

P.E.R.C. NO. 84-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MILLBURN,

Petitioner,

-and-

Docket No. SN-84-24

MILLBURN FIREMEN'S MUTUAL
BENEVOLENT ASSOCIATION,
LOCAL 32,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, issues a scope of negotiations decision finding not mandatorily negotiable, under the circumstances of this case, two proposals which the Millburn Firemen's Mutual Benevolent Association, Local 32 seeks to submit to interest arbitration. The two proposals concern outdoor drills in inclement weather and the number of men that may be on vacation at any one time.

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Appearances:

For the Petitioner, Murray and Granello, Esqs.
(Robert Emmet Murray, of Counsel; Robert T. Clarke,
on the Brief)

For the Respondent, John J. Fox, Esq.

DECISION AND ORDER

On December 7, 1983, the Township of Millburn ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Millburn Firemen's Mutual Benevolent Association, Local 32 ("Local 32") is the majority representative of a unit of Township firefighters including all uniformed employees in the Fire Department, but excluding the Fire Chief and volunteers. The Township seeks a determination that two proposals which Local 32 seeks to submit to interest arbitration are not mandatory subjects of negotiation.

The Township has filed a brief. Local 32 has not.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to resolve scope of negotiations

disputes involving the application of well-settled case law.

This is such a case.

The first proposal provides:

The contract should provide that there should be no outdoor drills when the temperature is below 32 degrees or over 85 degrees F.

This proposal does intimately and directly affect the health, safety, and comfort of employees. In In re Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982), however, the Commission stated:

...an employer is not required to negotiate over which training programs it deems to be most appropriate to further the development of its police department.

8 NJPER at 308.

The delivery of firefighting services by a public employer will on occasion occur when the outdoor temperature is below 32 degrees or above 85 degrees. Certainly the public employer could not be compelled to refrain from having its personnel fight fires under such conditions. Therefore, the public employer may find it essential that its firefighting personnel are properly trained to deal with fires which occur under adverse weather conditions. Acting under authority delegated to me by the full Commission, I hold that in this instance, on balance, the employer's need to train its employees outweighs the employees' legitimate concerns about health, safety and comfort and the instant proposal would significantly interfere with a governmental policy determination. Accordingly, the proposal is not mandatorily negotiable.^{1/}

1/ In Fairview Professional Firefighters Ass'n Local 1686, IAFF and Fairview Fire District, 12 PERB 3155 (¶3083 1979), New York's Public Employment Relations Board held the following similar proposal to be not mandatorily negotiable:

(continued)

The second proposal provides:


The contract should provide that a maximum of two (2) men and one (1) officer may be on vacation at any one time.

This proposal is not mandatorily negotiable under the standards set forth in In re Township of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978).^{2/}

ORDER

The proposals submitted by Local 32 are not mandatory subjects of negotiations.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
April 2, 1984

1/ (continued)

...Further that training related non-emergency exercise and all outside work will be suspended when weather conditions become severe i.e., thunder, rainstorms, snow, blizzard and temperature humidity index above 78 degrees, windchill factor below 32 degrees.

2/ Under different circumstances, the number of employees permitted to take simultaneous vacations may be a mandatory subject of negotiations. In In re City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982), the Commission held that:

a clause permitting two employees (out of 150) per shift to be on vacation at the same time and expressly conditioning such permission on manpower and squad strength does not impose a sufficient limitation on the City's managerial prerogatives to displace the general presumption that proposals concerning vacations are mandatorily negotiable.