

P.E.R.C. NO. 76-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PLAINFIELD PATROLMEN'S BENEVOLENT
ASSOCIATION LOCAL #19,
Petitioner,

Docket No. SN-76-5

-and-

CITY OF PLAINFIELD,
Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated jointly by a municipal public employer and the majority representative of its police officers, the Commission rules that the public employer's establishment of minimum educational requirements for promotions within the unit, relates to prerequisites to the performance of particular jobs, not terms and conditions of employment. The Commission reiterates the distinction between procedures for promotion -- terms and conditions of employment and thus required subjects for negotiations -- and qualifications or prerequisites for promotion -- managerial prerogatives and thus permissive, but not required, subjects for negotiations. The majority representative is ordered to refrain from insisting to the point of impasse with respect to educational prerequisites for promotions.

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Appearances:

For the Petitioner: Kleimer, Juman &
Juman, Esqs. (Mr. Stephen F. Juman,
of Counsel)

For the Respondent: Edward W. Beglin,
Jr., Esq., City Solicitor.

DECISION AND ORDER

On September 11, 1975 the Plainfield Patrolmen's Benevolent Association, Local #19 (the "PBA") and the City of Plainfield (the "City") filed a joint Petition for Scope of Negotiations Determination ^{1/} seeking a determination as to whether a certain matter in dispute between them was within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act,

1/ The Commission's Rules governing scope of negotiations proceedings state that in the case of a joint petition the party contending that the disputed matter is within the scope of collective negotiations shall be designated the "Petitioner".
N.J.A.C. 19:13-3.1.

as amended, N.J.S.A. 34:13A-1 et seq. (the "Act")^{2/}

The issue in dispute is whether the establishment by the City of a minimum number of college credits as a qualification for eligibility for promotional examinations in the Plainfield Police Department is within the scope of collective negotiations.^{3/} The case has its genesis in the civil disorders which took place in Plainfield in 1967. Following those events the City commissioned a survey of the police department by the International Association of Chiefs of Police. One of the recommendations contained in the report submitted by that organization was the institution of a program of educational incentives for police personnel coupled with the establishment of certain credit and degree requirements as prerequisites for promotions within the Department. The program suggested culminated with an Associate in Arts degree as a qualification for promotion to sergeant and a Bachelor of Arts degree

^{2/} 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.

^{3/} The Statement of Dispute in the Petition requests a determination of the following dispute:

"Whether a unilateral condition of promotional examinations implemented by the City of Plainfield as an additional qualification for promotion is negotiable between the parties, and more particularly whether a requirement of a certain number of college credits established as one of the qualifications for eligibility for promotional examinations within the Police Division with the concurrence (sic) of the Civil Service Commission is a matter within the scope of collective negotiations."

In its initial proposal to the Department of Civil Service the City included a suggestion by the PBA that each officer would receive one-half credit for each year of service. This proposal was later deleted from the program when the Director of the Division of Civil Rights, in passing upon the program, pointed out that if it could be shown that the past employee population of the department was predominantly white males this provision would violate both State and Federal Civil Rights Laws as discriminating against minorities and women. The City then adopted a proposal suggested by Civil Service itself. It consisted of the use of two lists, the first for those with sufficient college credits, the second for those without. Preference would be given to those on the first list, but at least the others would be eligible to take the examination for promotion. It later developed that the Attorney General disallowed this dual list approach. The final form of the program as ultimately approved in late 1974 by the Civil Service Commission contained no exemption for the existing members of the unit.^{4/}

^{4/} The educational requirements for promotion, as finally established by Civil Service, are as follows:

	Effective Date	Number of Credits
A. For any promotion	2/1/74	9
	2/1/77	27
	2/1/80	45
B. For promotion to Sergeant	2/1/83	60 or
		A.A. Degree
C. For promotion to Lieutenant, Captain or Chief	2/1/83	63
	2/1/86	81
D. For promotion to Lieutenant	2/1/89	90
E. For promotion to Captain or Chief	2/1/89	99
	2/1/92	111
	2/1/95	120 or
		Bachelor's Degree

as a necessity for promotion to lieutenant, captain and chief.

In an effort to effectuate these recommendations a two part program was developed, consisting of an Educational Incentive Program and Educational Requirements for Promotion. On August 7, 1972 City Council adopted a resolution implementing the Educational Requirements for Promotion. Immediately following the adoption of the resolution the PBA instituted a lawsuit in Superior Court challenging the resolution and seeking to enjoin its implementation. A request for a temporary restraining order was denied by the Court.

In the absence of any preliminary injunction the City proceeded to try to implement its program. Plainfield is a municipality that has opted to come under the Civil Service Law (see N.J.S.A. 11:19-1 to 11:26D-1). As such it needed the approval of the Department of Civil Service of the Education Requirements for Promotion. Before submitting the program to Civil Service the City apparently discussed it with the PBA. (Some of these discussions apparently took place even prior to the adoption of the resolution on August 7, 1972.) While it is not clear if these discussions ever reached the level of negotiations it does appear that the parties attempted to deal with some of the concerns of the PBA. One of the main objectives of the PBA, and the underlying reason for this proceeding, was an attempt to exempt officers who had joined the department prior to the effective date of the resolution from its requirements. To this end the City and the PBA discussed various types of "grandfather clauses".

Following this approval the City moved, in March 1975, to dismiss the PBA lawsuit on the ground, among others, that following the effective date of Chapter 123 of the Public Laws of 1974, January 20, 1975, this Commission had jurisdiction to initially determine whether the particular matter was a term and condition of employment. The Court granted the City's motion, dismissing the lawsuit and the PBA appealed to the Appellate Division of Superior Court. That appeal has been stayed pending a determination by this Commission.

The PBA then filed an Unfair Practice Charge against the City on June 20, 1975 (CO-134) alleging that the City's conduct constituted a refusal to negotiate. Pursuant to the Rules of the Commission (N.J.A.C. 19:14-1.6) an exploratory conference was conducted by a Commission staff member at which time it was agreed that the PBA would withdraw the Unfair Practice Charge and the parties would submit the within joint Petition.^{5/}

The City of Plainfield, as a Civil Service municipality, makes its selections for promotion within the police department on the basis of competitive examinations prepared by the Department of Civil Service. Prior to the introduction of the college credit requirement eligibility for the promotional examinations was based

^{5/} The factual background set forth above is taken from the letter briefs and submissions of both parties. Attached to the letter brief of the City was a series of exhibits which consisted of various documents and correspondence, all relating to the development of the program of educational incentives and requirements. The PBA in its letter brief specifically accepts all the exhibits forwarded by the City. An examination of the two letter briefs indicates that there is very little factual dispute between the parties as to the history of this matter. Neither party objected to the factual representations of the other and neither requested an evidentiary hearing.

exclusively on length of service in a particular title. The college credit requirement altered the qualifications or prerequisites for eligibility for the promotional examinations. It did not alter the method or procedure for selection, which is still by competitive examination, nor did it alter the procedure for selection from amongst those candidates for promotion which successfully completed the test. It altered only the pre-conditions for eligibility for promotion.

In two previous Commission decisions we have held that the procedures for promotion are terms and conditions of employment but that the qualifications for promotion, the prerequisites, are managerial prerogatives and are thus permissibly, but not mandatorily negotiable. In re Rutgers, the State University, P.E.R.C. No. 76-13 at page 31, 2 NJPER 13, at page 20 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, at page 45, 2 NJPER ___ at page ___ (1976). We believe that the result in this case is dictated by the reasoning of these two decisions. We therefore hold that education requirements for eligibility for promotion are not a required subject of collective negotiations but are a permissive subject.

The PBA maintains that the decision of the City to institute educational requirements for promotion alters the terms and conditions of employment of those police officers who have been on the force prior to the development of the program in question. When these officers were hired longevity was the only qualification for promotion. The change in the prerequisites for eligibility for promotion, it is argued, changes their terms and conditions of employment. We do not agree. The decisions cited above hold,

and we reiterate that holding herein, that the qualities which are felt to be essential prerequisites to the performance of a particular job are not terms and conditions of employment but rather are within the employer's prerogatives. As such expectations developed with regard to these qualifications or any reliance placed on their not changing are not terms and conditions of employment.^{6/} They are within the control of the City and the City is not required to negotiate with the PBA when it decides to change them.

While it was not specifically included within the statement of dispute certain other subjects deserve comment in an effort to afford the parties guidance in their future negotiations. As part of its educational incentive program the City instituted a reimbursement program for courses taken on the basis of \$10.00 per credit hour. It also attempted to provide for courses to be given at police headquarters with certain arrangements made to allow time off to take these courses. All these items appear to relate to the wages, hours and work load of the police officers and to the extent that they do they are required subjects of collective negotiations and must be negotiated upon demand by the PBA.

^{6/} This decision does not reach the issue of whether the opportunity for promotion is a term and condition of employment. The introduction of educational requirements for eligibility for promotion with a two year lead time did not preclude existing officers from being promoted. They had and have the same opportunities that are available to all police personnel to attain the necessary college credits. A different result might occur if the City imposed an age maximum, such as no officer over a specified age would be eligible for promotion. This would have the effect of precluding an existing group from even attempting to seek promotion and the impact of that exclusion might have to be negotiated. However the present case does not present such a situation.

ORDER

The Plainfield Patrolmen's Benevolent Association, Local #19 is hereby ordered to refrain from insisting, to the point of impasse, upon negotiation of the education requirements for promotion within the Police Department of the City of Plainfield.

BY ORDER OF THE COMMISSION



Acting Chairman

DATED: Trenton, New Jersey
May 25, 1976

Issued: May 26, 1976