

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF ELIZABETH,

Petitioner,

-and-

ELIZABETH FIRE FIGHTERS
ASSOCIATION, LOCAL 2040, IAFF,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, concludes that those aspects of the Article in dispute which relate to overtime allocation procedures are required subjects for collective negotiations and orders the City of Elizabeth to negotiate in good faith, upon demand of Local 2040, concerning those proposals. The Chairman also concludes that the aspect of the Article in dispute concerning the duties of a particular position relates to a permissive subject of negotiations and orders Local 2040 to refrain from insisting to the point of impasse upon the inclusion of such provision in an agreement with the City.

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In the Matter of

CITY OF ELIZABETH,

Petitioner,

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Docket No. SN-80-20

ELIZABETH FIRE FIGHTERS
ASSOCIATION, LOCAL 2040, IAFF,

Respondent.

Appearances:

For the Petitioner, Murray, Granello & Kenney, Esqs.
(Mr. James P. Granello, of Counsel and on the Brief)

For the Respondent, William G. Neafsey, President
Local #2040

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the City of Elizabeth ("City") with the Public Employment Relations Commission on September 21, 1979 disputing the negotiability of a matter which the Elizabeth Fire Fighters Association, Local 2040, IAFF ("Local 2040") was seeking to negotiate.

At the time the Petition was filed the parties were presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The City filed its Brief in this matter on September 26, 1979. Local 2040 filed its Brief on October 22, 1979.^{1/}

1/ In its brief Local 2040 stated that the parties had agreed that if the contract provision at issue was declared to be mandatorily negotiable it would be included in a new contract between the parties. If the article was declared to be only permissively negotiable the provision would be deleted from any successor agreement.

The issue placed before the Commission for determination in the instant proceeding is the negotiability of the following contract provision (Article XXX, 2nd paragraph):

Whenever a Captain or Battalion Chief must be replaced by a man on overtime assignment, every effort will be made to have a man of equal rank assigned. If this cannot be done then the next lower rank will be used to fill the overtime assignment. Employees filling in on overtime shall assume all duties and responsibilities of the position they fill.

The parties had earlier agreed to the deletion of the first paragraph of Article XXX which had stated the following: "The City shall make provisions for the maintaining of manpower schedules for each fire company. Each company shall have a minimum of two (2) Firemen and one (1) Captain."

The City maintains that the Article in dispute related to a minimum manning requirement which was not a required subject of collective negotiations. The City suggested that the contract article at issue had to be read in conjunction with the first paragraph of that Article which was clearly a minimum manpower provision. The City thus concluded that the requirement to replace a Captain or Battalion Chief on an overtime assignment was predicated on the minimum manpower requirements that are set forth in the aforementioned first paragraph of Article XXX. Alternatively, the City asserted that the issue presented for determination was one of the right to assign and did not address itself to compensation considerations. Local 2040 maintained that the Article in dispute related exclusively to overtime compensation, i.e. the

distribution or allocation of overtime among employees within the unit. Local 2040 argued that the Article essentially recognized that procedures for selecting employees for overtime were only relevant whenever the City decided that personnel should be replaced, an issue that was not subject to mandatory negotiations.

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 decision on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission.

The Commission in a prior decision has determined that contract proposals or articles relating to overtime compensation, the distribution or allocation of overtime among employees and the procedures for selecting employees for overtime are all mandatory subjects for collective negotiations. In re Township of Maplewood (FMBA), P.E.R.C. No. 78-89, 4 NJPER 258 (14132 1978). I conclude that the first two sentences of the article at issue are provisions that relate exclusively to the distribution or allocation of overtime among particular employees and are therefore required subjects for collective negotiations. These are procedural matters relating to an overtime compensation issue and do not in any way restrict the City's decision-making authorities concerning manpower requirements. However, I do find that the last sentence of the article at issue relates not to overtime allocation procedures but to the duties and responsibilities of individuals

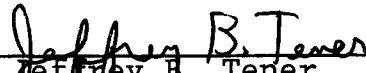
filling a position on an ad hoc basis, i.e. their particular work assignments. Therefore I conclude, consistent with prior Commission decision,^{2/} that this particular sentence is a permissive, not a required subject for collective negotiations.

ORDER

With respect to those aspects of the Article in dispute relating to overtime allocation procedures (the first two sentences of the provision) which have been determined to be required subjects for collective negotiations, the City of Elizabeth is ordered, upon demand of Local #2040, I.A.F.F., to negotiate in good faith with Local #2040. These proposals may be submitted to compulsory arbitration in accordance with the procedures and requirements of N.J.S.A. 34:13A-14 et seq. (P.L. 1977, c. 85).

With respect to that aspect of the Article in dispute concerning the duties of a particular position which have been determined to relate to a permissive subject for negotiations, Local 2040, I.A.F.F. is ordered to refrain from insisting to the point of impasse upon inclusion of such provision in an agreement with the City of Elizabeth.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
December 17, 1979

^{2/} See for example In re Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (14097 1978).