

P.E.R.C. NO. 83-116

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-82-116

CAMDEN FIRE OFFICERS
ASSOCIATION, LOCAL 2758,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that certain contract proposals of the Camden Fire Officers Association, Local 2758 are not mandatorily negotiable. A proposal requiring the City of Camden to adopt and enforce reasonable rules and regulations of the operation of the Fire Department is not mandatorily negotiable because it conflicts with N.J.S.A. 40A:14-7. Proposals restricting the City's right to assign fire-fighters to perform certain police functions are not mandatorily negotiable to the extent they conflict with N.J.S.A. 40A:14-54, which contemplates that fire officers shall have and use the powers of police officers while going to, attending, and returning from fires, and with the City's ability to respond to civil emergencies and to deploy its firefighting forces. A proposal requiring the City to maintain a complement of one superior officer per company is not mandatorily negotiable because it sets a minimum manning level.

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Appearances:

For the Petitioner, Murray & Granello, Esqs.
(Robert E. Murray, of Counsel)

For the Respondent, M. Craig Aronberg, Esq.

DECISION AND ORDER

On June 4, 1982, the City of Camden ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The City alleges that certain proposals which the Camden Fire Officers Association, Local 2758 ("Local 2758") wishes to submit to binding interest arbitration for inclusion in a collective negotiations agreement are not mandatorily negotiable. The City also alleges that a clause from the predecessor agreement which the City seeks to remove is not mandatorily negotiable.

The Association's proposals in dispute state:

2. The City shall adopt and enforce reasonable rules and regulations for the operation of the Fire Department.

3. Police Duties

a. Fire Officers shall not be required to perform any police duties except in the issuance of summons in accordance with N.J.S.A. 40A:14-30.

b. The City shall not require a Fire Officer to order the use of, direct the use of, or man hose streams or any other devices or appliances, or take part actively in the quelling of any civil disorder.

c. In addition to the police functions enumerated in this article, no fire officer shall be required to order the closing of fire hydrants where there is a possibility of physical injury to himself or other firefighters.

5. Physical Endurance - No officer past age 45, in any capacity within the Fire Department shall be subject to a physical endurance test to have his employment terminated due to physical endurance.

Article XIII(A), which the City wishes to remove, reads:

The City hereby agrees to maintain throughout the duration of this contract, a complement of one (1) Superior Officer per Company.

The City has filed a brief. The Association has elected not to file a brief.

While this matter was pending before the Commission, Arbitrator Lawrence I. Hammer issued an interest arbitration award. Noting the pendency of this petition, the arbitrator refrained from ruling on the proposals contested here with the exception of proposal #5. Since the arbitrator's award did not grant the Association the language it sought, the scope of negotiations dispute over proposal #5 is moot.

After a thorough review of the proposals in dispute, we conclude that the Association's proposals are not mandatorily negotiable.

Proposal #2, dealing with rules and regulations, would alter Article XII in the predecessor agreement by substituting the word "shall" for the word "may" in the following sentence:

A. The City may establish and enforce reasonable and just rules and regulations in connection with its operation of the Fire Department and maintenance of discipline provided such rules and regulations are not in conflict with the provisions of this Agreement.

The City argues that inserting "shall" into the above language would remove the statutory discretion that the City has in determining whether to enact rules for the department. It cites N.J.S.A. 40A:14-7 which provides, in part:

The governing body of any municipality, by ordinance, may create and establish a paid or part-paid fire department and force and...adopt and promulgate rules and regulations for the government of the department and force and for the discipline of its members.

We agree with the City that the substitution of "shall" for "may" would be inconsistent with N.J.S.A. 40A:14-7 and therefore proposal #2 is not mandatorily negotiable. We note, however, that generally when a municipality wishes to exercise its discretion to promulgate rules which govern terms and conditions of employment, such rules must be negotiated with the majority representative before they are established. See N.J.S.A. 34:13A-5.3.

In support of its contention that proposals #3(a), (b) and (c) are not mandatorily negotiable, the City notes that firefighters, while they are engaged in the performance of their duties, have full police powers pursuant to N.J.S.A. 40A:14-54. This statute provides:

The members and officers of the paid or part-paid fire department and force of a municipality shall have the powers and authority of police officers within the municipality to be exercised while going to, attending and returning from a fire."

The City then argues that these proposals would constrict the range of police powers which the Legislature has determined can be exercised by firefighters.

We hold that proposal #3(a) conflicts with N.J.S.A. 40A:14-54. That statute contemplates that fire officers shall have and use the powers of police officers while going to, attending, and returning from fires. Proposal #3(a) would prevent the City from requiring fire officers to use their police power at such times. Under State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978), this proposal is therefore non-negotiable.

Proposal #3(b) would not conflict with this statute to the extent it addresses circumstances not connected with an actual fire, but is nevertheless not mandatorily negotiable as it impinges on the City's ability to determine what functions its fire department will perform during civil emergencies. We recognize that firefighters have a legitimate interest in preserving their unit work and in not being required to perform duties which primarily involve law enforcement skills and which are normally assigned to police officers. In re Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); In re Weehawken, P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1981). However, proposal #3(b), as written, goes beyond these legitimate interests and precludes the City from using its Fire Department to help respond to a civil emergency.

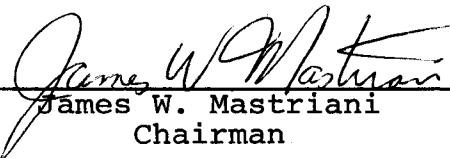
Proposal #3(c) certainly has elements relating to employee safety, a term and condition of employment. On balance, however, the proposal predominantly touches upon the City's managerial prerogative to deploy its firefighting forces. Therefore, it is not mandatorily negotiable.

Finally, Article XIII(A) of the existing contract is a minimum manning provision and as such is not mandatorily negotiable. See, e.g., In re City of East Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶111184 1980), aff'd App. Div. Docket No. A-4851-79 (July 15, 1981); In re City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982).

ORDER

Proposals #2, #3(a), (b), and (c), and Article XIII(A) of the parties' most recently expired contract are not mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch, Suskin and Newbaker voted for this decision. Commissioners Graves and Hipp voted against this decision.

DATED: Trenton, New Jersey
February 16, 1983

ISSUED: February 17, 1983