

P.E.R.C. NO. 77-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BROOKDALE COMMUNITY COLLEGE POLICE
FORCE, a/w FRATERNAL ORDER OF POLICE,
LODGE 54,

Petitioner,

Docket No. SN-77-13

-and-

BROOKDALE COMMUNITY COLLEGE,

Respondent.

ERRATA

The Commission's decision, P.E.R.C. No. 77-53, in the above-entitled matter that issued on March 17, 1977 is hereby corrected as follows:

<u>PAGE</u>	<u>LINE</u>	<u>DELETE</u>	<u>SUBSTITUTE</u>
7	5	City's	College's
7	7	City's	College's


Jeffrey B. Tener
Chairman

DATED: March 22, 1977
Trenton, New Jersey

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SYNOPSIS

The College and the Police Force jointly initiated a scope of negotiations proceeding seeking a determination as to whether the subject of whether and at what times members of the campus police force shall carry firearms is a required subject for collective negotiations. This dispute arose during the course of collective negotiations for a successor agreement between the parties. The Police Force had sought to negotiate the right to carry firearms at all times while on duty. The College had consistently rejected this demand as being non-negotiable. In order to conclude a collective negotiations agreement when all other issues were resolved the parties agreed to leave the firearms matter open, pending the resolution of the negotiability dispute by the Commission. The Commission holds that the subject of whether and at what times members of the College's campus police force shall carry firearms is not a required subject for negotiations, but is a permissive subject for negotiations. The Police Force is therefore ordered to refrain from insisting, to the point of impasse, upon the inclusion of this subject in a collective negotiations agreement with the College. The Commission further finds that any impact or effect of the College's decision on the terms and conditions of employment of campus police officers, including employee safety, would be a required subject for collective negotiations.

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Appearances:

For the Petitioner, Healy and Falk, Esqs.
(Mr. Allen E. Falk, of Counsel)

For the Respondent, Murray, Meagher and Granello, Esqs.
(Mr. Malachi J. Kenney, of Counsel and on the Brief)

DECISION AND ORDER

A joint Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (hereinafter the "Commission") on November 1, 1976, by Brookdale Community College (hereinafter the "College") and the Brookdale Community College Police Force, a/w the Fraternal Order of Police, Lodge 54, (hereinafter the "Police Force")^{1/} seeking a determination as to whether a certain matter in dispute is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq.

1/ The Commission's Rules governing scope of negotiations proceedings state that in the case of a joint petition the party contending that the disputed matter is within the scope of collective negotiations shall be designated the "Petitioner".
N.J.A.C. 19:13-3.1.

(hereinafter the "Act").^{2/} The statement of dispute in the Petition requests a determination as to whether "the subject of whether and at what times members of the Campus Police Force shall carry firearms is a required subject for collective negotiations."

The factual context in which the instant dispute arose is not complicated and is undisputed by the parties. On October 28, 1976 the College and the Police Force, representing thirteen (13) police officers employed in non-supervisory positions by the College, entered into a new collective negotiations agreement concerning terms and conditions of employment. During the course of the negotiations that resulted in the execution of the agreement, the Police Force sought to negotiate the right to carry firearms at all times while on duty.^{3/} The College consistently rejected this demand as being non-negotiable. In order to conclude a collective negotiations agreement when all other issues were resolved, the parties agreed to leave the firearms question open,

^{2/} The Commission's authority to determine whether the matter in dispute is within the scope of collective negotiations is provided by N.J.S.A. 34:13A-5.4(d), which states: "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 matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court."

^{3/} It is uncontroverted that at the present time unit members of the Police Force are permitted to carry firearms while on duty only when the college campus is officially closed /from 10:30 p.m. to 7:30 a.m. on weekdays, as well as on Sundays and legal holidays/ and when carrying money from the College's business

(Continued)

pending the resolution of the negotiability dispute by the Commission. The aforementioned Scope Petition was thereafter jointly filed by the parties with the Commission.

The Police Force filed its original brief herein on December 16, 1976 and the College filed its original brief on December 23, 1976. Thereafter the College filed its reply brief on January 7, 1977 and the Police Force filed its reply brief on January 20, 1977. Neither party has requested an evidentiary hearing or oral argument.

Based upon the entire record herein, the Commission finds and determines as follows.

The College's authority to employ its own police force derives from N.J.S.A. 18A:6-4.2 et seq., which states, in part, that institutions of higher education "may appoint such persons as the governing body may designate to act as policemen for the institution." Police officers so hired must be approved by the local chief of police [N.J.S.A. 18A:6-4.3] and must successfully complete an approved police training course [N.J.S.A. 18A:6-4.4]. These police officers possess all the powers of policemen and constables to deal with criminal offenses and other violations

3/ offices for bank deposit. Otherwise, at present, they are prohibited from carrying firearms on duty while the campus is officially open to students, faculty, staff and the public.

Firearms are kept at the campus police headquarters for use in emergencies. The College, however, stated that it was unaware of the occurrence of any emergency in the past that required the use of these weapons during the hours that the college campus was open.

of the law while patrolling institutional property /N.J.S.A. 18A:6-4.5/^{4/} and to enforce traffic laws /N.J.S.A. 18A:6-4.7/. In addition N.J.S.A. 18A:6-4.8 exempts campus police officers from the State "Concealed Weapons Law" as set forth at N.J.S.A. 2A:151-41. The local municipal police /the Middletown Township Police Department in the instant matter/ retain full authority to act on college property /N.J.S.A. 18A:6-4.10/, if so requested.^{5/}

After the creation of a campus police force in the public sector, pursuant to the aforementioned statutory provisions, the New Jersey Employer-Employee Relations Act requires that an institution of higher education /such as the College/, as the public employer, negotiate in good faith with the recognized or certified majority representative of those employees, with respect to the terms and conditions of their employment.^{6/}

The Police Force in the instant case argues that the issue of whether campus police officers should carry firearms at all times while on duty is a term and condition of employment and is a required subject for collective negotiations. The Police

^{4/} It is undisputed that the Police Force has as its primary responsibility the maintenance of security on the College's Lincroft Campus and the enforcement of traffic and parking regulations on the campus.

^{5/} It is apparently undisputed that the Middletown Township police customarily enter the campus area only when requested to do so by the campus police.

^{6/} N.J.S.A. 34:13A-5.3 provides in part: "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

Force maintains that this firearms issue directly involves the well-being and safety of the campus police officers, a matter that is clearly a term and condition of employment. The Police Force also asserts that the aforementioned statutes relating to the establishment of a campus police force N.J.S.A. 18A:6-4.2 et seq. mandate that a campus police force, once appointed, be fully armed at all times and that only the amendment or repeal of existing state laws can change that mandate.

The College responds that the question of whether campus police officers should carry firearms at all times while on duty is a question of the manner and means in which a public service entrusted to the College, i.e., the providing of police protection, is to be performed and is, therefore, not within the scope of collective negotiations. Although conceding that the issue of firearms for policemen involves, to some degree, a question of employee safety, the College contends that the safety implications of a decision as to whether campus police officers shall carry firearms are not sufficient to make the issue a mandatory subject for negotiations. The College submits that inasmuch as it has the statutory responsibility to provide police protection on campus, the question of whether the service is better provided by the presence of armed or unarmed officers is a question of "means and methods", the resolution of which is the College's managerial prerogative, whatever the interest or expertise of its employees. The College adds that since the matter at issue raises questions of "such unusual delicacy and

sensitivity" which effect all members of the College community, it is not an appropriate subject for collective negotiations.

In attempting in the past to analyze whether a particular subject matter is a term and condition of employment the Commission has relied upon the distinction which must be drawn between the actions of an employer which directly concern terms and conditions of employment, such as employee job safety,^{7/} and those activities which do not concern terms and conditions of employment, but which do have an impact or an effect upon them. In the former the action or decision itself must be negotiated with the majority representative of the employees, whereas in the latter the decision or activity does not have to be negotiated but its impact or effect upon terms and conditions of employment must.^{8/} The Commission in the past has recognized that while such distinctions are perhaps more difficult to make when dealing with negotiability disputes relating to police or firefighters since, as the College concedes in its briefs, every aspect of their jobs may raise questions of personal

^{7/} With regard to safety see In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 142 (1976) appeal pending, App. Div. Docket No. A-3402-75 (fire escapes for employees); In re Hunterdon County Board of Chosen Freeholders, E.D. No. 76-9, 1 NJPER 64 (1975) (employer rule requiring the wearing of safety helmets and discipline for non-compliance. Cf. In re Newark Firemen's Union of New Jersey, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) and In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER ____ (1977).

^{8/} The rationale was most fully explained in the Commission's decision, In re Rutgers, the State University, P.E.R.C. No. 76-13 at pages 24-25, 2 NJPER 13, 18 (1975), but had been utilized prior to that decision. In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). It has continued to be the basis for Commission decisions since. See e.g. In re North Plainfield Board of Education, P.E.R.C. No. 76-16, 2 NJPER 49 (1976); In re Byram Township Board of Education, supra; In re City of Jersey City, supra.

safety,^{9/} the Commission believes that the application of this analytical framework provides the most appropriate method for resolving the instant dispute.

An analysis of the Police Force's arguments indicates that it is not really the College's decision not to negotiate about firearms policies which is claimed to jeopardize employee safety, but rather the potential effect or impact of the College's action. In its original brief the Police Force refers to the waiver and relinquishment of a policeman's statutory right of self-protection and defense while carrying out the dangerous duties of a commissioned police officer as being the logical result of the College's refusal to negotiate about the subject of whether and at what times members of the campus police force should carry firearms. The Police Force's reply brief refers to many potential effects of not being properly armed while on duty. The Police Force refers to the possibility that a campus police officer would respond, pursuant to a newly installed panic alarm system, to a holdup in progress at the College's payroll office without the ability to properly respond if deadly force was exerted against him by the perpetrator of the crime. In the alternative the Police Force states that a campus police officer would be guilty of irresponsible behavior if he refused to immediately report to the scene of a holdup and took time to report to police headquarters on campus in order to follow existing departmental procedures relating to the checking out of firearms during

9/ See In re Newark Firemen's Union of New Jersey, supra and In re City of Jersey City, supra.

emergencies. In response to an assertion of the College that one possible way of avoiding potentially violent confrontations between unarmed campus police and criminals would be to permit the lawbreakers to leave the campus area to be dealt with thereafter by the municipality's police force, the Police Force stated that this could result in lawsuits being brought against the College for failure to provide adequate police protection.

The above statements clearly establish that the College's decision to decide the manner and means by which it should render police services to its constituency does not directly concern employee safety. The Commission determines that it is a managerial decision not subject to the duty of mandatory negotiations as to whether and at what times members of the campus police force shall carry firearms in the performance of their duties on campus. However, it is also evident that the College's continued implementation of its decision not to permit campus police officers to carry guns while on duty while the campus is open may have a direct effect or impact on employee safety, an issue which is subject to mandatory negotiations. What appears to be called for are bilateral negotiations concerning the establishment of rules on safety procedures to provide for the legitimate concerns of the campus police officers regarding situations that may arise when their lives or physical well being are in danger. ^{10/}

10/ The College in its briefs concedes that it is required to negotiate demands which directly relate to employee job safety.

Mandatorily negotiable "rules and regulations" on the safety issue may provide, for example, that campus police officers shall not respond to a holdup alarm alone, but instead should radio for immediate assistance from municipal police officers. The parties may also negotiate regarding new and better safety equipment to protect campus police officers in potentially dangerous circumstances. These examples are not cited as solutions or even proposals to the parties. They are mentioned only to demonstrate that it is the effect or impact of the College's decision not to permit members of its police force to wear firearms, under normal circumstances, during hours when the campus is open, that may directly affect the employees and it is this effect or impact that is mandatorily negotiable.

Additionally, the Police Force has contended that inasmuch as N.J.S.A. 18A:6-4.2, et seq. provides, in part, that campus police officers possess all the law enforcement powers of policemen, and further provides that these individuals are exempted from being affected by the State "Concealed Weapons Law", set forth in N.J.S.A. 2A:151-41, campus police officers have not only the right, but the legal responsibility, to carry firearms while on duty. The Police Force submits therefore that the state of the law clearly mandates that a campus police force be armed at all times and that only an amendment to or the repeal of existing statutes can change that status.

After careful analysis of the record and the applicable statutes, the Commission concludes that the legislation referred

to by the Police Force does not mandate that members of college police forces must be armed. N.J.S.A. 18A:6-4.8 provides in part that, should they be so armed while on duty, they will not be subject to criminal penalties. N.J.S.A. 18A:6-4.8 simply adds campus police officers to the long list of individuals who are exempted from being covered by the State "Concealed Weapons Law".^{11/} The Commission therefore determines that the College's refusal to provide the campus police force with firearms or to negotiate about same is not inconsistent with the statutory provisions since those statutes cited by the Police Force merely permit a college to equip its police officers with guns while on duty, without facing the risk of legal liability, but does not require that arms be supplied or utilized.

It appears that the Police Force in addition assumes that the grant of police powers to campus patrolmen, pursuant to N.J.S.A. 18A:6-4.5, is synonymous with a grant that they be given firearms in order that they are able to assume and perform their law enforcement functions. It is clear, however, that the state judiciary has recognized that individuals may be categorized as policemen for the purposes of the detection, apprehension, arrest and conviction of offenders, even though they are not armed.^{12/}

^{11/} See N.J.A.C. 2A:151-43 /carrying weapons without permit or identification card; exception of police, military personnel, jailers, etc.7.

^{12/} See County of Gloucester v. P.E.R.C., 107 N.J. Super. 150 (App. Div. 1969), aff'd per curiam, 55 N.J. 333 (1970) (rev'g P.E.R.C. No. 11, August 20, 1969).

Therefore, based upon the above discussion, we hold that the subject of whether and at what times members of the College's campus police force shall carry firearms is not a required subject for negotiations. We do not construe the Act or any other statute cited in the parties' briefs as prohibiting the College from discussing or negotiating with the Police Force on this subject if it so desires, and thus deem this subject to be permissibly negotiable. Although not specifically raised in the instant Scope Petition because it is conceded by the College, it is clear, as previously analyzed, that any impact or effect of this subject on the terms and conditions of employment of campus police officers, including employee safety, would be a required subject for collective negotiations.

ORDER

The Police Force is hereby ordered to refrain from insisting, to the point of impasse, upon the inclusion of the aforesaid permissive subject in a collective negotiations agreement with the College.

BY ORDER OF THE COMMISSION


Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Hurwitz and Parcels
voted for this decision
Commissioner Forst abstained.
Commissioner Hipp was not present.

DATED: Trenton, New Jersey
March 16, 1977
ISSUED: March 17, 1977