

P.E.R.C. NO. 2004-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEW BRUNSWICK,

Petitioner,

-and-

Docket No. SN-2003-54

F.M.B.A. LOCAL 17,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of a work schedule proposal made by F.M.B.A. Local 17 during interest arbitration proceedings for a successor collective negotiations agreement between the City of New Brunswick and the FMBA. The Commission concludes that an arbitrator may consider the arguments pro and con with respect to a proposed work schedule for firefighters which is common throughout the State, and whether the benefits to employees outweigh the municipal concerns of efficiency and supervision.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Schenck, Price, Smith & King, LLP,
attorneys (Kathryn V. Hatfield, on the brief)

For the Respondent, Abramson & Liebeskind Associates
(Marc Abramson, on the brief)

DECISION

On March 27, 2003, the City of New Brunswick petitioned for a scope of negotiations determination. The City seeks a determination as to the negotiability of a work schedule proposal made by F.M.B.A. Local 17 during interest arbitration proceedings for a successor collective negotiations agreement between the City and the FMBA.

The parties have filed briefs and exhibits. The City has submitted the certification of fire director Robert McLaughlin. These facts appear.

The FMBA represents all firefighters excluding superior officers. The parties' collective negotiations agreement expired on December 31, 2002. On March 21, 2003, the parties jointly

petitioned for interest arbitration. The FMBA signed the petition on March 3 and forwarded it to the City for signature. The City signed the petition on March 14. The Commission received and docketed the interest arbitration petition on March 21, 2003.^{1/}

Article VIII is entitled Hours of Work and Overtime. It provides:

The work week for firefighters shall consist of an average of forty-two (42) hours per week over an eight (8) week cycle consisting of (10) hours day shift (8 a.m. to 6 p.m.) of duty and fourteen (14) hours night shift (6 p.m. to 8 a.m.) of duty.

The FMBA has proposed the following:

The work week for firefighters shall consist of an average of forty-two (42) hours per week over an eight (8) week cycle of twenty-four (24) hours shift (8 AM to 8AM) duty, seventy-two (72) hours off duty, twenty-four (24) hours shift (8AM to 8AM) duty, and seventy-two (72) hours off duty.

The fire department has worked a 10/14 schedule since 1974. Currently there are 58 firefighters and 21 superior officers in

^{1/} The FMBA contends that the City's scope of negotiations petition is out of time under N.J.A.C. 19:16-5.5(c). Section 5.5 provides that a scope petition must be filed within 14 days of receipt of the notice of the interest arbitration petition. Regardless of whether the City knew the petition existed, it was not considered formally filed until March 21. The scope petition was filed six days after that date and is timely.

the department. There are four platoons and generally there are 15 firefighters and 5 superior officers assigned to a platoon.

The fire officers have entered into a successor collective negotiations agreement that does not change their 10/14 schedule. That agreement is effective until December 31, 2004.

In Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police officers and firefighters. The Court stated:

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 and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, 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 fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking 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. [Id. at 92-93; citations omitted]

We consider only whether a contract proposal is mandatorily negotiable. It is our policy not to decide whether proposals, as opposed to grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The City contends that supervision would be severely diminished if the firefighters worked a schedule different from that worked by the superior officers. The FMBA responds that no facts demonstrate that the work schedule proposal would so significantly interfere with the City's governmental policy determinations that it cannot be considered by the arbitrator. The City replies that jurisdiction to determine whether the proposal impedes governmental policy cannot be passed to an arbitrator simply because the arbitrator must consider the public interest and welfare.


An employer's interest in effective supervision does not generally preclude an interest arbitrator from evaluating a proposed change to a 24/72 shift for firefighters. Teaneck Tp. and FMBA Local No. 42, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. ___ N.J. ___ (2003); see also Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997) (police and fire work schedules are generally proper subjects for negotiation). An

arbitrator may consider the arguments pro and con with respect to a proposed work schedule for firefighters which is common throughout the State, and whether the benefits to the firefighters outweigh the municipal concerns of efficiency and supervision. Id. at 305. The facts of this case do not provide a basis for distinguishing Teaneck or otherwise holding that the proposed work schedule would so impede governmental policy as to foreclose arbitration of the issue.

ORDER

The work schedule proposal of F.M.B.A. Local 17 is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: October 30, 2003
Trenton, New Jersey
ISSUED: October 30, 2003