employees shall be assigned for the following purposes: at least two per vehicle for salting and plowing; when doing street work where danger exists; other situations where two employees have normally been used when called in for overtime work.

When the parties negotiated the clause, the snow plow truck controls were on the passenger side, making it necessary to assign two people to operate the vehicle -- one to drive and one to control the plow. All but two trucks have been modified; controls for the operation of the truck and the plow are now next to the driver.

The Township asserts that the modification moots the operational and safety concerns that were present at the time the parties negotiated the clause. The Township further asserts that

it has assigned a single foreman to operate the unmodified trucks and that no one has reported any safety concerns.

The Union asserts that the truck modification does not resolve its safety concerns. It maintains that two unmodified trucks remain in operation and that the two-employee minimum also serves to protect the driver when navigating the steep hills and turns that are commonplace in the Township.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states: "The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations." We do not consider the wisdom of the clause in question, only its negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable. It states:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's

> managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The Township has a managerial prerogative to determine its staffing levels. See, e.g., City of Linden, P.E.R.C. No. 95-18, 20 NJPER 380 (¶25192 1994); Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 1981), certif. den. 88 N.J. 476 (1981). The clause at issue requires the employer to assign two employees to the operation of salt and plow trucks, to do any street work where danger exists, and in other instances when the Township would normally call in two employees for overtime work. We appreciate the Union's safety concerns, but they would have to be addressed through other means besides a contractual clause determining how many employees will be used to operate a vehicle or assigned to a job. City of Newark, P.E.R.C. No. 2006-74, 32 NJPER 94 (¶47 2006); see also Borough of Franklin, P.E.R.C. No. 98-138, 24 NJPER 273 (¶29130 1998) (proposal requiring two patrol officers on a shift not mandatorily negotiable; premium pay proposal for officers working alone mandatorily negotiable).

ORDER

Article XIII, Section 13.5 is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Joanis voted in favor of this decision. None opposed. Commissioner Watkins was not present.

ISSUED: March 26, 2009

Trenton, New Jersey