

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WANAQUE,

Petitioner,

-and-

Docket No. SN-81-103

WANAQUE POLICE ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission addresses the negotiability of three negotiations proposals in dispute between the Borough of Wanaque and the Wanaque Police Association. The Commission finds a proposal concerning the minimum number of men to be on duty on the day, afternoon and night shifts and a proposal relating to additional rounds of ammunition for members of the "PEST" team to be non-mandatory subjects for negotiations. With respect to these matters, the Police Association was ordered to refrain from insisting to the point of impasse upon inclusion of these proposals in a contract with the Borough.

A proposal granting employees represented by the Association a paid holiday, whenever a legal holiday is declared in writing or by resolution or ordinance for Borough employees, was found to be mandatorily negotiable. With respect to this proposal the Borough was ordered to negotiate with the Police Association.

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Appearances:

For the Petitioner, Dorf and Glickman, P.A.
(Mark S. Ruderman, of Counsel)

For the Respondent, Napolitano & Napolitano, Esqs.
(Thomas Napolitano, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on June 3, 1981 by the Borough of Wanaque (the "Borough") seeking a determination as to whether certain matters in dispute between the Borough and the Wanaque Police Association (the "Association") were within the scope of collective negotiations.

The parties are in negotiations on a new contract and have reached the interest arbitration stage, pursuant to a petition filed by the Association with the Commission on April 27, 1981. The present dispute concerns certain contract provisions currently in the existing contract which the Association has proposed be carried forward in the succeeding agreement. The Borough contends that three of these proposals are not mandatorily negotiable, and should

not be submitted to interest arbitration. The Borough filed its brief on July 1, 1981. The Association has not filed a brief. The contested proposals are considered individually below.

The Association has proposed:

Contract provisions confirming past practice of minimum number of men on duty, 3 men each afternoon and night shift; 2 men day shifts.

The Borough contends this is a "minimum manning" provision and thus not mandatorily negotiable, citing City of Perth Amboy and Local 286, I.A.F.F., AFL-CIO, P.E.R.C. No. 79-86, 5 NJPER 205 (¶10117 1979). We agree with the Borough that the clause prescribes a level of municipal services and corresponding staff levels, and is thus not a required subject of negotiations:

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 193 (¶4097 1978); In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER 258; In re Township of Maplewood (PBA), P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978); In re Cinnaminson Township, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978); In re Township of Clark, P.E.R.C. No. 79-50, 5 NJPER 90 (¶10049 1979) and In re Township of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979). Perth Amboy, supra, 5 NJPER at 205.

See also, In re Township of Weehawken, P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1981).

The second contested proposal reads as follows:

Addition of 5 rounds per month, shotgun
ammo for members of PEST team.

We understand this proposal to relate to the quantity of ammunition allotted to officers for use in qualifying for appointment to a particular assignment. The Borough argues that this would change the criteria for the performance of a certain job which has been held not to be mandatorily negotiable in Middlesex County Park Police, PBA Local #156 and Middlesex County Board of Freeholders, P.E.R.C. No. 78-90, 4 NJPER 261 (¶4133 1978). We agree. The Commission in the past has determined that qualifications for employment or prerequisites to the performance of a particular job are not mandatorily negotiable terms and conditions of employment.^{1/}

Also, the Borough maintains the following contract clause of the parties' agreement is an illegal "parity" or "me too" clause which must be deleted from the contract:

- C. Whenever a legal holiday is declared in writing or by resolution or by ordinance for Borough employees, the employees covered by this Agreement shall likewise enjoy such a holiday pursuant to the administrative provisions of Section A above. Early quitting time shall not be deemed to be holiday time.

^{1/} In re Salem Community College, P.E.R.C. No. 78-22, 3 NJPER 375 (1977); In re Plainfield Patrolmens' Benevolent Ass'n, Local No. 19, P.E.R.C. No. 76-42, 2 NJPER 216 (1976); and In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976).

They argue that the Commission's decision in In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (1978) should be controlling. We disagree.

This clause is distinguishable from the parity provision considered in Plainfield in that the instant clause does not concern negotiated holidays; instead the clause concerns legal holidays "declared in writing or by resolution or by ordinance." This does not appear to encompass holidays negotiated by other employee organizations. This distinction is meaningful and guides our decision here. We found the parity provision in Plainfield to be an illegal subject of negotiations "because it unlawfully limit[ed] the right of an employee organization to negotiate fully its own terms and conditions of employment." The contested provision has no effect on negotiated terms and conditions of employment and is thus not a parity provision. Instead, the provision concerns holidays without affecting the negotiation rights of other employee groups, and is therefore a mandatory subject of negotiations.^{2/}

ORDER


A. With respect to those matters which have been determined herein to be non-mandatory subjects of negotiation, the

^{2/} This conclusion is consistent with our reasoning in In re Watchung Borough and Watchung PBA #193, P.E.R.C. No. 81-88, 7 NJPER 94 (¶12038 1981), where we found that a clause guaranteeing the PBA unit payment for holidays enjoyed by the Borough employees was not a parity provision as it did not interfere with or inhibit negotiations between the public employer and the other employee groups. See, P.E.R.C. No. 81-88 at p. 8.

Wanaque Police Association is ordered to refrain from insisting to the point of impasse, which includes submission to interest arbitration, upon inclusion of such matters in a collective negotiations agreement with the Borough of Wanaque.

B. With respect to those matters which have been determined herein to be mandatory subjects of negotiation, the Borough of Wanaque is ordered to negotiate with the Wanaque Police Association with respect thereto, and these matters may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

With respect to the issues in Paragraph A of the Order, the vote was as follows: Chairman Mastriani, Commissioners Hartnett, Parcels, Newbaker and Suskin voted for this portion of the decision. Commissioners Hipp and Graves voted against this portion of the decision.

With respect to the issues in Paragraph B of the Order, the vote was as follows: Chairman Mastriani, Commissioners Suskin, Hartnett, Parcels, Graves and Hipp voted for this portion of the decision. Commissioner Newbaker voted against this portion of the decision.

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