P.E.R.C. NO. 82-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and- Docket No. SN-81-97

WEST NEW YORK P.B.A.
LOCAL NO. 88,

Respondent.

SYNOPSIS

The Public Employment Relations Commission issues a scope of negotiations decision holding that proposals concerning (1) whether or not a promotion will be made or a vacancy filled, (2) minimum manning, and (3) the placement of shotguns in police vehicles are not mandatorily negotiable. The Commission refrains from considering whether these proposals are permissively negotiable under In re Paterson Police P.B.A. Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) since such consideration is premature and not necessary when deciding the negotiability of a contract proposal. The Commission also rules that the petition was not untimely because it involved issues different from those involved in an earlier interest arbitration proceeding.

grievance had been filed on his behalf and further, in that the Respondent on January 30, 1980 terminated the employment of DiBeneditto because of what transpired on January 23, 1980, supra, all of which was alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1),(3) and (7) of the Act. 1/

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 1, 1980. 2/ Pursuant to the Complaint and Notice of Hearing, hearings were held on September 15, 16, 17, 18, 1980 and March 16, 1981 3/ in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by May 8, 1981.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

1/ These Subsections prohibit public employers, their representatives or agents from:
"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act.
"(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act.
"(7) Violating any of the rules and regulations established by the commission."

2/ The Unfair Practice Charge filed on February 5, 1980 was accompanied by a request for interim relief. Following five days of hearing on the application for interim relief before Stephen B. Hunter, Special Assistant to the Chairman of the Commission, an Interlocutory Decision and Order was issued by him on April 30, 1980 (P.E.R.C. No. 80-135, 6 NJPER 258) wherein the Respondent was ordered to reinstate DiBeneditto to the residency position, which he had held prior to his discharge on January 30, 1980, during the pendency of the instant unfair practice proceeding. The Hearing Examiner takes notice of the fact that, notwithstanding this Order, DiBeneditto did not return to his employment with the Respondent for reasons not of record.

P.E.R.C. NO. 82-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and- Docket No. SN-81-97

WEST NEW YORK P.B.A.
LOCAL NO. 88,

Respondent.

Appearances:

For the Petitioner, Francis X. Hayes, Esq.

For the Respondent, Osterweil, Wind & Loccke, Esqs.
(Manuel A. Correia, of Counsel)

DECISION AND ORDER

On May 7, 1981, the Town of West New York ("Town") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Petition alleged that the Town and West New York P.B.A. Local No. 88 ("Local 88"), the representative of a unit of the Town's police patrolmen, sergeants and lieutenants, could not agree upon the negotiability of certain proposals for a successor contract. The first proposed clause in dispute states:

> Article IV Section 2: The "EMPLOYER" agrees that all vacancies or promotions will be filled not more than thirty (30) days from the effective date of said vacancy if budgetary appropriations are available. The "EMPLOYER" agrees on promotions not to discriminate because of religion, age, race, color, or politics, or for personal reasons unrelated to the job.

The second proposed clause in dispute states:

> Section 3: A constant Civil Service list shall be maintained for all ranks to insure the prompt filling of all vacancies. At the request of the "UNION," the Town will request Civil Service to call an examination. 1/

The third proposed clause in dispute states:

> Article V Section 5: There shall be a minimum of three (3) patrol cars at all times. While patroling, all patrol cars shall at all times be manned by two (2) men from 7:00 P.M. to 8:00 A.M. and at all other times when manpower is available.

1/ While the Town submitted both Section 2 and Section 3 of Article IV in its scope petition as being in dispute, its brief only addresses the first sentence of Section 2 dealing with the filling of vacancies or promotions within 30 days. It did not discuss either the non-discrimination clause or any of Section 3. Local 88 did not address these clauses either in its brief. Like the Town, its arguments on these clauses were limited to the filling of vacancies and promotions. Since the parties have not discussed these other issues, this decision will not decide the negotiability of these provisions. However, the Commission would note generally that it has held non-discrimination clauses to be mandatorily negotiable. In re Fairview Board of Education, P.E.R.C. No. 79-64, 5 NJPER 125 (¶10073 1979); In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10087 1979), aff'd sub nom Dept. of Law & Public Safety, et al. v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981). The State Troopers decision points out that most forms of discrimination are prohibited by statute as well; as long as the negotiated provision is not inconsistent with a statute, it is mandatorily negotiable. No legitimate managerial prerogatives or governmental policy considerations could be interfered with by a commitment by a public employer not to discriminate against an employee on the basis of race, religion, etc., and the right to be considered fairly does directly affect an employee's work and welfare. The State Troopers decision also held that to the extent that a current list is maintained to keep employees advised as to their relative eligibility for promotion, it is procedural and mandatorily negotiable, but such a provision cannot be interpreted to require an employer to fill a vacancy.

These cases are pointed out for the possible guidance of the parties. However, in the absence of any argument by either party on the exact meaning of these clauses, the Commission refrains from making a specific holding on their negotiability.

Finally, the Petition alleged that the parties could not agree on the negotiability of proposals that not less than one sergeant and one lieutenant be assigned to desk duty for each tour and that shotguns be placed in patrol cars.

On August 27, the Town and Local 88 submitted letter briefs. The Town submitted an additional statement by letter on September 2, 1981.

These briefs set forth some additional material facts which do not appear to be in dispute. All the contract proposals in dispute except the proposal requiring shotguns in patrol cars were contained in the parties' agreement which expired on December 31, 1980. On November 18, 1980, Local 88 filed a 60-Day Notice And/Or Petition to Initiate Compulsory Interest Arbitration ("60-Day Notice") pursuant to N.J.A.C. 19:16-5.1 et seq. This notice stated that the parties had reached impasse in negotiations over a successor agreement and had not agreed upon a terminal procedure for resolving the issues in dispute. Accordingly, Local 88 requested compulsory interest arbitration. The notice identified certain economic and non-economic issues in dispute; listed in the latter category was a "police vehicles" clause. On January 12, 1981, the Director of Arbitration appointed Robert L. Mitrani as arbitrator pursuant to N.J.A.C. 19:16-5.6(b). The arbitrator held hearings on March 28 and April 17, 1981.[2/] On July 10, 1981, after

2/ Local 88 has attached excerpts from the transcript of the April 17 proceedings in which the Town announced that it would file a scope petition on the minimum manning and promotion clauses and in which the arbitrator stated: "The parties agree that shotguns shall be placed in the car subject to a determination by the parties as to how many cars shall be provided with shotguns and where such guns shall be provided in the vehicles."

receiving the parties' proposals and briefs, the arbitrator rendered his award.[3/]

In its brief, the Town, citing In re Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson") and In re City of Newark and IAFF, Local 1860, AFL-CIO, P.E.R.C. No. 80-111, 6 NJPER 138 (¶11068 1980), contends that the clause pertaining to vacancies and promotions is outside the scope of mandatory negotiations. The Town then relies upon In re Newark Firemen's Union of New Jersey and City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) and In re Borough of Roselle and New Jersey State Policeman's Benevolent Assoc., Local No. 99, Roselle Police, P.E.R.C. No. 76-29, 2 NJPER 142 (1976), for the proposition that minimum manning clauses -- here the third clause and the demand that there be at least one sergeant and lieutenant assigned to desk duty for each tour -- are permissive, not mandatory subjects. With respect to the shotgun issue, the Town asserts that under In re Brookdale Community College Police Force and Brookdale Community College, P.E.R.C. No. 77-52, 3 NJPER 156 (1977), the proposed clause is not mandatorily negotiable. The Town concludes by stating that the disputed clauses which were contained in the previous contract had a devastating effect on the Town's overtime budget.

In its brief, Local 88, citing N.J.A.C. 19:16-5.5(c), first argues that the instant Petition is untimely because it was

3/ According to Local 88, the Town has refused to implement the award pending execution of the contract, and a confirmation proceeding is currently ongoing in the Hudson County Superior Court.

not filed within ten days of receipt of the petition requesting compulsory interest arbitration. On the merits, Local 88 argues that the clause setting the time period for filling a vacancy involves promotional procedures, not management prerogatives, and hence is negotiable. Local 88 then asserts that the clauses which appear to be minimum manning clauses really concern the safety of police officers. Citing New York cases [4/] involving the safety of employees and emphasizing an alleged recent influx of Cuban refugees into West New York, Local 88 states that such clauses should not be ruled non-negotiable without a hearing into the safety concerns behind these clauses. With respect to the clause concerning the placement of shotguns in police cars, Local 88 argues that the parties have already reached agreement on this issue and that under In re County of Middlesex and PBA Local 152, Correction Officers of Middlesex County Workhouse, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), the clause is mandatorily negotiable because it relates to the employees' health, safety and comfort. Finally, Local 88 requests a ruling that the parties are bound to abide by the provisions which were in the recently expired contract and which are now in dispute until the time of this decision and the execution of a successor agreement, even if we find such clauses not to be mandatorily negotiable.

We first address Local 88's contention that we should dismiss the instant petition as untimely. Pursuant to N.J.A.C.

4/ See, Uniformed Firefighters Association v. New Rochelle, 10 PERB 3078 (1977); City of New Rochelle v. Crowley, 405 N.Y.S.2d 100 (App. Div. 1978).

19:16-5.2(a)(3), a party may initiate compulsory interest arbitration proceedings by submitting a 60-day notification indicating that the parties have failed to agree on a mutually agreeable terminal procedure. Pursuant to N.J.A.C. 19:16-5.4, the party filing the notification must identify the issues in dispute and their economic or non-economic nature. Pursuant to N.J.A.C. 19:16-5.5, the respondent must then file a response setting forth any additional unresolved issues to be submitted to arbitration and stating whether it will refuse to submit any of the identified issues to arbitration on the ground that such issue is outside the required scope of negotiations. In particular, N.J.A.C. 19:16-5.5(c) states:

> Where a dispute exists with regard to whether an unresolved issue is within the required scope of negotiations, the party asserting that an issue is not within the required scope of negotiations shall file with the commission a petition for scope of negotiations determination pursuant to chapter 13 of these rules. This petition must be filed within 10 days of receipt of the petition requesting the initiation of compulsory interest arbitration or within five days after receipt of the response to the petition requesting the initiation of compulsory interest arbitration. The failure of a party to file a petition for scope of negotiations determination shall be deemed to constitute an agreement to submit all unresolved issues to compulsory interest arbitration.

In the instant case, Local 88 contends that the Town failed to comply with N.J.A.C. 19:16-5.5(c), thus making its scope petition untimely. Local 88's 60-Day Notice, however, did not specifically identify the subject matters presently in question -- the filling of vacancies, minimum manning, and the placement of shotguns in police cars -- as issues in dispute which should be

submitted to compulsory interest arbitration. Without such specific warning that Local 88 sought to submit these issues to compulsory interest arbitration, the Town had no reason or obligation to file a scope petition within 10 days of the 60-Day Notice. Put another way, the Town did not have to act affirmatively and promptly to divest the arbitrator of a jurisdiction he was not going to assert anyway. In fact, in accordance with the parties' agreement, the arbitrator did not consider any of the issues raised in the Town's scope petition.[5/] Therefore, we find that the Town did not violate N.J.A.C. 19:16-5.5(c) when it filed its scope petition more than ten days after the filing of the 60-Day Notice because the latter involved consideration of distinct issues.[6/]

Before turning to the negotiability of the clauses in dispute, it is also necessary to set forth certain limitations on the nature of the scope decisions which can be issued in cases dealing with the negotiability of proposals arising during the course of negotiations for contracts covering police and fire

5/ In its 60-Day Notice, Local 88 did identify, without any further elaboration, a "police vehicles" clause as an issue in dispute. Assuming this spare and vague description encompasses the shotgun issue before us, we note that the parties subsequently agreed to remove this matter from the arbitrator's province on the assumption that the parties could agree on how many cars should be provided with shotguns and where the guns would be located in the cars. The assumption apparently proved unreliable. We will not construe this sequence of events as a waiver of the Town's opportunity to file a scope petition rather than to submit to compulsory interest arbitration on that issue.

6/ Because there is no overlap between this petition and the arbitrator's award, we need not pass on Local 88's contention that the arbitrator's award must be implemented. That question is properly before the courts.

employees. As will be explained, we believe these limitations are dictated by the abstract quality of many such disputes, the lack of any specific factual context in which to analyze the matter in dispute, and the subtle and difficult questions which must be answered.

As interpreted by our Supreme Court in Ridgefield Park Board of Education v. Ridgefield Park Education Ass'n, 78 N.J. 144 (1978), the New Jersey Employer-Employee Relations Act provides for only two possible categories for any proposal which can be made in negotiations for collective agreements covering all types of public employees other than police and firefighters: mandatorily negotiable terms and conditions of employment and non-negotiable matters. Paterson, supra at pp. 86-87. Our Supreme Court defines terms and conditions of employment as:

> ...those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978). See also, Woodstown-Pilesgrove v. Woodstown-Pilesgrove Reg. Ed Ass'n, 81 N.J. 582 (1980); Dunellen Bd of Ed v. Dunellen Ed Ass'n, 64 N.J. 17 (1973).

Subjects outside this definition are non-negotiable managerial prerogatives. In addition, even if a matter would otherwise fall within the definition, it will be non-negotiable if the proposal is inconsistent with a specific statute or regulation on point. Paterson, supra at 86.

In its recent Paterson decision, supra, the Supreme Court upheld the existence of a third category of negotiations - permissive subjects - for police and fire employees based upon the specific reference to such a category in N.J.S.A. 34:13A-16(b) and N.J.S.A. 34:13A-16(f)(4) as enacted by Chapter 85, P.L. of 1977 requiring interest arbitration for contract negotiations impasses involving these types of employees. 87 N.J. at 87-88. See also, Ridgefield Park, supra at 158. It also adopted the distinctions between the permissive and mandatory categories developed by this Commission in its prior decisions. Paterson, supra at 88. Thus, unlike mandatory subjects, neither party is required to negotiate over a permissive subject or to submit such a proposal to interest arbitration, and neither party is allowed to insist on such an item to the point of impasse. Id. Either side may simply refuse to negotiate such a subject at any time before an agreement is reached. If, however, agreement is achieved on a permissive item, or if such an item is included in the agreement as part of an interest arbitrator's award, then the item is a valid and enforceable term of the contract, and disputes over it can be submitted to the grievance procedures set forth in the agreement. 87 N.J. at 88.

The Court also adopted PERC's holding from prior cases that the inclusion of a permissive subject in an agreement does not convert it into a mandatory subject of negotiations for those parties for negotiations on successor agreements.

In re City of Newark and IAFF, Local 1860, P.E.R.C. No. 80-111, 6 NJPER 138 (¶11068 1980). Paterson, supra at 88. Such a provision is enforceable only for the term of the agreement, and either party may delete it from successor agreements simply by refusing to negotiate over it during negotiations for those subsequent contracts. Id.

While the Court adopted this Commission's analysis of the consequences of finding a provision to be a mandatory or permissive subject, it did not adopt PERC's definition of the breadth of the permissive category. Paterson at 89. PERC decisions, consistent with precedent from other public sector jurisdictions and the private sector, had held that the permissive category encompassed all those matters which affected employees' work and welfare but fell on the managerial prerogatives side of the balance and were not inconsistent with a specific statute or regulations.[7/] The Appellate Division in Paterson had affirmed this interpretation of the statutory intent of Chapter 95. Paterson 87 N.J. at 89. The Supreme Court disagreed with this analysis and instead fashioned a more limited definition of permissive subjects of negotiation designed to insure that:

7/ If it developed during the term of the contract that the implementation of the permissively negotiated proposal, or even a mandatory one, presented a serious threat to the public welfare, compliance with this provision would be excused on public policy grounds. See, e.g., Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969), cert. den. 55 N.J. 310 (1970).

> Significant matters of governmental policy must remain outside the scope of negotiations where citizen participation will not be precluded.
> Paterson at 92.

It, however, acknowledged that this third category for police and fire negotiations, as limited, would have to be carved out of the management prerogative side of the balance that it had established in State v. State Supervisory Employees Ass'n, 78 N.J. 54, 67 (1978) and Board of Ed of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Reg. Ed Ass'n, 81 N.J. 582 (1980):

> By providing for a permissive category, where it is the employer's option to negotiate, the Legislature must have intended to give police and firefighters more subjects of potential negotiation than those that are mandatorily negotiable for other public employees. Therefore, the permissive category must be a part of the management prerogative side of the balance.
> Id. at 92.

The Court, however, goes on to state that it is speaking of a fairly narrow category.

> If it places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.
> Id. at 92-93.

As in its prior decisions, the Court leaves the application of these broad guidelines to case-by-case determinations. It delegates to PERC and the reviewing appellate courts the task of giving meaning and substance to these principles as individual cases arise. Id. at 93. We agree that such subtle determinations

are difficult to make in the abstract. A specific factual context gives meaning to the policy and legal arguments made by the opposing parties. For example, in the instant case, the Town makes numerous arguments and cites cases to support its position that the minimum manning clauses herein must be held non-negotiable because such clauses may significantly interfere with essential matters of governmental policy pertaining to the deployment and effective use of police personnel. However, the Town also candidly admits that the main reason it wants these clauses declared non-negotiable is because complying with them in past contracts caused the payment of significant amounts of overtime to existing members of the department. Thus, in the absence of an actual controversy over the application of a particular contract clause, scope proceedings frequently become contests between each parties' hypotheticals about the alleged effect of the disputed provision.8/

In Paterson, the Court reviewed a scope of negotiations decision concerning the negotiability and arbitrability of a provision in the parties' collective negotiations agreement which an arbitrator had already held had been breached by the City. Thus, the Court had before it a binding arbitration award which set forth a complete factual record and required the City to take

8/ Compare, for example, the majority and dissenting opinion on the negotiability of subcontracting in State of New Jersey v. Local 195, IFPTE, AFL-CIO, 176 N.J. Super. 85 (App. Div. 1980), appeal pending Supreme Court Docket No. 17,888

certain action. Given such circumstances, PERC, the Appellate Division and the Supreme Court had to determine whether the clause was within either the mandatory or permissive category, and thus enforceable, as opposed to being outside the scope of either category and thus non-negotiable and unenforceable.

No such determination is required in this case or in similar cases which present scope disputes in the context of negotiations and interest arbitration proceedings on prospective agreements. If it is held that a proposal is not mandatorily negotiable, an employer is then free to refuse to negotiate over it, and the employee organization must refrain from insisting upon it to the point of impasse, or from submitting it to interest arbitration without the employer's consent. The difficult judgments as to whether a particular provision would "place substantial limitations on government's policy-making powers" or whether those "governmental powers remain essentially unfettered" in the absence of any actual controversy or concrete factual setting are avoided without any infringement upon the governmental power which is alleged to be threatened. 9/

9/ There are, of course, instances where the proposal in dispute is so similar to one which has been fully adjudicated in prior cases as to remove any doubt as to its classification even in the absence of a particular factual setting.

As more cases are decided applying the Paterson definition, the number of such instances will increase. However, we believe that the development of a coherent and reasonable body of case law can be best achieved by the cautious approach set forth herein. The finding that a particular clause is not a required subject relieves the employer from any obligation to negotiate concerning it.

Our reluctance to make unnecessary and abstract distinctions between permissively negotiable and non-negotiable subjects on scope petitions involving contract proposals rather than grievances over existing contract clauses, stems, in part, from a desire to avoid deciding cases on the basis of labels rather than a specific factual foundation. The Appellate Division, in the past, has also noted the difficulty of deciding scope questions presented in the absence of an adequate factual record. Irvington Policemen's Benevolent Ass'n Local #29 v. Town of Irvington, 170 N.J. Super. 539 (App. Div. 1979), certif. den. 82 N.J. 296 (1980); City of Trenton v. P.B.A. Local No. 11, aff'd in part, rev'd in part, App. Div. Docket No. A-3966-78 (October 3, 1980); cf. In re Camden County Board of Chosen Freeholders and Locals 2301, 2305 and 2307, AFSCME, Council 71, P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1980). Accordingly, we shall strive to tailor our answers to the specific questions asked and facts presented.

We now turn to the negotiability of the clauses in dispute. Paterson holds that clauses requiring the filling of all vacancies promptly or within a certain time period are beyond the scope of permissive negotiations. The clause dealt with in that case was nearly identical to the first sentence of Article IV, Section 2 herein. The only significant difference appears to be that the instant clause expressly conditions the required filling of a vacancy upon the availability of budgetary appropriations. Whether this explicit condition absent in Paterson suffices to convert an otherwise non-negotiable clause into a permissive one, we need not

decide at this juncture. In light of Paterson and our pre-Paterson precedents, there can be no dispute that clauses which control decisions concerning whether or not a promotion will be made or a vacancy filled are not mandatorily negotiable. In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979), aff'd sub nom Dept. of Law & Public Safety et al v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981).[10/]

We now consider the negotiability of the two proposed clauses which would require, respectively, a minimum number of patrol cars and patrolmen and a minimum number of sergeants and lieutenants on desk duty. The Town cites and accepts our past rulings that minimum manning clauses are permissive in nature and does not argue that under Paterson such clauses should be declared illegal. Local 58 argues that our past rulings are distinguishable because of the safety concerns underlying these clauses. In Township of Weehawken and Weehawken PBA Local No. 15, P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1981), we found virtually identical clauses permissive rather than mandatory subjects, even though the clauses were explicitly couched in terms of employee safety. See also, In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re City of Perth Amboy, P.E.R.C. No. 79-86, 5 NJPER 205 (¶10117 1979); In re City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd App. Div. Docket No. A-4851-79 (7/15/81), pet. for certif. pending. We see no reason to deviate

10/ In re City of Newark, supra, further holds that the inclusion of permissive clauses in a contract does not convert that issue into a mandatory one during negotiations for a successor clause. See also, Paterson, supra at 88. Thus, the Town, by simply refusing to discuss the aspects of the instant clauses requiring the filling of all vacancies, can prevent their insertion in the new contract.

from our unbroken line of precedent here. These clauses are not mandatorily negotiable.

The final proposed clause in dispute would require the placement of shotguns in certain police vehicles.[11] In Brookdale Community College, supra, we held that the public employer was not required to negotiate over whether and at what times members of the campus police force would carry firearms. The College had the managerial right to decide the manner and means by which it delivered police services to its constituency.[12] Brookdale controls here and establishes that the instant proposal is not mandatorily negotiable. [13]

11/ Local 88 argues that the parties reached agreement to include this proposal in the successor contract during the interest arbitration proceedings; we do not believe that the transcript establishes agreement on the wording of a particular clause. In any event, a dispute over the proposal's inclusion in or exclusion from the ultimate contract quite clearly exists now.

12/ We recognize that such decisions, while not directly concerning employee safety, could have an effect on that mandatorily negotiable item.

13/ Local 88's reliance on In re County of Middlesex and PBA Local 152, Correction Officers of Middlesex County Workhouse, supra is misplaced. There, the employee representative sought to negotiate a clause requiring the employer to purchase vehicles with certain equipment and to make every effort to keep such equipment in good repair. We held that equipping of vehicles, to the extent directly related to employee health, safety and comfort, was a mandatorily negotiable subject, while all aspects of the type of vehicle to be purchased not so related were permissive subjects. The good repair clause was also mandatorily negotiable. In contrast to County of Middlesex, the proposal now in dispute has a much more direct connection to decisions concerning the manner and means of delivering police services and a less immediate connection to employee safety. Under the Woodstown-Pilesgrove balancing test, the scales here come down on the managerial decision side of the balance.

Local 88 invites us to declare that our decision is prospective only and that contractual clauses in the prior agreement remain in effect until we issue this decision and a new agreement is executed. We decline the invitation. Our jurisdiction over scope petitions is limited to determining the negotiability of disputed items and does not encompass questions of whether contractual provisions have been mutually extended, have continued to remain in force, or have been violated. We will not render advisory opinions beyond the narrow confines of our scope jurisdiction.

ORDER

West New York P.B.A. Local 88 is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of the clauses, as described and limited in this decision, in the successor agreement between it and the Town of West New York.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Newbaker, Parcells and Suskin voted in favor of this decision. Commissioners Hipp and Graves voted against the decision.

DATED: October 2, 1981
Trenton, New Jersey
ISSUED: October 5, 1981