

P.E.R.C. NO. 83-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BERGEN,

Petitioner,

-and-

Docket Nos. SN-82-89 and
SN-82-89A

P.B.A. LOCAL NO. 134, BERGEN
COUNTY SHERIFFS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that a contract proposal of P.B.A. Local No. 134, Bergen County Sheriffs is not mandatorily negotiable. The proposal would have required the County to assign at least two sheriffs at all times to staff the secure ward at Bergen Pines County Hospital.

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Appearances:

For the Petitioner, Michael B. Ryan, Esquire

For the Respondent, Loccke & Correia, Esquires
(Richard D. Loccke, of Counsel)

DECISION AND ORDER

On March 24, 1982, the Bergen County Board of Chosen Freeholders ("County") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The County sought a determination that a contract proposal of P.B.A. Local 134 ("Local 134"), the representative of the County's sheriffs and correction officers, was not mandatorily negotiable.^{1/} The proposal would require the County to assign two officers to staff the secure ward at Bergen Pines County Hospital.

Both parties have filed briefs and documents. The County has filed a reply brief. The following facts appear.

When prisoners in the main jail or jail annex in Hackensack seek medical treatment, they must be transferred to

^{1/} The County indicated on the petition that it filed the petition jointly with Local 134.

the "secure ward" of the Bergen Pines County Hospital in Paramus. The secure ward is reserved for treating prisoners and is separated by locked doors from the rest of the hospital floor. The secure ward consists of essentially two parts: (1) a small area between the locked outer door and an interior fence and a locked metal gate, and (2) an area consisting of five patient rooms, a toilet, and a shower room. The secure ward operates continuously. There are three work shifts. The County has assigned one sheriff per shift to the secure ward when there are three or fewer prisoners being treated; it assigns two sheriffs when there are four or more prisoners in the security ward. The sheriffs control prisoner access from the first part of the secure ward into the second. In 1979, the sheriff on duty in the secure ward was killed when a prisoner, who had been incarcerated for shooting another police officer, grabbed the sheriff's revolver and shot him.

On October 29, 1979, Local 134 filed a Petition to Initiate Compulsory Interest Arbitration with the Commission. The petition listed several issues to be arbitrated, but did not list any proposals concerning the number of sheriffs on duty in the secure ward. On November 5, 1979, the County responded to the petition. It stated that certain items were not mandatorily negotiable. It also listed certain additional unresolved issues -- including a proposal concerning the guarding of prisoners -- to be submitted to arbitration. An interest arbitrator -- Irving Halevy -- was appointed.

On November 8, 1979, the County filed a Petition for

Scope of Negotiations Determination. It requested a declaration that a number of proposals -- including the proposal concerning the guarding of prisoners -- be declared not mandatorily negotiable. The parties requested that this petition be held in abeyance while interest arbitration proceedings continued.

On July 29, 1980, the parties reached agreement on a collective agreement effective between January 1, 1980 through December 31, 1981. Article XXVII provided:

The parties hereby agree to reserve the issues of the weapon clause proposal and the proposal on manpower and safety at Bergen Pines County Hospital with both parties reserving without prejudice on all of their rights. The parties agree that these issues shall be submitted to the appropriate agency for determination as to their negotiability and shall be bound thereby. If such issue or issues are found to be negotiable, then the parties agree to submit this matter or matters to the P.E.R.C. appointed Arbitrator, Prof. Irving Halevy, for his determination pursuant to Interest Arbitration Statute.

The interest arbitrator retained jurisdiction over this issue.

On August 8, 1980, the County's attorney called the Commission staff agent handling the scope petition and informed him that the parties had agreed on a contract and that they had agreed to disagree on the negotiability of the proposal concerning the number of sheriffs in the secure ward. According to the County's attorney, the parties had agreed that if Local 134 sought to grieve this issue, the parties reserved their rights to seek a ruling on negotiability from the Commission. The County's attorney concluded that the Commission could consider its previous scope petition withdrawn. The staff agent sent the parties a letter confirming the withdrawal. Local 134 did not respond or seek to invoke at that time the jurisdiction arbitrator Halevy had retained.

On March 1, 1982, the 1980-81 contract having expired, Local 134 filed a Petition to Initiate Compulsory Interest Arbitration with the Commission. The petition identified manning in the secure ward as an issue. An interest arbitrator -- John J. Pearce -- was appointed. The County responded with the instant scope petition.

Local 134 concurrently requested that interest arbitrator Halevy exercise the jurisdiction he had retained over the issue of manning in the secure ward. The County participated in a March 23, 1982 hearing before arbitrator Halevy on that issue. In its scope petition filed the next day, the County asserted that it had participated without prejudice to its right to contest the issue's negotiability. Arbitrator Halevy has not yet issued a decision.^{2/}

The County asserts that minimum manning proposals have repeatedly been held not to be mandatorily negotiable. It cites, e.g., In re City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶111184 1980), aff'd App. Div. Docket No. A-4851-79 (July 15, 1981), pet. for certif. den., 88 N.J. 476 (1981); In re Kearny PBA Local No. 21, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); In re City of Newark and IAFF 1860, AFL-CIO, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981); Local 195, IFPTE v. State, 88 N.J. 383 (1982).

Local 134 argues that the County has waived its right to contest negotiability because it failed to pursue the first

^{2/} On November 15, 1982, arbitrator Pearce issued his award concerning the parties' successor contract for calendar years 1982 and 1983. He did not consider the issue of manning in the secure ward.

petition to a conclusion. On the merits, it argues that its proposal should be held mandatorily negotiable because it is designed to promote the sheriffs' safety. It cites, e.g., In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979); In re Byram Township Bd. of Ed., 152 N.J. Super 12 (App. Div. 1977); In re Township of Hillside, P.E.R.C. No. 78-59, 4 NJPER 159 (¶ 4076 1978); In re City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977). It acknowledges that the Commission has previously held minimum manning proposals not mandatorily negotiable, despite recognizing legitimate employee safety concerns, and has specifically held that a proposal requiring two officers in each patrol car is not mandatorily negotiable; it claims, however, that this case is distinguishable because it involves "...safety at a controlled and secured area where prisoners are held in a one on one situation," not a "passive patrol" situation.

We believe the County has not waived its right to contest the negotiability of the proposal before us. In their 1980-81 contract, the parties expressly agreed to reserve their rights and positions concerning the negotiability of the secure ward issue. The County withdrew its pending scope petition because its attorney apparently believed that the issue would not be further litigated until such time as Local 134 pressed it. Local 134 apparently did not do so until the expiration of the 1980-81 contract and the onset of negotiations over a new contract. The County responded promptly to Local 134's reactivation

of the issue and renewed its position of non-negotiability. Under all these circumstances, we hold that the instant scope petition is properly before us.^{3/}

On the merits, we hold that the Association's proposal requiring the County to assign at least two sheriffs to the secure ward at all times is not mandatorily negotiable. We recognize that such proposals, as in this case, have a relation to employee safety, but it has been repeatedly held that the employer's managerial right to determine the number of employees working at any given time outweighs that relation. See Local 195, IFPTE, supra; Kearny, supra; East Orange, supra. See also In re Borough of Roselle, P.E.R.C. No. 80-137, 6 NJPER 247 (¶11120 1980), aff'd App. Div. Docket No. A-3329-79 (May 7, 1981); In re City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982); Borough of Wanauque, P.E.R.C. No. 82-42, 7 NJPER 613 (¶12273 1981); In re Town of West New York, 7 NJPER 594 (¶12265 1981). In view of the employer's well-established right to determine manning levels, we are not prepared to draw the distinction Local 134 requests between "passive patrol" situations and secure ward duty.^{4/}

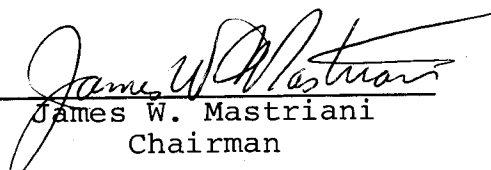
^{3/} Even if we held that the County technically had an obligation to pursue the scope petition it filed during the negotiations for the 1980-81 contract, that holding would not bar the County from contesting the negotiability of the secure ward issue during successor contract negotiations. The County did so and thus its scope of negotiations petition, even if considered untimely with respect to the 1980-81 contract, is timely with respect to the 1982-83 negotiations.

^{4/} We do not consider whether the proposal would be considered a permissive subject of negotiation under Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981). When we review a scope petition concerning the negotiability of a contract proposal, we only determine whether the proposal is mandatorily negotiable. In re Town of West New York, P.E.R.C. No. 82-24, 7 NJPER 594 (¶12265 1981). That is because an employer cannot be forced to submit non-mandatory subjects to interest

ORDER

The proposal of Local 134 which would require the County of Bergen to assign at least two sheriffs to secure ward duty at all times is not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Suskin, Newbaker, Butch and Hartnett voted for this decision. Commissioners Hipp and Graves voted against this decision.

DATED: Trenton, New Jersey
February 16, 1983
ISSUED: February 17, 1983

4/ (Continued) arbitration, although it may consent to submit permissive subjects. N.J.A.C. 19:16-5.7(g). Here the employer has not consented to submit the secure ward issue to arbitration.