

P.E.R.C. NO. 2006-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST NEW YORK,

Petitioner,

-and-

Docket No. SN-2005-071

WEST NEW YORK POLICE  
SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

\_\_\_\_\_The Public Employment Relations Commission dismisses a petition for scope of negotiations determination filed by the Town of West New York. The Town seeks a determination that it has a managerial prerogative to eliminate weekend on-call for captains represented by the West New York Police Supervisors Association. The Town wants to assign captains, if necessary, to weekend tours. The Commission concludes that there is no basis to entertain this petition. The expired contract does not address weekend call-in and the Association has not submitted a proposal on this issue. The Commission holds that its authority under N.J.S.A. 34:13A-5.4(d) does not extend to issuing advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy.

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, The Murray Law Firm, LLC, attorneys  
(Robert E. Murray, of counsel; Mary E. Hennessy-  
Shotter, on the brief)

For the Respondent, Mets & Schiro, LLP, attorneys  
(Leonard Schiro, of counsel; Roosevelt Porter, on the  
brief)

DECISION

\_\_\_\_\_ On April 1, 2005, the Town of West New York petitioned for a scope of negotiations determination. The Town seeks a determination that it has a managerial prerogative to eliminate weekend on-call for captains represented by the West New York Police Supervisors Association. The Town wants to assign captains, if necessary, to weekend tours.

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

The Association represents police supervisors. The parties' most recent collective negotiations agreement expired on June 30,

2004. On March 28, 2005, the Association petitioned for interest arbitration. The petition set forth these disputed economic issues: "wages, clothing allowance (maintenance and uniform), eyeglass plan and terminal leave."

Currently, a captain is available via telephone on weekends. The Town seeks to require a command presence, when needed, rather than telephone direction on the weekends.

N.J.A.C. 19:16-5.5 provides that where a dispute exists as to whether an interest arbitration issue is within the required scope of negotiations, the party asserting that it is not shall file a scope of negotiations petition. The expired contract does not address weekend call-in and the Association has not submitted a proposal on this issue. The Town asks us to declare that it has a managerial prerogative to eliminate weekend on call and to have captains report when required. There is no basis for us to entertain that request.

In essence, the Town is asking us to issue an advisory opinion that it has a right to assign captains on weekends although the Association has not challenged that right, either at the negotiations table or in binding arbitration. We have long held that our authority under N.J.S.A. 34:13A-5.4(d)<sup>1/</sup> does not

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<sup>1/</sup> N.J.S.A. 34:13A-5.4(d) provides, in part, that the Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a  
(continued...)

extend to issuing advisory opinions in scope of negotiations matters in the absence of an actual, as opposed to potential, controversy. Camden Cty., P.E.R.C. No. 81-56, 6 NJPER 544 (¶11276 1980). Accordingly, we dismiss this scope petition. Should the Association seek to arbitrate a challenge to the scheduling of captains on weekends, the Town can file a scope petition seeking a restraint of binding arbitration.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: December 15, 2005

Trenton, New Jersey

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1/ (...continued)  
matter in dispute is within the scope of collective negotiations.