

P.E.R.C. NO. 2013-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Petitioner,

-and-

Docket Nos. SN-2012-014

SN-2012-017

PLAINFIELD FIRE OFFICERS
ASSOCIATION, LOCAL NO. 207,

Respondent,

-and-

FMBA LOCAL 7,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses scope of negotiations petitions filed by the City of Plainfield seeking a negotiability determination as to language Plainfield Fire Officers Association, Local No. 207 and FMBA Local 7 seek to submit to interest arbitration for inclusion in a successor agreement. The Commission holds that the scope petitions were filed out-of-time. If a dispute arises regarding the language during the next agreement, the Township may file a petition seeking to restrain grievance arbitration.

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, Ruderman & Glickman, P.C.,
attorneys (John A. Boppert, of counsel)

For the Respondent FOA, Fox and Fox, LLP, attorneys
(Jennifer Heiner Pisano, of counsel)

For Respondent FMBA, Marc D. Abramson, Labor Relations
Consultant

DECISION

On November 1, 2011, the City of Plainfield (City) petitioned for a scope of negotiations determination concerning a manpower contract clause it seeks to remove from a successor collective negotiations agreement. The Plainfield Fire Officers Association, Local 207 ("FOA") seeks to retain the clause. The FMBA did not oppose the removal of similar language in its contract.

The parties have filed briefs and exhibits. These facts appear. The Association represents all uniformed fire officers, excluding firefighters, employed by the City. The parties' most recent agreement expired on December 31, 2009. On December 30, 2010, the FOA filed for interest arbitration. On January 22, 2011, the City submitted a response to the interest arbitration petition that listed "promotions" as outside the scope of negotiations. The response did not identify the manpower clause.

Article VI is entitled Manpower and provides:

6-1 In order to protect the health and safety of the employees of the Fire Division, the City will make a reasonable effort to maintain the manpower strength assigned to each company on each platoon as follows:

Engine Companies - One (1) Officer and three
(3) Firefighters

Truck Companies - One (1) Officer and three
(3) Firefighters

Rescue One - One (1) Firefighter

Car 2 -Battalion Fire Chief and One (1)
Firefighter

6-2 In the event that manpower of any Engine or Truck company on any platoon should fall below three (3) individuals and such assignments cannot be made to fill such shortage without reducing manpower in the other companies below the minimum allowed, said shortage shall be filled by overtime work in accordance with Article XII. No apparatus shall leave quarters for a normal alarm response with less than two (2) men at any time for any reason except Rescue Company One (1).

The City argues that the manpower provision impermissibly restricts its non-negotiable managerial prerogative to set

staffing levels and to determine minimum staffing levels. The FOA responds that the clause has been in the parties' agreement since at least 1970 and concerns the mandatorily negotiable subject of firefighter safety as it only requires the City to make a reasonable effort to maintain staffing levels. The FOA further asserts that section 6-2 concerns overtime procedures which are mandatorily negotiable.

In its reply brief, the City acknowledges that it has filed its scope petition ten months out of time. It argues that the Commission should consider its petition because there has not been an arbitration hearing; no award has been issued; current counsel was not hired until the fall of 2011; and circumstances warrant a relaxation of Commission rules.

We dismiss the City's scope petition without prejudice to its ability to file a new petition should a dispute arise regarding this language during the duration of the contract. The timeline set forth in N.J.A.C. 19:16-5.5c structures the interest arbitration process; ensures the parties and the arbitrator know the nature and extent of the controversy at the outset; and fosters the statutory goal of providing for an expeditious, effective and binding procedure for resolution of disputes between employers and police. Wycoff Tp., P.E.R.C. No. 2004-63, 30 NJPER 107 (¶43 2004). Scope petitions filed after the time period set in N.J.A.C. 19:16-5.5c are presumptively time-barred,

although we will consider, on a case-by-case basis, arguments that N.J.A.C. 19:16-5.5c should be relaxed. The City has not shown good cause or unusual circumstances to relax the regulation. In finding so, we take administrative notice that this is the second scope of negotiations petition the City has filed in connection with this interest arbitration proceeding. A timely scope petition, Docket No. SN-2011-51, was filed on January 22, 2011 and did not list the manpower article as being in dispute. That petition was subsequently withdrawn by the City. We also take notice that interest arbitration hearings have been underway and the arbitrator filed a notice of voluntary settlement with the Commission on August 16, 2012. Thus, we decline to relax our rules to permit an employer to file a second scope of negotiations petition to remove existing contract language it was aware of at the time the first scope petition was filed.^{1/}

^{1/} The Firefighter's most recent agreement expired on December 31, 2009 and contains the same manpower clause. On November 1, 2011, the City filed a scope of negotiations petition to remove the language. The FMBA did not oppose the scope petition and we take administrative notice that the parties' impasse settled in mediation. Accordingly, we also dismiss SN-2012-017 as moot.

ORDER

The scope of negotiations petition filed by the City of Plainfield is dismissed without prejudice. The employer may file a scope of negotiations petition should a dispute arise under the successor contract and a demand for binding arbitration is filed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioner Boudreau, Jones, Voos and Wall voted in favor of this decision. None opposed. Commissioner Eskilson abstained from consideration. Commissioner Bonanni was not present.

ISSUED: September 27, 2012

Trenton, New Jersey