

P.E.R.C. NO. 90-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-90-39

ORANGE LOCAL NO. 10,
FIREMEN'S MUTUAL
BENEVOLENT ASSOCIATION

Respondent.

Appearances:

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Orange Local No. 10, Firemen's Mutual Benevolent Association against the City of Orange Township. The grievance challenges a directive that firefighters take EMT training. The Commission finds that the city's decision to train firefighters in EMT techniques is a non-negotiable governmental policy decision.

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Appearances:

For the Petitioner, Genova, Burns & Schott, attorneys (Steven E. Trimboli, of counsel)

For the Respondent, Fox & Fox, attorneys (Dennis J. Alessi, of counsel)

DECISION AND ORDER

On January 22, 1990, the City of Orange Township petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by Orange Local No. 10, Firemen's Mutual Benevolent Association.

The parties have filed briefs and documents. These facts appear.

Local 10 represents the City's non-supervisory firefighters. Local 10 and the City have executed a collective negotiations agreement effective January 1, 1987 through December 31, 1989. The grievance procedure ends in binding arbitration. Article 19, paragraph A reads:

Employees covered by this agreement may only be assigned to perform any duty which is related to firefighting, fire prevention, rescue, salvage, overhaul work, care and maintenance of firefighting equipment and such other duties as are prescribed by the job title description under the Civil Service Act, provided such assignments do not conflict with the restrictions and duties as set forth in Article XVII [barring assignment of school crossing guard duties]. Employees may only be assigned to any duty which is related to the normal routine daily housekeeping care required to maintain the quarters in which they are employed in a safe, clean and sanitary manner. It is understood that this will not encompass construction, plumbing, electrical, carpentry, painting or masonry, other than of a minor nature.

On September 13, 1989, the City, after unsuccessfully seeking volunteers, directed that four firefighters attend emergency medical training (EMT) classes. The next day, the FMBA filed a grievance alleging that the directive violated Article 19. The City denied the grievance and the FMBA demanded arbitration. This petition ensued.

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare Local 195, IFPTE, 88 N.J. 393 (1982) and Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981). Paterson outlines the steps of a scope of negotiations analysis for police and firefighters:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory

Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. 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. [87 N.J. at 92-93; citations omitted]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers. We do not consider the grievance's merits. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144 (1978).

The City, citing Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985), asserts that it has a managerial prerogative to determine the appropriate training for its firefighters. It notes that EMT activities are among the duties listed in the Department of Personnel job description for firefighters. The fire chief's certification states that he seeks to have as many firefighters as

possible, including all new hires, trained in EMT techniques. His purposes are to have firefighters give EMT assistance to fire victims and other firefighters and to have a pool of firefighters capable of operating a rescue vehicle service.

The FMBA contends that the sole aim of the training is to have the firefighters operate an ambulance service for non-fire related calls. The department had operated such a service until the mid-1970s.^{1/} It asserts that the grievance is arbitrable because the assignment of firefighters to an ambulance service would be outside the DOP job description for firefighter and is unrelated to firefighting.^{2/} It cites Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981) (assignment of non-emergency duties unrelated to firefighting mandatorily negotiable).

This grievance challenges only the directive that firefighters take EMT training. No firefighter was assigned to either an emergency rescue vehicle service or a general ambulance service. Thus we consider only whether a directive to take EMT training is negotiable. We hold it is not. The FMBA concedes that EMT techniques may be needed by firefighters at a fire. Unquestionably EMT techniques are relevant to the duties contained in the firefighters' DOP job description. Thus we find that the

^{1/} The City states that its planned emergency rescue vehicle service is different from a general ambulance service, which it has no plans to operate.

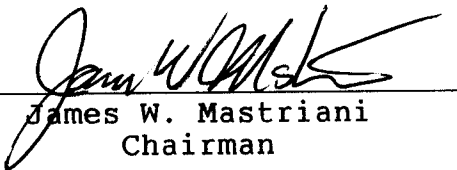
^{2/} The FMBA contends that a separate civil service title and job description exist for EMT personnel.

City's decision to train firefighters in EMT techniques is a non-negotiable governmental policy decision. Franklin; Town of Hackettstown, P.E.R.C. No. 82-102, 8 NJPER 308 (¶13136 1982).

ORDER

The City's request for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. None opposed. Commissioners Smith and Ruggiero were not present.

DATED: Trenton, New Jersey
June 25, 1990
ISSUED: June 26, 1990