

P.E.R.C. NO. 2010-20

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

-and-

Docket No. SN-2009-068

FIREMEN'S MUTUAL BENEVOLENT
ASSOCIATION, LOCAL NO. 6,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the City of Trenton's petition for a scope of negotiations determination that Firemen's Mutual Benevolent Association, Local No. 6 may not submit a proposal for a 24/72 work schedule to interest arbitration because the superior officers are on a 10/14 schedule. The Commission holds that the proposal is mandatorily negotiable and may be submitted to the interest arbitration for consideration in accordance with the Teaneck standards.

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, Knapp, Trimboli & Prusinowski, LLC,
attorneys (Steven E. Trimboli, on the brief)

For the Respondent, Fox and Fox LLP, attorneys (David
I. Fox and Nora R. Locke, of counsel and on the brief)

DECISION

On March 31, 2009, the City of Trenton petitioned for a scope of negotiations determination. The City contends that the proposal of the Firemen's Mutual Benevolent Association, Local No. 6 to convert firefighters to a 24/72^{1/} work schedule is not mandatorily negotiable because superior officers are on a 10/14^{2/}

1/ This work schedule involves a 24-hour shift, followed by 72 hours off duty.

2/ This work schedule involves two 10-hour days followed by 24 hours off, then two 14-hour nights, followed by 72 hours off.

schedule. We find that the proposed work schedule is mandatorily negotiable and may be submitted to interest arbitration.^{3/}

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

The FMBA represents the City's firefighters. The parties' most recent collective negotiations agreement expired on December 31, 2005.

The parties are currently in interest arbitration proceedings. The City was also in contract negotiations for the captains and battalion chief, who are represented by the Trenton Fire Officer's Association ("TFOA"). The TFOA also proposed a 24/72 schedule. However, on March 9, 2009, the City and the TFOA reached a contract settlement that kept the fire superiors on the 10/14 schedule. The FMBA continues to seek a 24/72 schedule.

The City has filed a certification of Fire Director Richard Laird. Laird asserts that the FMBA's proposed schedule will impair operational efficiency since captains will have contact with any single company approximately four times every twenty-eight days and will "essentially become floaters," changing from company to company based upon the rotation of two different

^{3/} In light of our holding, we need not address FMBA's argument that the City's petition is untimely or the parties' dispute over whether the City agreed to change the fire officers schedule should the firefighters be awarded a 24/72 schedule.

schedules.^{4/} He asserts that under the proposed schedule, captains would be unable to maintain discipline, supervise effectively, accurately ascertain and provide for training needs, or determine the strengths and weaknesses of subordinates.

The FMBA has filed the certification of FMBA Officer Mark Robotin. Robotin contends that the beneficial impact of the 24/72 shift includes reduction of sick leave and overtime and an increase in efficiency. Robotin also contends that having superior and rank-and-file officers on different schedules has proved to be fully workable in many other cities.

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).

^{4/} The Trenton Fire Department is divided into seven engine companies, three ladder companies and one rescue company. Each company consists of one captain and three to four firefighters. All members of the company serve on duty together and participate in fire suppression and related activities.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and firefighters.^{5/} 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]

Firefighter work schedules are, in general mandatorily negotiable. Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106

^{5/} 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).

(¶28054 1997). In Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), we addressed an identical issue. The firefighters proposed a 24/72 work schedule and the employer opposed the proposal on the ground that the superior officers were on a 10/14 schedule. The arbitrator awarded the 24/72 schedule and, on appeal, we modified the award to provide that the 24/72 schedule could be implemented only if and when the 24/72 schedule was adopted for the superior officers' unit. The Appellate Division reversed and remanded that portion of our ruling and the Supreme Court affirmed substantially for the reasons expressed by the Appellate Division. 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). The Appellate Division stated that:

[F]rom a practical standpoint PERC's decision dooms the FMBA rank-and-file to continuation on the 10/14 shift in perpetuity so long as the Township continues to oppose the change to a 24/72 shift for the officers. . . . By its postponement of a trial period for the 24/72 schedule, PERC has sent FMBA's proposal off to a political never-never land. Such a result is both arbitrary and unreasonable.

On remand, we directed the arbitrator to consider the work schedule proposal in light of the standards arbitrators should apply in considering proposals for a major work schedule change, including proposals that would result in supervisors being on a different work schedule from the employees they supervise.

[A]n arbitrator may award such a proposal only if he or she finds that the different

work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.

[Teaneck, 25 NJPER at 455]

Thus, the arbitrator in this case may consider the FMBA's work schedule proposal under the Teaneck standards.

ORDER

The 24/72 work schedule is mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Colligan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed. Commissioner Branigan recused herself.

ISSUED: September 24, 2009

Trenton, New Jersey