

P.E.R.C. NO. 2010-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH CALDWELL,

Petitioner,

-and-

Docket No. SN-2010-025

WEST ESSEX PBA LOCAL 81,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a successor contract proposal advanced by the West Essex PBA Local 81 for inclusion in compulsory interest arbitrations proceedings with the Borough of North Caldwell. The proposal involves limiting the assignment of PBA members to dispatcher duties. The Commission finds that the proposal is not mandatorily negotiable because the employer has a managerial prerogative to set staffing levels and to assign additional duties related to an employee's normal responsibilities.

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.

P.E.R.C. NO. 2010-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH CALDWELL,

Petitioner,

-and-

Docket No. SN-2010-025

WEST ESSEX PBA LOCAL 81,

Respondent.

Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, attorneys (Jonathan F. Cohen, on the brief)

For the Respondent, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Eric B. Levine, on the brief)

DECISION

On October 10, 2009, the Borough of North Caldwell petitioned for a scope of negotiations determination. The Borough seeks a determination that a successor contract proposal involving assignment to dispatcher duties advanced by West Essex PBA Local 81 is not mandatorily negotiable and may not be submitted to compulsory interest arbitration. We find that the proposal is not mandatorily negotiable.

The parties have filed briefs. The Borough has filed exhibits and a certification. These facts appear.

The PBA represents all police officers employed by the Borough excluding captains and the police chief. The parties' most recent collective negotiations agreement expired on December

31, 2008. Between November 6, 2008 and January 22, 2009, the Borough and the PBA held four negotiations sessions. At the first session, the PBA presented a proposal labeled "Dispatcher Duties/Overtime":

In the event that a dispatcher calls in sick and someone is required to fill the role of the dispatcher, the Borough agrees to [sic] that dispatchers will first be called to fill the position. Only if no dispatcher is available to fill the position, the Borough may offer the dispatching duties to officers so long as the level of manpower on patrol remains at no less than three officers.

At the next negotiations session, the Borough rejected the addition of the "Dispatcher Duties/Overtime" clause. On August 31, 2009, the PBA petitioned to initiate compulsory interest arbitration. This petition ensued.

The Borough asserts that the proposal interferes with two managerial prerogatives: the assignment of duties to employees that it deems best suited to carry out such work; and the setting of staffing levels it deems necessary to efficiently and effectively deliver public services.

The PBA responds that the proposal allows the Borough to fill dispatcher posts with both dispatchers and officers. It adds that: "the clear intent of the proposal is to ensure that sufficient officers are available for patrols during periods where a dispatcher is absent." The PBA argues that the Borough has not produced any evidence tending to show that the proposal

would interfere with the Borough's staffing decisions or its ability to assign duties to qualified individuals.

In reply, the Borough reiterates its contentions about its right to assign and notes that the PBA has conceded that the proposal affects staffing levels.

Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), outlines the steps of a scope of negotiations analysis for police officers 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. 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.

We consider only whether the proposal is mandatorily negotiable. It is our policy not to decide whether contract

proposals, as opposed to grievances, involving police officers and firefighters 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).

Public employers have a managerial prerogative to assign additional duties that are related to an employee's normal responsibilities. Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997). However, employees may negotiate for contractual protection against being required to assume duties outside their job titles and beyond their normal duties. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977); Maplewood. There is nothing in this record to suggest that dispatching is not sufficiently related to the normal duties of these police officers so as to preclude the Borough from assigning that work without additional negotiations. See Town of Harrison, P.E.R.C. No. 2002-54, 28 NJPER 179 (¶33066 2002) (restraining grievance arbitration over requirement that during a given shift, firefighters respond to both EMS and dispatch calls). The first sentence of the PBA proposal is thus not mandatorily negotiable.

A public employer also has a managerial prerogative to determine the staffing levels required to provide police services. Sea Isle City, P.E.R.C. No. 96-83, 22 NJPER 240 (¶27125 1996). The second sentence of the proposal conditions assignment to

dispatching duties on certain staffing levels and is thus also not mandatorily negotiable.

ORDER

The PBA proposal "Dispatcher Duties/Overtime" is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel and Voos voted in favor of this decision. None opposed. Commissioners Colligan and Watkins recused themselves.

ISSUED: January 28, 2010

Trenton, New Jersey