

P.E.R.C. NO. 89-65

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF NUTLEY,

Petitioner,

-and-

Docket No. SN-87-68

F.M.B.A., LOCAL 44,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Firemen's Mutual Benevolent Association, Local 44 against the Township of Nutley. The grievance contests requiring fire fighters to dispatch police calls. The Commission finds that the dispatching duty has not been linked to the fire fighters' primary duties and that therefore the grievance's subject is at least permissively negotiable.

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FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL 44,

Respondent.

Appearances:

For the Petitioner, Mark S. Ruderman, Esq.

For the Respondent, Rinaldo & Rinaldo, Esqs.  
(Anthony D. Rinaldo, Jr., of counsel)

DECISION AND ORDER

On April 30, 1987, the Township of Nutley ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks to restrain binding arbitration of a grievance which Firemen's Mutual Benevolent Association, Local 44 ("FMBA") has filed. The grievance protests requiring fire fighters to dispatch police calls.

The parties have filed briefs and documents.<sup>1/</sup> These facts appear.

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<sup>1/</sup> The FMBA was granted two extensions of time to file a brief. On February 11, 1988, well after the last extension had expired, we advised the parties that the case would be decided without argument from the FMBA. The FMBA responded by forwarding a brief which it asserted had been timely mailed. The Township has questioned, but not objected to, the late filing. On March 8, 1988 the Township filed a reply brief.

The FMBA is the majority representative of the Township's full-time uniformed fire personnel below the rank of executive officer. The FMBA and the Township have executed a collective negotiations agreement effective January 1, 1985 to December 31, 1986. The agreement contains a retention of benefits clause and its grievance procedure ends in binding arbitration.

In April 1986, the FMBA and Township settled a grievance which alleged that the Township had impermissibly changed vacation scheduling. The settlement permitted the Township "to utilize a firefighter to perform supplemental dispatcher duties...to alleviate emergency manpower shortages within the Department of Public Safety." The agreement also states that the fire department will only be used for dispatching when its own minimum staffing requirements are satisfied. The dispatching is done at the public safety department's "Communications Center" which handles both police and fire calls. The settlement agreement expired December 31, 1986.<sup>2/</sup>

On January 7, 1987, the Township ordered a fire fighter to dispatch police calls. The FMBA grieved that order. The grievance was denied and the FMBA demanded arbitration. This petition ensued.

The Township argues that it has a non-negotiable prerogative to determine firefighter assignments. It cites City of

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<sup>2/</sup> The agreement also addresses its continuation, termination or modification beyond the expiration date.

Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) and Tp. of West Orange, P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982). It stresses that the dispatching duties are only assigned when "manpower" permits.

The FMBA responds that assigning police dispatching to fire fighters is not a managerial prerogative and is barred by the retention of benefits clause in the expired contract and by a May 26, 1987 interest arbitration award. It cites Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981) and City of Orange Tp., P.E.R.C. No. 85-120, 11 NJPER 373 (¶16134 1985).

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154; emphasis added].

Accordingly, we determine only whether the Township could legally agree to arbitrate the grievance. We do not determine the grievance's merits or the settlement agreement's vitality or impact.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.<sup>3/</sup> The Court stated:

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. 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 policy-making 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]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either

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<sup>3/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

mandatorily or permissively negotiable.<sup>4/</sup> See Middletown Tp. and Middletown PBA, P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policy-making powers.

No statute or regulation requires that fire fighters dispatch police calls. N.J.S.A. 40A:14-54 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.

See City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983). That statute does not apply to dispatching police calls.

Uniformed employees may be required to perform minor tasks incidental to their primary duties. See, e.g., Mercer Cty. Park Commission, P.E.R.C. No. 81-43, 6 NJPER 491 (¶11250 1980) (police required to check oil and change flats on patrol cars); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985) (fire fighters assigned school crossing and patrol duties connected to firefighting). In Tp. of West Orange, P.E.R.C. No. 83-14, 8 NJPER 447 (¶13210 1982), we found a clause requiring fire fighters to perform fire patrol duties on foot or in a vehicle to be related to firefighting and not mandatorily negotiable. However we have found mandatorily negotiable the assignment of non-emergency duties

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<sup>4/</sup> The Township's reply brief reiterates that it only seeks to restrain arbitration. Its petition does not refer to the negotiations and interest arbitration proceedings.

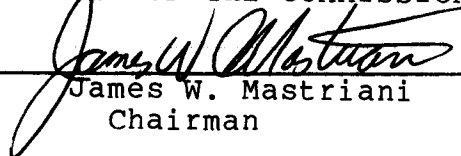
unrelated to firefighting. See Town of Kearny, P.E.R.C. No, 82-12, 7 NJPER 456 (¶12202 1981). Cf. In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12 (App. Div. 1977). Compare Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10127 1979), aff'd. App. Div. Dkt. No. A-3651-78 (7/1/80) (grievances contesting assignment of police dispatching to other uniformed employees are mandatorily negotiable).

There is no evidence that an emergency prompted having fire fighters dispatch police calls. Unlike City of Newark and Tp. of West Orange, this dispatching duty has not been linked to the fire fighters' primary duties. Even if we find this duty was not mandatorily negotiable, the Township has not established that arbitration of the grievance would substantially limit its policy-making powers. The grievance's subject is at least permissively negotiable.

ORDER

The Township's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
November 22, 1988  
ISSUED: November 23, 1988