

P.E.R.C. NO. 97-153

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-97-46

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the City of Newark for a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12. The grievance asserts that the City violated its contract with the FOP when it directed certain police officers to turn in their portable, two-way radios. The Commission finds that given the employees' safety concerns, this dispute is at least permissively negotiable and may be arbitrated.

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, Michelle Hollar-Gregory, Corporation
Counsel (Gregory J. Franklin, Labor Relations and
Compensation Officer)

For the Respondent, Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

DECISION AND ORDER

On November 22, 1996, the City of Newark petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Newark Lodge No. 12. The grievance asserts that the City violated its contract with the FOP when it directed certain police officers to turn in their portable, two-way radios.

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

The FOP represents the City's police officers. The parties entered into a collective negotiations agreement effective from January 1, 1995 through December 31, 1997. The grievance procedure ends in binding arbitration.

In 1971, the City began to issue hand-held, two-way radios to on-duty "field" personnel at the beginning of their shifts. The radios were turned in at the end of the shift for use by field officers on the next shift. This practice continued until 1992, when the City distributed new "walkie-talkie" radios to all officers, irrespective of assignment and without requiring officers to turn the radios in at the end of a tour of duty.

In May 1995, the City found that it did not have enough radios for the 180 new police officers who would graduate from the academy in July and begin field assignments. To meet the demand the City needed to purchase an additional 200 radios at an estimated cost of over \$150,000. That money had not been included in the budget for that fiscal year.

On May 31, 1995, after surveying assignments, the chief issued an order directing that 137 named officers turn in their radios by June 9. Eighteen of the officers were sergeants or lieutenants in a superior officers' negotiations unit. The remainder were detectives or patrol officers in the FOP negotiations unit. The officers came from these commands: Field Operations; Support Services; Management Services; Training Division; Community Service; Medical Services; Criminal Investigations; Candidate Investigation; Intelligence Section; Internal Affairs Bureau; and Personnel & Finance. The chief states that all officers subject to his directive perform administrative tasks with limited, if any, field assignments. The FOP's president states that radios have been

taken from officers assigned to transport prisoners and provide courtroom security and other officers who do field investigations and make arrests.

On June 5, 1995, the FOP filed a grievance asserting that the order violated several provisions of the agreement.^{1/} The grievance was denied by the City and the FOP demanded arbitration. This petition ensued.

The employer asserts that it has a non-negotiable right to determine which officers should be equipped with the radios, as the issue relates to the delivery of public services and public safety. It also maintains that there has been no appropriation authorized in the department's budget to purchase additional radios. The City suggests that, if necessary, it will return to its policy of issuing portable radios to on-duty personnel for their tour of duty only.

The FOP responds that the grievance presents legally negotiable safety issues and that the City's decision has placed officers in unnecessary jeopardy. It also asserts that since the dispute arose, another class has graduated from the academy and the City did not purchase enough radios to supply those new officers. It disputes the City's budgetary defense, noting that the City has had time to budget for sufficient radios to cover the shortfall but it has not done so.

^{1/} On that same date, the FOP filed an unfair practice charge (Docket No. CO-95-413) asserting that the order violated N.J.S.A. 34:13A-5.4(a)(1) and (5). The unfair practice case is still pending.

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 a mandatory category of negotiations. Compare Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88 (1981) with Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson outlines the steps of a scope of negotiations analysis for police and fire fighters:

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 fire fighters, 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 fire fighters, 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]

Because the dispute arises as a grievance, arbitration will be permitted if the dispute is at least permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. Dkt. No. A-3664-81T3 (4/28/83). No preemption arguments

have been made so we focus on whether the grievance, if sustained, would substantially limit governmental policymaking. We consider that question in the abstract and express no opinion about the contractual merits or any contractual defenses. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

A demand that public safety officers be equipped with portable, two-way radios while on duty predominately involves employee safety and is a mandatorily negotiable subject of negotiations. Teaneck Tp., P.E.R.C. No. 88-107, 14 NJPER 338 (¶19127 1988); contrast Egg Harbor Tp., P.E.R.C. No. 86-20, 11 NJPER 518, 519 (¶16181 1985) (scanner radios allowing communication with neighboring agencies predominantly concerns management's prerogative to determine how best to deliver information). Given this precedent and the facts of this case illustrating the employees' safety concerns, this dispute is at least permissively negotiable and may be arbitrated. While the City may determine that two-way radios should be given to new police officers in field assignments, it may agree that other officers should receive radios as well and may budget for that expense. Cf. City of Elizabeth, P.E.R.C. No. 92-106, 18 NJPER 262 (¶23109 1992) (employer had prerogative to take action to improve employee safety).

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Klagholz and Wenzler voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration. Commissioners Boose and Ricci were not present.

DATED: June 19, 1997
Trenton, New Jersey
ISSUED: June 20, 1997