

P.E.R.C. NO. 79-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY,

Petitioner,

-and-

Docket No. SN-79-96

LOCAL 286, I.A.F.F., AFL-CIO,

Respondent.

SYNOPSIS

The Chairman of the Commission in a scope of negotiations matter determines that several minimum manning provisions at issue are permissive, not required subjects, for collective negotiations. Local 286, I.A.F.F., AFL-CIO was ordered to refrain from insisting to the point of impasse upon the inclusion of such proposals in a negotiated agreement with the City of Perth Amboy. Such proposals may not be submitted to compulsory interest arbitration unless both parties agree.

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Appearances:

For the Petitioner, Pachman, Aron, Till,
& Salsberg, Esqs.
(Brian C. Doherty, on the Brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(Martin List, on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the City of Perth Amboy ("City") with the Public Employment Relations Commission on March 28, 1979 disputing the negotiability of a matter which Local 286, I.A.F.F., AFL-CIO ("Local 286") was seeking to negotiate.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The City filed its Brief in this matter on April 4, 1979. Local 286 filed a Positional Statement which was dated April 10, 1979.

The issue placed before the Commission for determination in this instant proceeding is the negotiability of the following contract provision contained in the contract between the parties:

Article VIII - Tour of Duty Manpower

Section 1. In order to protect the health and safety of the employees, there shall be a minimum of thirteen (13) firefighters allowed during any tour of duty. In the event one or more of the employees regularly scheduled for a tour of duty cannot work during that particular tour of duty the minimum manpower then shall not fall below twelve (12) firefighters during that particular tour of duty.

Engine 1 - One Firefighter

Engine 2 - One Firefighter

Engine 3 - One Firefighter

Engine 4 - One Firefighter

Engine 5 - One Firefighter

Engine 6 - Three Firefighter on
thirteen man roll call

Truck 2 - One Firefighter

Truck 3 - One Firefighter

Snorkel or Truck - Two Firefighters

Control Room - One Firefighter

Section 2. In the event that manpower shall for any reason fall below the minimum manpower strength provided in Section 1 for each company on each shift, such shortage shall be filled by overtime work in accordance with Article VII. There shall be an overtime cap of \$25,000 annually. If \$25,000 annual cap is reached prior to end of year, then overtime will be at the discretion of employer.

The Commission pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission. This particular expeditious procedure will enable parties to receive a decision concerning certain negotiability disputes shortly after

positional statements or briefs have been received from the parties and will assist in the avoidance of protracted delays in the impasse resolution process affecting public employers and employee organizations.

The Commission in numerous decisions has determined that minimum manning provisions, i.e. proposals relating to the number of employees on a shift or in a department or, more generally, to the level of service and staff levels, are not required subjects of negotiations. See, In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); In re Newark Firemen's Union, P.E.R.C. No. 76-40, 2 NJPER 139 (1976); In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977); In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977); In re Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER 192 (¶4097 1978); In re Town of Northfield, P.E.R.C. No. 78-82, 4 NJPER 247 (¶4125 1978); In re Township of Maplewood (FMBA), P.E.R.C. No. 78-89, 4 NJPER 258; In re Township of Maplewood (PBA), P.E.R.C. No. 78-92, 4 NJPER 265 (¶4135 1978); In re Cinnaminson Township, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978) In re Township of Clark, P.E.R.C. No. 79-50, 5 NJPER 90 (¶10049 1979); and In re Township of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979). The Commission in these prior decisions has considered the arguments raised by the parties in the present case and has consistently ruled that minimum manpower provisions such as the proposals at issue in this case are only permissively negotiable. These

proposals may not be insisted upon to the point of impasse, nor may they be submitted to compulsory interest arbitration absent mutual agreement of the parties.

In specific response to Local 286's contention that the manning provisions at issue relate directly to the safety of firefighters, the Commission has noted in prior manning cases that the effect of changes in manning practices on employees' terms and conditions of employment, including, for example, employees' workload or safety, would be a required subject for collective negotiations.^{1/}

The undersigned notes that Section 2 of Article VIII in part provides for overtime payments, subject to a "cap" of \$25,000 annually, to be paid to firefighters if manpower on a particular shift falls below the minimum manpower strength provided for in Section 1 of that Article. Overtime payments are of course a form of compensation and as such involve a required subject of collective negotiations. Once a public employer determines its minimum shift complement, a majority representative may negotiate additional compensation for firefighters working on "understaffed" shifts in the form of overtime payments to those assigned the work. But the City is not required to negotiate a provision requiring the employment of an additional employee(s) if manpower falls below any set level.

The undersigned further notes and rejects the City's argument that the New Jersey Supreme Court's decision in Ridgefield

^{1/} See In re Newark Firemen's Union, supra, and In re Brookdale Community College Police Force, P.E.R.C. No. 77-53, 3 NJPER 156 (1977).

Park Education Ass'n v. Ridgefield Park Board of Education, 78 N.J. 144 (1978) eliminated the category of permissive subjects in all public sector negotiations. The Supreme Court in that decision stated that Chapter 85, Public Laws of 1977 (N.J.S.A. 34:13A-14 to 21) expressly provided for a permissive category of negotiations relating to contract negotiations affecting police and fire fighters.^{2/} The Supreme Court contrasted the specific provisions in Chapter 85 providing for permissive subjects with the absence of references to a permissive category for collective negotiations within Chapter 123, Public Laws of 1974. The Supreme Court in reference to Chapter 85's provisions for permissive subjects stated the following:

Of course, this enactment (c. 85) is not now before us. Neither is it of great importance to our interpretation of L. 1974, c. 123. It represents a specific decision on the part of the Legislature to authorize permissive negotiations with respect to police and firemen. Moreover, if it were so clear that L. 1974, c. 123 had created such a permissive area, we doubt that the Legislature would have had to provide carefully for a permissive category in L. 1977, c. 85. This recent statute covering a small percentage of all public employees may not be accorded dispositive effect in interpreting a more general statute passed three years earlier. We intimate no view as to the validity of the authorization for binding arbitration of "permissive subjects of negotiation" in N.J.S.A. 34:13A-16(f). 78 N.J. at 158.

The Court later specifically refrained from declaring statutory provisions providing for negotiations relating to managerial prerogatives unconstitutional when it added the following in the Ridgefield Park decision:

^{2/} The Supreme Court cited specifically N.J.S.A. 34:13-16(h) and N.J.S.A. 34:13A-16(f).

The Legislature is of course free to exercise its judgment in determining whether or not a permissive category of negotiation is sound policy. We wish merely to point out that careful consideration of the limits which our democratic system places on delegation of government powers is called for before any such action is taken. On the other hand, we are in no way prejudging the constitutionality of the concept of permissive negotiation per se. (footnote omitted) 78 N.J. at 165-166.

Given the above-cited language and the existence of N.J.S.A. 34:13A-16(h) and (f) the Commission must assume the existence of a permissive area of negotiations within the framework of police and fire negotiations as set forth in Chapter 85.

ORDER

Based upon the above discussion, it is hereby determined that the minimum manning provision at issue is a permissive subject for collective negotiations. Local 286 is ordered to refrain from insisting to the point of impasse upon inclusion of such a proposal in a collectively negotiated agreement with the City of Perth Amboy. Such proposal may not be submitted to compulsory interest arbitration unless both parties agree.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
May 1, 1979