

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF GLOUCESTER CITY,

Petitioner,

-and-

Docket No. SN-2005-008

FMBA LOCAL NO. 51,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of two issues raised by FMBA Local No. 51 during negotiations for a successor collective negotiations agreement between the City of Gloucester City and the FMBA. During negotiations the FMBA sought an increase in the number of firefighters assigned to each shift and the City responded that with the elimination of the 24/72 work schedule it could increase staffing levels. The FMBA does not dispute that the City has a managerial prerogative to set overall staffing levels. The Commission concludes that it appears that the City's negotiations proposal is in response to the FMBA's demand to increase staffing levels and not an assertion that the current schedule so impedes governmental policy that changes to the schedule cannot be addressed through negotiations and interest arbitration. The Commission holds that the proposal to retain the 24/72 hour work schedule is mandatorily negotiable.

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, Parker, McCay & Criscuolo, P.A.,  
attorneys (M. James Maley and Elizabeth M. Garcia, on  
the briefs)

For the Respondent, Fox and Fox, LLP, attorneys  
(Craig S. Gumpel, on the brief)

DECISION

On August 4, 2004, the City of Gloucester City petitioned for a scope of negotiations determination. The City seeks a negotiability determination concerning two issues raised by FMBA Local No. 51 during negotiations for a successor collective negotiations agreement between the City and the FMBA.<sup>1/</sup>

The parties have filed briefs and exhibits. The City has filed the certification of its fire chief. The FMBA has

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<sup>1/</sup> The City originally disputed the negotiability of four issues. In its reply brief, the City withdrew two issues from consideration, but reserves its right to reintroduce them should they arise again in negotiations.

submitted the certification of its president. These facts appear.

The FMBA represents approximately 26 full-time firefighters, firefighter/EMTs and EMTs. The expired contract provides for a 24/72 hour work schedule that averages out to a 42-hour workweek over the course of the year. There are also three volunteer fire companies in the City.

In the early 1990's, the City restructured the department, creating a full-time paid fire chief position and making the volunteer company's officer the deputy chief. It also added the firefighter/EMTs who respond to fire and ambulance calls. The City's fire and ambulance calls have increased from 2,955 calls in 2001 to over 3,553 in 2003; if the trend continues the City expects to respond to over 3,800 calls in 2004.

The parties' most recent contract expired on December 31, 2003. The parties have been in negotiations for a successor agreement and have met and exchanged proposals and counter-proposals on several occasions. During negotiations, the FMBA orally demanded that the City increase the number of firefighters assigned to each shift. The City responded that with the elimination of the 24/72 work schedule, it could increase staffing levels. For example, it could implement a 24/48 work schedule with three platoons instead of four and increase shift staffing from seven to approximately nine. The chief certifies

that this change would increase efficiency and ultimately lead to less physical and emotional strain on firefighters in the event of a fire. The City's proposal would maintain the average workweek of 42 hours. The FMBA rejected the City's demand that the 24/72 work schedule be removed from the contract.

The City seeks a determination that it has a managerial prerogative to determine the number of firefighters and set their work schedules. It contends that the current 24/72 work schedule has precluded the chief from assigning the maximum number of individuals per shift. The FMBA responds that the City may set staffing levels, but must negotiate over the work schedule and such negotiable issues as safety and compensation. The City replies that it is prepared to negotiate over the economic impact of a work schedule change.<sup>2/</sup>

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states: "The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations." We do not consider the wisdom of the clauses in question, only their negotiability. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

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2/ The FMBA has informed us that while the parties have reached agreement on a new contract that continues to include a 24/72 work schedule, the City continues to seek a negotiability determination on the work schedule issue.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters.<sup>3/</sup> 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 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 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. [87 N.J. at 92-93; citations omitted]

We will only consider whether the provisions are mandatorily negotiable. We do not decide whether contract proposals

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<sup>3/</sup> 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 a mandatory category of negotiations. Compare Local 195, IFPTE v. State, 88 N.J. 393 (1982).

concerning police officers are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The FMBA does not dispute that the City has a managerial prerogative to set overall staffing levels and the City does not deny an obligation to negotiate the mandatorily negotiable impact of a work schedule change. Accordingly, we need not consider these issues further.

As for the work schedule change, the FMBA argues that the City has not demonstrated any specific reasons to conclude that removing the 24/72 work week would result in a more efficient department. The FMBA argues that under Paterson's balancing test, the employees' interest in negotiating over a work schedule outweighs the City's need to control the schedule.

In its reply brief, the City notes that the chief has certified that while the 24/72 schedule works effectively in larger departments, it is not in the best interests of the City and the public.

When the Legislature approved interest arbitration as the means of resolving negotiations impasses over the wages, hours, and employment conditions of police officers and firefighters, it recognized that both management and labor would have legitimate concerns and competing evidence and that interest arbitration was

the best forum for presenting, considering, and reviewing those concerns and evidentiary presentations. Maplewood Tp. P.E.R.C. No. 97-80, 23 NJPER 106, 114 (¶28054 1997); see also Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), aff'd in relevant pt., rev'd in pt. and rem'd, 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). Consistent with that legislative scheme and Supreme Court case law, this Commission and the Appellate Division have generally held that police and firefighter work schedules are mandatorily negotiable. See Maplewood, 23 NJPER 113 and cases cited therein.

Maplewood noted that both we and the Appellate Division had found exceptions to the rule of work schedule negotiability when the facts prove a particularized need to preserve or change a work schedule to protect a governmental policy determination. Id. at 113-114. But Maplewood held that, in the context of a pre-arbitration scope petition, the question was not whether a work schedule proposal raised legitimate concerns, but whether it so involved and impeded governmental policy that it must not be addressed through negotiations and interest arbitration. Id. at 114.

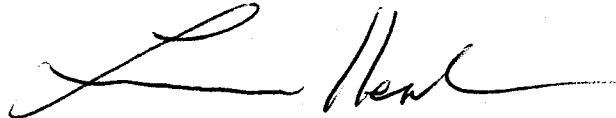
The facts do not prove a particularized need to eliminate the current work schedule to protect a governmental policy determination. It appears that the City's negotiations proposal is a response in part to the FMBA's demand for increased staffing

levels, and not an assertion that the current schedule so impedes governmental policy that changes to that schedule cannot be addressed through negotiations and interest arbitration. Under these circumstances, the City may make its arguments about its desire for greater scheduling flexibility to the arbitrator.

ORDER

The proposal of FMBA Local No. 51 to retain the 24/72 hour work schedule in a successor contract is mandatorily negotiable.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", is written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. Commissioner Katz abstained from consideration. Commissioner Mastriani was not present. None opposed.

DATED: November 23, 2004  
Trenton, New Jersey  
ISSUED: November 24, 2004