

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MOUNT HOLLY,

Petitioner,

-and-

Docket No. SN-79-39

ASSOCIATION OF MOUNT HOLLY  
TOWNSHIP POLICE DEPARTMENT  
EMPLOYEES,

Respondent.

SYNOPSIS

The Chairman of the Commission in a scope of negotiations matter determines that several minimum manning provisions at issue are permissive, not required subjects, for collective negotiations. The Association of Mount Holly Township Police Department Employees was ordered to refrain from insisting to the point of impasse upon the inclusion of such proposals in a negotiated agreement with the Township of Mount Holly. Such proposals may not be submitted to compulsory interest arbitration unless both parties agree.

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Appearances:

For the Petitioner, Parker, McCay & Criscuolo,  
Esqs. (Stephen J. Mushinski, on the Brief)

For the Respondent, Stark & Stark, Esqs.  
(Richard N. Shaine, on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Township of Mount Holly ("Township") with the Public Employment Relations Commission on December 8, 1978 disputing the negotiability of a matter which the Association of Mount Holly Township Police Department Employees ("Police") was seeking to negotiate.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The Township filed its Statement of Position in this matter on January 3, 1979. The Police filed a Positional Statement which was received on January 31, 1979.

The issue placed before the Commission for determination in this instant proceeding is the negotiability of the following contract provision contained in the contract between the parties in effect until March 31, 1978:

X. WORKING CONDITIONS

A. In order to provide for the safety of the Association members, the Township has established as a policy a minimum shift strength of 3 police officers and 1 desk officer-dispatcher. Prior to changing this policy, the Township shall meet and confer with the Association Officers for the purpose of discussing the proposed change. If the Association requests, a public hearing will be held on the proposed change, at which time the Association can present evidence concerning the impact of the proposed change. The change shall not go into effect until after the public hearing unless agreed to otherwise by the Association. The final decision in this matter resides with the Township Council and is not subject to the grievance procedure.

B. This procedure shall not apply to short term variations caused by emergency conditions, not to exceed 5 days within a pay period unless agreed to by the Association.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission. This particular expeditious procedure will enable parties to receive a decision concerning certain negotiability disputes shortly after positional statements or briefs have been received from the parties and will assist in the avoidance of protracted delays in the impasse

resolution process affecting public employers and employee organizations.<sup>1/</sup>

The Commission in numerous decisions has determined that minimum manning provisions, i.e. proposals relating to the number of employees on a shift or in a department or, more generally, to the level of service and staff levels, are not required subjects of negotiations. See, In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977); In re Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978); In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978); In re Township of Maplewood (FMBA), P.E.R.C. No. 78-89, 4 NJPER 258; In re Township of Maplewood (PBA), P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978); and In re Cinnaminson Township, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978). The Commission in these prior decisions has considered the

<sup>1/</sup> According to the Police the parties, at an interest arbitration hearing held on January 22, 1979, agreed that should the Commission decide the pending petition in favor of the Township, i.e., that the minimum manning provision at issue relates to an illegal and not to a permissive subject for collective negotiations, compromise language agreed to by the parties' negotiating teams during the ongoing negotiations for a successor agreement concerning the minimum manning issue would be excluded from the arbitrator's award and from any agreement entered into by the parties. The parties are also alleged to have agreed that should the Commission decide that the minimum manning provision was at least permissively negotiable, the arbitrator would award the compromise manning provision to the Police and this provision would ultimately be included in the parties' successor agreement.

arguments raised by the parties in the present case and has consistently ruled that minimum manpower provisions such as the proposals at issue in this case are only permissively negotiable. These proposals may not be insisted upon to the point of impasse, nor may they may be submitted to compulsory interest arbitration absent mutual agreement of the parties.<sup>2/</sup>

The undersigned further notes and rejects the Township's argument that the New Jersey Supreme Court's decision in Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) eliminated the category of permissive subjects in all public sector negotiations: the Supreme Court in that decision stated that Chapter 85, Public Laws of 1977 (N.J.S.A. 34:13A-14 to 21) expressly provided for a permissive category of negotiations relating to contract negotiations affecting police and fire fighters.<sup>3/</sup> The Supreme Court contrasted the specific provisions in Chapter 85 providing for permissive subjects with the absence of references to a permissive category for collective negotiations within Chapter 123, Public Laws of 1974. The Supreme Court in reference to Chapter 85's provisions for permissive subjects stated the following:

<sup>2/</sup> The Commission has noted in prior manning cases that the impact of changes in manning practices on police officers' terms and conditions of employment, including, for example, employees' workload or safety, would be a required subject for collective negotiations. See In re Newark Firemen's Union, supra, and In re Brookdale Community College Police Force, P.E.R.C. No. 77-53, 3 NJPER 156 (1977).

<sup>3/</sup> The Supreme Court cited specifically N.J.S.A. 34:13-16(h) and N.J.S.A. 34:13A-16(f).

Of course, this enactment (c. 85) is not now before us. Neither is it of great importance to our interpretation of L. 1974, c. 123. It represents a specific decision on the part of the Legislature to authorize permissive negotiations with respect to police and firemen. Moreover, if it were so clear that L. 1974, c. 123 had created such a permissive area, we doubt that the Legislature would have had to provide carefully for a permissive category in L. 1977, c. 85. This recent statute covering a small percentage of all public employees may not be accorded dispositive effect in interpreting a more general statute passed three years earlier. We intimate no view as to the validity of the authorization for binding arbitration of "permissive subjects of negotiation" in N.J.S.A. 34:13A-16(f). 78 N.J. at 158.

The Court later specifically refrained from declaring statutory provisions providing for negotiations relating to managerial prerogatives unconstitutional when it added the following in the Ridgefield Park decision:

The Legislature is of course free to exercise its judgment in determining whether or not a permissive category of negotiation is sound policy. We wish merely to point out that careful consideration of the limits which our democratic system places on delegation of government powers is called for before any such action is taken. On the other hand, we are in no way prejudging the constitutionality of the concept of permissive negotiation per se. (footnote omitted) 78 N.J. at 165-166.

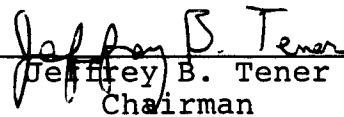
Given the above-cited language and the existence of N.J.S.A. 34:13A-16(h) and (f) the Commission must assume the existence of a permissive area of negotiations within the framework of police and fire negotiations as set forth in Chapter 85.

#### ORDER

Based upon the above discussion, it is hereby determined that the minimum manning provision at issue is a permissive subject

for collective negotiations. The Association of Mount Holly Township Police Department Employees is ordered to refrain from insisting to the point of impasse upon inclusion of such a proposal in a collectively negotiated agreement with the Township of Mount Holly. Such proposal may not be submitted to compulsory interest arbitration unless both parties agree.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
February 22, 1979