P.E.R.C. NO. 2015-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Petitioner,

-and-

Docket Nos. SN-2014-087
SN-2014-088

PLAINFIELD FIRE OFFICERS ASSOCIATION LOCAL 207, and FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, Local No. 7,

Respondents.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of contract clauses in expired collective negotiations agreements between the City of Plainfield and the Plainfield Fire Officers Association Local 207, and between the City of Plainfield and the Firemen's Mutual Benevolent Association, Local No. 7. Finding that public employers are not required to negotiate over overall how many firefighters will be on duty or how many will be assigned to a truck, even where such staffing and manning decisions affect employee safety, the Commission holds that the disputed language requiring the City to maintain specific staffing levels and alarm responses substantially limits its policymaking power to determine the size of its workforce and how best to deploy its fire personnel.

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, Ruderman & Glickman, P.C., attorneys (Mark S. Ruderman, of counsel)

For the Respondent Plainfield Fire Officers Association Local 207, Mets, Schiro & McGovern, LLP, attorneys (James M. Mets, of counsel)

For the Respondent Firemen's Mutual Benevolent Association, Local No. 7, Marc D. Abramson & Associates (Marc. D. Abramson, Consultant)

DECISION

On April 8, 2014, the City of Plainfield (City) petitioned for two scope of negotiations determinations concerning identical manpower contract clauses it seeks to remove from successor collective negotiations agreements with the Plainfield Fire Officers Association Local 207 ("PFOA"), and Firemen's Mutual Benevolent Association, Local No. 7 ("FMBA"). The Associations seek to retain the clauses. As the contracts have identical language, we have consolidated the two petitions into one

decision. The parties have filed briefs and exhibits. The PFOA filed a certification of counsel. The FMBA filed a certification of FMBA, Local No. 7 Vice-President Geoffrey Plummer. These facts appear.

The PFOA represents all uniformed fire officers, excluding firefighters, employed by the City. The FMBA represents all sworn fire personnel, excluding fire officers. The parties' most recent agreements had a duration from January 1, 2010 through December 31, 2012. According to counsel, the PFOA also had a one-year agreement from January 1, 2013 through December 31, 2014. On March 31, 2014, the City filed for interest arbitration with both Associations.

Article VI of both agreements is entitled "Manpower" and provides:

> 6-1 In order to protect the health and safety of the employees of the Fire Division, the City will make a reasonable effort to maintain the manpower strength assigned to each company on each platoon as follows:
>
> Engine Companies - One (1) Officer and three (3) Firefighters
>
> Truck Companies - One (1) Officer and three (3) Firefighters
>
> Rescue One - One (1) Firefighter
>
> Car 2 -Battalion Fire Chief and One (1) Firefighter
>
> 6-2 In the event that manpower of any Engine or Truck company on any platoon should fall below three (3) individuals and such

> assignments cannot be made to fill such shortage without reducing manpower in the other companies below the minimum allowed, said shortage shall be filled by overtime work in accordance with Article XII. No apparatus shall leave quarters for a normal alarm response with less that two (2) men at any time for any reason except Rescue Company One (1).

Plummer certifies that the disputed language has been in the FMBA's agreement for at least 15 to 20 years. He asserts it was negotiated specifically for the heath and safety of the employees of the Fire Division and is not intended as a minimum staffing provision, but rather what constitutes a safe environment for the operation of the various apparatus used by the firefighters. The term engine companies, truck companies and rescue one and Car 2 refer to the apparatus and not the facilities where they are stored.

Plummer further certifies that in section 6-1, engine companies require three firefighters because one functions as a driver and pump operator, the second as the nozzle man, and the third as the control man. Truck companies require three firefighters because one functions as the driver and control of the ladder, the second functions as the can and hook person, and the third firefighter functions as the outside vent and rear evaluator of the structure. Rescue One requires one firefighter to be the initial person to perform a search of above and below the fire. Car 2 requires one firefighter whose primary

responsibility is accountability for who is in and out of the fire scene. Plummer asserts that in a post-9/11 era, the public is aware of the significant risk that all fire employees face and the disputed contract provisions are not related to minimum staffing, but are related to health and safety of firefighters.

The certification of counsel submitted by the PFOA serves to attach exhibits including: The National Fire Protection Association's Standard 1710; the NJ Department of Community Affairs, Division of Fire Safety (NJDFS) April 21, 2006 report "Firefighter Runs Out of Air and Loses Consciousness While Operating at a Structure Fire"; NJDFS report dated September 25, 2003 "Two Chief Officers and a Firefighter Killed in a Collapse During a Structural Fire"; and a NJDFS report dated February 9, 2007 "Firefighter Receives Severe Respiratory Injuries While Operating at a Structure Fire."

Our jurisdiction is narrow. We will address only the abstract issue of whether the subject matter of the proposals are within the scope of collective negotiations. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). We do not consider the wisdom of any contract proposal. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977). The scope of negotiations for police officers and firefighters 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. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981). However, we will consider only whether the proposals are mandatorily negotiable. We do not decide whether contract proposals 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). Paterson outlines the steps for determining whether a proposal is mandatorily negotiable:

> 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. [87 N.J. at 92-93; citations omitted]

The City argues that the disputed contract language is a minimum staffing provision which is an inherent managerial prerogative that is not mandatorily negotiable as Article 6-1 requires the deployment of a set number of officers and

firefighters on each piece of equipment and Article 6-2 requires the maintenance of a minimum staffing level. The City relies primarily on Township of Nutley, P.E.R.C. No. 2012-25, 38 NJPER 207(¶71 2012)(employer has a managerial prerogative to operate under minimum staffing levels) and North Hudson Regional Fire and Rescue, P.E.R.C. No. 200-78, 26 NJPER 184 (¶31075 2000) (public employer is not required to negotiate overall staffing levels or the number of firefighters on duty at a particular time even when staffing decisions may affect employee safety).

The FSOA responds that the disputed language is mandatorily negotiable because it is directly limited to specific safety issues and equipment; explicitly states the parties agreed to the language "to protect the health and safety of the employees of the Fire Division"; the staffing levels set forth are a recitation of those approved by the NFPA; and the reports of the NJDFS it supplied support adequate staffing. The FSOA further argues that this Commission should hold a factual hearing to develop a full record as to whether safety is the primary purpose of the language. The FSOA relies on cases from several other jurisdictions that permitted minimum staffing/safety disputes to proceed to a hearing and were found ultimately to be mandatorily negotiable.[1/] It urges this Commission to recognize a new

1/ The FSOA relies on City of New Rochelle v. Crowley, 403 N.Y.S.2d 100 (A.D. 1978); Village of Oak Lawn v. Illinois (continued...)

standard that places more importance on firefighter safety than money.[2/]

The FMBA argues that the disputed language is related to safety and should be found mandatorily negotiable. It asserts sending an insufficient number of firefighters to an active fire scene is unacceptable. The language in dispute is a protocol negotiated long ago to determine what the parties considered an unsafe alarm response. The FMBA relies on State of New Jersey Judiciary, I.R. No. 2007-14, 33 NJPER 138 (¶49 2007), an interim relief case where the Commission designee found issues of employee safety deriving from a change in protocol requiring home inspections to be mandatorily negotiable. However, we note that this Commission granted reconsideration of that interim decision and vacated the interim relief order to negotiate.

1/ (...continued)
Labor Relations Board, No. 1-10-347, 2011 IL App (1st) 103417, 2011 Ill. App. LEXIS 974 (1st. Dist. 2011); Village of Streamwood and IAFF Local 3022, Case No. S-DR-11-0001 (2010); Detroit v. Detroit Firefighters Ass'n, 204 Mich. App. 541, 517 N.W.2d 240, 1994 Mich. App. LEXIS 183, 147 LRRM (BNA) 2215 (Mich. App. 1994); City of Manistee v. L-645, IAFF, 435 N.W.2d. 778 (Mich. App. 1989); City of Trenton v. Trenton Firefighters Union, L-2701, 420 N.W.2d. 1488 (Mich. App. 1988); and City of Erie and IAFF Local 293, 459 A.2d. 1320 (Pa. Cmwlth 1982).

2/ The FSOA also argues that the scope petition is premature as the parties had not negotiated prior to the filing of the City's interest arbitration petition and that the interest arbitrator has jurisdiction to decide the scope issue. We reject this argument and take administrative notice that the parties proceeded to mediation and settled their successor agreement subject to this decision.

P.E.R.C. No. 2008-12, 33 NJPER 225 (¶85 2007), granting recon. I.R. No. 2007-14.

The City replies that two of the cases cited by the FSOA are distinguishable as the Commission held that the contract language was related to safety and did not interfere with the employer's managerial prerogatives. See Township of Hillside, P.E.R.C. No. 83-132, 9 NJPER 271(¶14123 1983) (proposal concerning installation of emergency and alley lights on police cars is mandatorily negotiable as it did not interfere with employer's ability to select vehicles of its choice) and Middlesex Cty. and PBA Local 152 Correction Officers of Middlesex Cty. Workhouse, P.E.R.C. No. 79-80, 5 NJPER 194(¶10111 1979), aff'd in pt., rev'd in pt., 6 NJPER 338 (¶1169 App. Div. 1980) (equipping and repair of vehicles, to the extent it directly relates to employee health and safety is mandatorily negotiable. All other aspects of vehicle acquisition were managerial prerogatives). The City further responds that the standards of the NFPA and the reports of the NJDFS are not binding on it, but may be considered by the City in exercising its managerial discretion. It cites City of Elizabeth, P.E.R.C. No. 92-106, 18 NJPER (¶23109 1992) (arbitration restrained where grievance contested City's decision to adopt NFPA standards and require all firefighters to wear protective trousers during emergency calls).

We reject the FSOA's argument that an evidentiary hearing should be held in this matter. First, a timely request for a hearing was not filed. N.J.A.C. 19:13-3.6. Second, the contract language is clear and unambiguous. Common sense dictates that the larger the response to a fire alarm, the safer the scene will be for an individual firefighter. However, the employer retains the managerial prerogative to determine what that response will be. Public employers are not required to negotiate about overall staffing levels or how many firefighters or fire officers will be on duty at a particular time, even where staffing decisions may effect employee safety. North Hudson Regional Fire and Rescue. Similarly, public employers are not required to negotiate how many firefighters will be assigned to a truck, how many police officers will be assigned to a patrol car, or how many sheriff's officers will be assigned to a prisoner security detail. See, e.g., County of Middlesex, P.E.R.C. No. 2013-46, 39 NJPER 269 (¶92 2012).

Here, the language in dispute requires the City to maintain specific staffing levels and alarm responses. It therefore substantially limits the City's policymaking power to determine the size of its workforce and how to deploy its fire personnel to best protect its citizens.

ORDER

Articles 6-1 and 6-2 of the City of Plainfield's collective negotiations agreements with the Plainfield Fire Officers Association, Local 207 and the Firemen's Mutual Benevolent Association, Local No. 7 are not mandatorily negotiable.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni and Boudreau voted in favor of this decision. Commissioners Jones and Voos voted against this decision. Commissioner Eskilson recused himself.

ISSUED: December 18, 2014

Trenton, New Jersey