

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

- and -

Docket No. SN-76-41

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent.

Mr. Martin R. Pachman argued  
for the Petitioner.

Mr. Harold Krieger and Mr. Brian N.  
Flynn argued for the Respondent  
(Messrs. Krieger and Chodash,  
attorneys).

Mr. Bruce Taylor argued for the  
New Jersey School Boards Asso-  
ciation, Amicus Curiae.

INTERLOCUTORY DECISION

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on April 5, 1976 by the City of Jersey City (the "City") requesting the Commission to determine whether certain matters in dispute between the City and the Jersey City Police Superior Officers Association (the "Association") are within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. The City has indicated that the dispute has arisen with respect to certain matters which the Association has sought to process pursuant to a collectively negotiated grievance

procedure and concerning which the Association has invoked arbitration pursuant to the negotiated grievance procedure.

This interlocutory decision deals with the City's request that the Commission temporarily restrain arbitration during the pendency of this scope of negotiations proceeding. The City argues that the disputed matters relate to non-negotiable and therefore non-arbitrable issues. In seeking a temporary restraint of arbitration the City contends that if it ultimately prevails before the Commission on the merits of its scope petition, the Association will not be entitled to arbitration. The Commission delegated to the undersigned the authority on its behalf to conduct show cause proceedings on the City's request and to render an interlocutory determination.<sup>1/</sup>

The City and the Association appeared before the undersigned on April 5, 1976 and presented oral and written argument. Upon motion duly made and granted, the New Jersey School Boards Association appeared and presented oral argument as amicus curiae. At the conclusion of the show cause proceedings, at which a stenographic record was made, the parties jointly requested the issuance of a concise written decision on an expedited basis, which request the instant interlocutory decision is intended to accommodate.

The underlying dispute involves the City's re-organization of its uniform patrol division effective June 16, 1975. It is undisputed

<sup>1/</sup> The authority of the Commission to restrain arbitration in scope proceedings is not in dispute. See The Board of Education of the City of Englewood v. Englewood Teachers' Association and The Board of Education of the Borough of Tenafly v. Tenafly Teachers' Association, 135 N.J. Super 120 (App. Div.), 1975, rev'g and remanding P.E.R.C. No. 86, 1 NJPER 34 (1975). This decision constitutes a determination as to whether the facts of this case warrant the exercise of that discretionary authority.

that in connection with this re-organization, the City eliminated two police precincts out of a total of six, and consolidated the remaining precincts into four police districts. The Association filed a grievance with respect to the re-organization, and now seeks to submit the grievance to arbitration pursuant to the parties' contractual grievance and arbitration provisions. In its request for the submission of a panel of arbitrators, the Association contended that the City had violated two named Articles of the parties' contract.

The City's scope petition frames the parties' dispute primarily as one involving the City's decision to re-organize its police department, arguing that such constitutes a non-negotiable, non-arbitrable governmental policy decision reserved exclusively to the City. Concerning any impact on terms and conditions of employment that may have resulted from the decision to re-organize, the City essentially argues that the grievance and request for arbitration on its face relates solely to the re-organization, and not the impact of such re-organization. The City also contends that, with respect to impact, the Association failed to make a timely demand to negotiate, and furthermore there is no obligation to negotiate impact if negotiations would result in significant interference with the City's policy-making.

The Association disagrees with the manner in which the City frames the dispute as essentially dealing with the City's decision to re-organize its police department. Quite to the contrary, the Association clearly does not dispute, for purposes of the instant proceeding, the City's right to organize or re-organize its police department. Rather, the Association maintains that its grievance relates solely to

the impact of the City's decision on terms and conditions of employment, pointing to two contractual articles claimed to have been violated.

On the basis of the parties' written and oral submissions herein, and upon due deliberation, the undersigned hereby denies the City's request for a temporary restraint of arbitration. The Commission has, in a number of recent scope decisions, clearly enunciated its position with regard to the mandatory negotiability of the impact on terms and conditions of employment of a public employer's managerial decisions. Based upon the Association's unequivocal representations concerning the subject matter of its grievance, the undersigned is convinced that the Association is not seeking to submit the City's decision to arbitration, and therefore need not pass upon the requested restraint from that perspective.

As has been frequently indicated by the undersigned and the Commission in the context of recent scope proceedings, and which bears repeating at this time, scope proceedings relate solely to the negotiability of the subject matter of the parties' dispute. The Commission does not intend to interpret the parties' agreement or to pass upon any issues relating to procedural or substantive arbitrability in the traditional sense. Any arguments or defenses which the parties might wish to raise concerning traditional procedural or substantive arbitrability are not properly before the Commission in a scope of negotiations proceeding.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By

  
Jeffrey B. Tener  
Executive Director

DATED: Trenton, New Jersey  
April 6, 1976