

P.E.R.C. NO. 99-99

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF RAHWAY,

Petitioner,

-and-

Docket No. SN-99-47

FMBA LOCAL NO. 33,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Rahway for a restraint of binding arbitration of a grievance filed by FMBA Local No. 33. The grievance contests the fire chief's directive ordering firefighters to flush hydrants. The Commission is persuaded that the periodic flushing of fire hydrants is essential to public safety, but the City has not shown how having public works employees rather than firefighters flush hydrants would substantially limit its governmental policymaking power. The Commission is also not persuaded, on this record and at this juncture, that the firefighters' job description and normal duties encompass hydrant flushing. The City may assert in arbitration that it has a contractual right to require firefighters to flush hydrants. The City may also seek a declaration from the New Jersey Department of Personnel that hydrant flushing is part of the firefighters' job description.

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, Genova, Burns & Vernoia, attorneys
(Lynn S. Degen, on the brief)

For the Respondent, Abramson and Liebeskind Associates,
labor relations consultants (Arlyne K. Liebeskind, on the
brief)

DECISION

On December 28, 1998, the City of Rahway petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by FMBA Local No. 33. The grievance contests the fire chief's directive ordering firefighters to flush hydrants.

The parties have filed briefs and exhibits. These facts appear.

The FMBA represents the City's uniformed fire personnel. The City and the FMBA are parties to a collective negotiations agreement effective from July 1, 1995 to June 30, 1999. Article III, Section 1(d) states:

Employees may be required to perform the following duties: serve 24 hours per day in attendance to the communications center at Fire

Headquarters, any duties relative to public emergency service with the exception of any and all police law enforcement work; servicing of fire hydrants.

The grievance procedure ends in binding arbitration.

The City maintains 686 hydrants for supplying water during fires. On April 28, 1998, the fire chief issued a memorandum stating:

The Rahway Fire Department will be performing the Spring Hydrant Flushing detail. Beginning the week of April 26th, the night shift will perform this detail. They should start no earlier than 2100 hours.

There are 15 Hydrant areas to be flushed and they must be flushed in order. The purpose of flushing is to move sediment and debris along the system and out the ends of each section. For each Area there is a map, a listing of the hydrants and a data sheet to record the following:

- . HYDRANT NUMBER
- . TIME STARTED
- . TIME STOPPED
- . COLOR OF WATER START TO FINISH, i.e. BROWN-CLEAR
- . REPAIRS NEEDED
- . SHEET #1 OF 1 OR 1 OF 2 DEPENDING ON THE AREA SIZE AND THE MAP # SHOULD BE NOTED ABOVE THE SHEET #.

The Water Department will calculate the time and total estimated flow. Ordinary repairs are to be noted on the sheet. Emergency repairs such as hydrant that won't shut off or a broken stem shall be reported to the Water Department immediately and the on-call repairman will respond.

The actual testing procedure is simple; you remove a 2-1/2" cap, screw on the diverter with a built in pressure gauge so that it dumps the water onto the roadway and open the hydrant, flushing until the water is clear. It should

take approximately 5 to 10 minutes per hydrant. The pressure should be recorded before shutting down the hydrant.

A minimum of 15 hydrants should be tested each night unless disrupted by an emergency. The detail will run 7 nights a week. All paperwork MUST be returned to the Battalion Chief PRIOR to the testing crew reporting off duty each day. A copy of the night's testing shall be FAXED to the Water Dept. @ 499-4781 each morning. The testing crew can be either two men in the Bronco or Pickup if delivered, or an Engine Company will be sent out the same as we now do for weeding and painting. Overtime to work this detail is not authorized.

Flushing hydrants is done once a year.

According to the City, assigning hydrant flushing to firefighters is authorized by the contractual provision concerning the "servicing of fire hydrants" and by a Department of Personnel (DOP) job specification stating that a firefighter "[m]aintains hydrants by removing caps, removing foreign objects, attaching and reading pressure gauges, greasing cap threads, removing ice or snow, and adding antifreeze when needed to ensure adequate water supply in times of emergency." The City also asserts that for at least 25 years firefighters have maintained hydrants by performing such functions as pumping out undrained hydrants; checking the drainage of hydrants; cleaning and lubricating discharge threads; cleaning, scraping and painting hydrants; clearing weeds, snow, and debris from around the hydrants; and marking and identifying hydrants. It adds that the safety of firefighters and the public mandates having clear lines and efficient water flow and that firefighters must use pressure gauges during flushing to test flow

efficiency and to clear the lines of sediment and debris. Firefighters flushing hydrants will be alerted to reduced flow rates and potential safety problems requiring immediate attention and repairs.

According to the FMBA, employees in the Department of Public Works have always flushed the fire hydrants and this responsibility was reassigned to firefighters because two DPW employees were out on extended sick leave and the City did not want to pay overtime to other DPW employees. It further asserts that neither the parties' contract nor the DOP job specification identifies hydrant flushing as a firefighting duty and that the DOP job specification and a recommendation in a National Fire Protection Association report encompass having firefighters conduct flow testing by attaching and checking pressure gauges, as opposed to having them flush hydrants in order to provide clean drinking water.

A day or two after the directive was issued, the FMBA grieved the hydrant detail and requested its discontinuance. The chief denied the grievance, asserting that this additional task was authorized by the DOP job specification; Article III, Section 1(d); and a past practice of servicing fire hydrants.

On May 6, the FMBA moved the grievance to the next level. It stated, in part:

On or about April 28, 1998, Rahway Fire Chief, Edward Fritz, issued a directive ordering firefighters to begin a hydrant flushing detail that unit members were never before required to

do as part of their regular duties. Hydrant flushing had heretofore been carried out by the Department of Public Works, Division of Water. The Fire Chief's order changed the terms and conditions of employment for the FMBA bargaining unit.

The FMBA contends that the action of the Fire Chief is in violation of Article I, Recognition and Areas of Negotiation, Section 1, Article III, Manpower, Section 1(d), Article XII, Responsibility of Parties, Article XVII, Retention of Benefits, and other contract articles, state statutes, federal laws and regulations relevant to the instant matter.

The grievance was apparently denied at that level and the FMBA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, we do not consider the contractual merits of this grievance or any contractual defenses the employer may have. We specifically do not consider whether hydrant flushing is encompassed within the contractual provision concerning "servicing of fire hydrants."

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. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for issues involving 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 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. In a case involving police and firefighters, 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. [87 N.J. at 92-93; citations omitted]

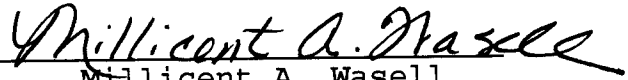
When a negotiability dispute arises over a grievance involving firefighters, arbitration will be permitted if the subject of the dispute is mandatorily or permissively negotiable. See Middletown Tp. P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd NJPER Supp.2d 130 (¶111 App. Div. 1983).

We are persuaded that the periodic flushing of fire hydrants is essential to public safety, but the City has not shown how having hydrants flushed by public works employees rather than firefighters would substantially limit its governmental policymaking powers. Citing In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 25 (App. Div. 1977) and City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985), the parties agree that the employer may unilaterally assign the hydrant flushing duties to firefighters if this duty is incidental to or comprehended within a firefighter's job description and normal duties. See also Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (¶28054 1997); West Orange Tp., P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982). On this record and at this juncture, we are not persuaded that the firefighters' job description and normal duties encompass hydrant flushing. The DOP job specification does not list hydrant flushing as a firefighter duty and Rahway's firefighters have not traditionally been responsible for that task. The City may have a contractual right to require firefighters to flush hydrants as part of the "servicing of fire hydrants," but that claim is in dispute. The City may assert that contractual position in arbitration and may also seek a declaration from DOP that could supersede any contrary contractual ruling. See City of Plainfield, P.E.R.C. No. 84-159, 10 NJPER 451 (¶15202 1984) (dismissing unfair practice charge protesting assignment of safety patrol duties to firefighters since the then Civil Service Commission had ruled that duties properly fit within firefighter title).

ORDER

The request of the City of Rahway for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: April 29, 1999
Trenton, New Jersey
ISSUED: April 30, 1999