

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROSELLE,
Respondent,

Docket No. SN-3

-and-

NEW JERSEY STATE POLICEMEN'S BENEVO-
LENT ASSOCIATION, LOCAL NOL 99,
ROSELLE POLICE,
Petitioner.

SYNOPSIS

In a scope of negotiations proceeding initiated by a majority representative of municipal police officers concerning the negotiability of contract proposals, the Commission rules that the subject-matter of the public employer's table of organization, as it pertains to the number of employees to employ in given titles, constitutes basic management decisions which are permissive, but not mandatory, subjects for negotiations. With respect to the subject-matter of promotions within the unit, the Commission rules that the qualifications or prerequisites for employment positions are permissive subjects, whereas the procedures whereby employees fulfilling such qualifications are selected for promotion within the unit, constitute terms and conditions of employment and are thus mandatorily negotiable. The public employer is ordered to negotiate in good faith concerning mandatorily negotiable promotional procedures. As to the permissive subjects, the majority representative is ordered to refrain from insisting to the point of impasse upon the inclusion of such matters in an agreement.

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Petitioner.

Appearances:

For the Petitioner, Zazzali and Zazzali, P.A.
(Lawrence A. Whipple, Jr., Esq., of Counsel)

For the Respondent, Irving F. Sturm, Esq.

DECISION AND ORDER

By letter dated January 27, 1975 the New Jersey State Policemen's Benevolent Association, Local No. 99, Roselle Police (the "PBA") requested a determination by the Public Employment Relations Commission (the "Commission") with respect to a dispute "concerning the negotiability of a Table of Organization within the Police Department" of the Borough of Roselle (the "Borough").^{1/} The PBA was advised by the Commission's Executive Director of the filing requirements of N.J.A.C. 19:13-2.2 (Contents of Petition for Scope of Negotiations Determination). Thereafter, on July 2, 1975

^{1/} N.J.S.A. 34:13A-5.4(d) provides: "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." The Commission's rules of practice and procedure governing scope of negotiations proceedings are set forth in N.J.A.C. 19:13-1.1 et seq.

the PBA filed with the Commission a Petition for Scope of Negotiations Determination fulfilling the aforesaid filing requirements. Briefs have been submitted to the Commission by both parties. Neither party has requested an evidentiary hearing or oral argument.

It is undisputed that the Borough is a public employer within the meaning of the Act, and that the PBA is the majority representative, within the meaning of the Act, of all police officers employed by the Borough, other than the Chief of Police, and that the instant dispute arose during the course of collective negotiations for a first contract, following the Borough's voluntary recognition of the PBA in February, 1975. The Borough takes no exception to the PBA's framing of the instant dispute as follows, as set forth in the PBA's scope petition:

The Petitioner [PBA] contends that the establishment and maintenance of a Table of Organization for the Roselle Police Department and its incorporation into a collective bargaining agreement is a term and condition of employment which is mandatorily negotiable within the meaning of the Act. The Table of Organization would: specify the numbers of patrolmen, sergeants, lieutenants and captains within the Police Department; set forth a chain of command; and establish the span of control. The Petitioner alleges that a Table of Organization is mandatorily negotiable since it would relate to promotional opportunities, work loads, safety of the employees, etc.... The Respondent [Borough] alleges that the Table of Organization is a management prerogative and therefore non-negotiable.

In its brief, the PBA has confined its argument to the relationship of the table of organization to promotional opportunities.^{2/} It states that its contract proposal, "if set forth in the Agreement, would mandate a departmental structure wherein a fixed number of sergeants, lieutenants,

^{2/} We shall accordingly consider as withdrawn, for purposes of the instant dispute, the additional contentions in the PBA's scope petition concerning work loads and safety.

and captains would be established and would remain for the duration of the Agreement," and maintains that "(s)ince a Table of Organization would specify a fixed number of employment positions, opportunities for advancement in rank would be made known and would offer greater incentive to the employees. It would provide a degree of certainty for the police officers as to the availability of promotional opportunities as well as the memorialization of the advancement structure within the Police Department."

Without specifically addressing the subject-matter of "promotional opportunities", the Borough submits generally that "the Table of Organization is a management prerogative, having an indirect or incidental effect on employment and not within the scope of collective negotiations as a 'term or condition' under the Act".

From the foregoing we conclude that, while the PBA's demand to negotiate a table of organization literally relates strictly to the number of employees to be employed in the various police positions, the PBA has also in its accompanying supportive statements to the Borough manifested a desire to negotiate at least generally the subject-matter of promotions within the unit. The PBA's references to promotions are apparently intended to persuade the Borough -- and now the Commission -- that there is a sufficient nexus between the two issues so as to render mandatorily negotiable the demand concerning the table of organization. We do not find the latter argument compelling, and will accordingly rule on the negotiability of the two issues separately.

With respect to the demand concerning a table of organization, we have previously determined that decisions as to how many employees to

employ or the number of unit positions are basic management decisions, not terms and conditions of employment, and therefore not subject to the Act's mandatory negotiations obligations. In re Rutgers, The State University, P.E.R.C. No. 76-13, at pages 20-22, 2 NJPER 13, 17, 18 (1976).^{3/} See also In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975) and In re the Board of Education of the City of Englewood, P.E.R.C. No. 76-23, 2 NJPER 72 (1976). Conceptually we see no substantive distinction between a decision as to the overall number of employees to employ, and a decision as to the number of employees to employ in given titles. We accordingly hold that the demand concerning a table of organization does not relate to terms and conditions of employment and is not a required subject for collective negotiations. We do not read the Act as prohibiting the Borough from discussing or negotiating with the PBA with regard to this subject-matter on a strictly voluntary basis, and thus deem the demand concerning table of organization to constitute a permissive subject for negotiations. The Act does not preclude the PBA from placing the issue on the table, so long as the PBA does not insist, to the point of impasse,^{4/} upon its inclusion in an agreement.

With respect to the subject-matter of promotions within the unit, in Rutgers, supra, we held that a demand concerning promotional procedures

^{3/} While in Rutgers we also indicated that a decision to alter the number of employees, while not itself mandatorily negotiable, could have an impact on terms and conditions of employment resulting in a duty to negotiate concerning the impact, we are not faced with an analogous situation in the instant matter.

^{4/} We have not yet confronted, and we need not determine at this time, the circumstances under which an impasse, in the context of permissive negotiating conduct, has occurred in given factual situations.

constitutes a required subject for collective negotiations. P.E.R.C. No. 76-13 at p. 31, 2 NJPER at p. 20. We also found it significant to note that the demand there at issue did not relate to promotional qualifications. Ibid. We view the qualifications or prerequisites for employment positions as relating strictly to the employer's prerogatives and are thus permissibly, but not mandatorily, negotiable. On the other hand, we conclude that the procedures whereby employees fulfilling such qualifications are selected for promotion within the unit, constitute terms and conditions of employment and are accordingly mandatorily negotiable.

ORDER

To the extent that the PBA's demand relates to promotional procedures, the Borough is hereby ordered to negotiate in good faith, upon demand of the PBA, with respect to promotional procedures within the unit.

To the extent that the PBA's demand relates to promotional qualifications and/or the table of organization of the Borough's Police Department, the PBA is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of the aforesaid matters in a collective negotiations agreement with the Borough.

BY ORDER OF THE COMMISSION



Acting Chairman

Bernard M. Hartnett, Jr.

DATED: Trenton, New Jersey
April 27, 1976