

P.E.R.C. NO. 95-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF LINDEN,

Petitioner,

-and-

Docket No. SN-94-87

LINDEN FMBA LOCAL NO. 34,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a contract proposal submitted by Linden FMBA Local No. 34 in successor contract negotiations with the City of Linden. The Commission finds not mandatorily negotiable a proposal which specifies the minimum number (13) of firefighters on a tour of duty. Such minimum staffing requirements are not mandatorily negotiable.

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Appearances:

For the Petitioner, Gerald L. Dorf, attorney
(Gerald L. Dorf, of counsel)

For the Respondent, Rinaldo and Rinaldo, attorneys
(Anthony D. Rinaldo, of counsel)

DECISION AND ORDER

On April 4, 1994, the City of Linden petitioned for a scope of negotiations determination. The City seeks a declaration that a successor contract proposal submitted by Linden FMBA Local No. 34 is not mandatorily negotiable. That proposal concerns firefighter staffing levels on tours of duty.

The parties have filed briefs and exhibits. These facts appear.

Local No. 34 represents the City's firefighters. The parties entered into a collective negotiations agreement that expired on December 31, 1992. Section 2 of Article IV is entitled Overtime. Subsection d provides:

In the event the number of working Fire Officers reporting to a given tour of duty is fewer than six (6) but no less than four (4), a Firefighter on said given tour shall fill the vacancy or vacancies one (1) or two (2) on an Acting Fire Officer basis; provided the remaining number of working Firefighters on said tour of duty is no less than thirteen (13).

In the event the number of working Fire Officers reporting to a given tour of duty is fewer than four (4), or fewer than six (6) and the elevation of a Firefighter to acting Fire Officer would cause the remaining number of working Firefighters on said tour of duty to be less than thirteen (13), a Fire Officer shall fill such vacancy or vacancies through regular recall procedures.

This provision has been in all contracts covering the last 15 years.

During successor contract negotiations, Local No. 34 proposed that Article IV, Section 2.d be retained in any new contract. The employer responded that this section is not mandatorily negotiable to the extent it specifies the minimum number of firefighters (13) on a tour of duty. This petition ensued. The parties have since reached an agreement on all other issues.

Local No. 34's president has filed an affidavit. He acknowledges (as does Local No. 34's brief) that the employer has a unilateral right to decide all minimum staffing issues, but he asserts that section 2.d was negotiated as a safety standard and given that standard there was no need to negotiate further over safety issues. He also asserts that if a reasonable safety standard regarding minimum staffing is not met, then Local No. 34 should have

the right to negotiate over "compensating safety and work conditions" -- for example, risk pay, other benefits, additional safety equipment, and special grievance procedures applicable to risk circumstances. He also states that City officials have stated publicly that their prime concern is to reduce overtime and payroll costs.^{1/}

Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for disputes involving police officers. Paterson states:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be

^{1/} Local No. 34 has requested a hearing to produce further evidence concerning safety issues associated with Section 2.d. We deny that request because Local No. 34 does not contest the employer's ultimate right to determine minimum staffing levels on a tour of duty and because the employer does not assert that safety issues are not mandatorily negotiable.

bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [87 N.J. at 92-93; citations omitted]

An employer need not negotiate over permissively negotiable proposals or agree to submit such proposals to interest arbitration. Thus, we consider only whether this proposal is mandatorily negotiable. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The instant proposal would require the employer to staff each tour of duty with at least 13 firefighters. Such minimum staffing requirements are not mandatorily negotiable. See, e.g., Paterson; City of Camden, P.E.R.C. No. 94-62, 20 NJPER 48 (¶25016 1993); City of Long Branch, P.E.R.C. No. 92-102, 18 NJPER 175 (¶23086 1992); City of Union City, P.E.R.C. No. 91-87, 17 NJPER 225 (¶22097 1991); Middle Tp., P.E.R.C. No. 88-22, 13 NJPER 724 (¶18272 1987); City of Plainfield, P.E.R.C. No. 84-29, 9 NJPER 601 (¶14254 1983); Readington Tp., P.E.R.C. No. 84-7, 9 NJPER 533 (¶14218 1983); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983); Bergen Cty., P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983), aff'd App. Div. Dkt. No. A-4747-82T5 (4/24/84); City of Northfield, P.E.R.C. No. 82-95, 8 NJPER 277 (¶13123 1982), recon. den., P.E.R.C. No. 83-1, 8 NJPER 424 (¶13195 1982); Borough of Wanage, P.E.R.C. No. 82-42, 7 NJPER 613 (¶12273 1981); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981); Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd App. Div. Dkt.

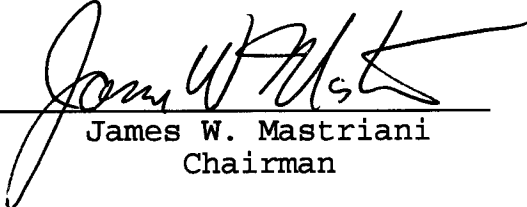
No. A-4851-79 (7/15/81), certif. den. 88 N.J. 476 (1981); City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976).

While we hold that Local 34 cannot require the employer to negotiate over a proposal to establish the number of firefighters on a tour of duty, we agree with its assertion that it may seek to discuss that question as it relates to mandatorily negotiable safety issues. No specific safety issues are raised by the clause which would now require a scope of negotiations determination.

ORDER

Section 2.d of Article IV is not mandatorily negotiable to the extent it specifies the minimum number (13) of firefighters on a tour of duty.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision.

DATED: September 29, 1994
Trenton, New Jersey
ISSUED: September 30, 1994