

P.E.R.C. NO. 80-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF HARRISON,

Petitioner,

-and-

Docket No. SN-80-17

HARRISON FIREMEN'S BENEVOLENT  
ASSOCIATION,

Respondent.

SYNOPSIS

The Commission dismisses a scope of negotiations petition filed by the Town of Harrison. The Commission finds that no dispute exists as to the negotiability of the matters in contention between the parties.

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Appearances:

For the Petitioner, Murray, Granello & Kenney, Esqs.  
(Mr. Robert Emmet Murray, Of Counsel; Mr. Mark J.  
Blunda, On the Brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.  
(Mr. David Solomon, Of Counsel)

DECISION AND ORDER

The Town of Harrison (the "Town") filed a Petition for Scope of Negotiations Determination on September 12, 1979 with the Public Employment Relations Commission. After reviewing the Petition and the briefs and legal memoranda filed with us by the Town and the Respondent Harrison Firemen's Benevolent Association (the "Association"), we find no actual controversy present concerning the range of negotiable matters in public employment.

The Petition alleges that the Association, during the term of the parties' current collective negotiations agreement, requested negotiations concerning a salary increase, a manning provision, additional vacation leave and a "next highest rank pay provision". The Town alleges that its decision to eliminate one of the department's four companies is the event which prompted the

negotiations demands. Asserting that its decision to reorganize the department is a matter of managerial prerogative, the Town contends it has no obligation to negotiate proposals concerning terms and conditions of employment which are prompted by managerial action. The Town also asserts that the provisions of the agreement currently in force allow it to reorganize the department without incurring any mid-contract negotiations obligation.

The latter assertion, as the Town recognizes, is not cognizable in a scope of negotiations proceeding as it is a question of contract interpretation. There is no allegation that the negotiability of the cited clause (concerning managerial rights) is in dispute. Nor is there, we find, any dispute concerning the negotiability of the Association's proposals.

With the exception of the minimum manning provision,<sup>1/</sup> the Town nowhere alleges that the remaining demands are other than terms and conditions of employment. What is asserted is that there is no obligation to negotiate these terms and conditions of employment, given the circumstance that the request to negotiate has been prompted by managerial action, i.e., the reorganization.

However, there is a distinction between whether a negotiations proposal concerns a mandatorily negotiable term and condition of employment and whether there is, at a particular point in time

<sup>1/</sup> The Association, in response to the Town's petition and brief, has readily conceded that the minimum manning issue is one upon which the Town may not be compelled to either negotiate or submit to binding interest arbitration. Thus, no dispute currently exists as to this proposal's negotiability.

and in particular circumstances, an obligation to negotiate proposals concerning such matters. Our jurisdiction, pursuant to N.J.S.A. 34:13A-5.4(d), to determine, in the first instance, the scope of negotiable matters properly concerns only disputes of the former variety. Scope of negotiations questions, as the Supreme Court recently pointed out, embrace only a limited issue:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.  
Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978) citing In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975).

The Town's contention that it is not obligated to negotiate the impact of managerial decisions upon terms and conditions of employment is not properly raised in this proceeding. The cases cited by the Town <sup>2/</sup> in support of this contention arose from disputes which concerned more than abstract negotiability questions, e.g., whether the one party's actions were in violation of the Act's

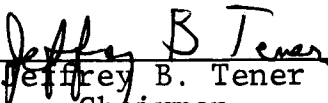
<sup>2/</sup> In re Maywood Bd. of Ed., 168 N.J. Super 45 (App. Div. 1979), certif. den. N.J. (1979); In re Cinnaminson Tp. Bd. of Ed., App. Div. Docket No. A-2682-77 (6/1/79); Edison Tp. Ed. Assn. v. Edison Tp. Bd. of Ed., A-5164-77 (9/21/79), 4 NJPER 4207 (1978) all arose as unfair practice charges. In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977) involved a grievance and In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) arose in Superior Court.

obligation to negotiate (i.e., an unfair practice) and/or provisions in collectively negotiated agreements. While the parties' interpretations of the contract may differ, a scope of negotiations proceeding will not resolve those differences, especially where there does not appear to be any controversy concerning the basic issue of negotiability. We have previously said we will not rule upon a given subject absent an indication that an actual dispute exists as to its negotiability. See e.g. In re Nutley Board of Education, P.E.R.C. No. 80-41, 5 NJPER 417, 418 (110218 1979). If an actual dispute exists concerning the parties' obligations (if any) to negotiate mid-term or concerning the reorganization,<sup>3/</sup> appropriate forums exist to resolve these matters.

ORDER

The Petition for Scope of Negotiations Determination filed by the Town of Harrison (Docket No. 80-17) is hereby dismissed without prejudice.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Hipp, Newbaker and Parcels voted for this decision. None opposed.

DATED: Trenton, New Jersey  
December 4, 1979  
ISSUED: December 5, 1979

3/ The Association has not alleged that the elimination of one of the fire companies should have been negotiated.