

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WEST ORANGE,

Petitioner,

-and-

Docket No. SN-78-17

WEST ORANGE FIRE FIGHTERS  
LOCAL 692, IAFF,

Respondent.

SYNOPSIS

The Commission, in a Scope of Negotiations proceeding initiated by the Town of West Orange, determines that the number of fire fighters allowed off duty at any one time is permissively, but not mandatorily, negotiable. The Commission concludes that within the framework of the number of employees that the employer has determined are necessary at a given time, the employer must negotiate as to which employees may be off duty, the method of selecting employees to be off duty, the amount of time that employees can take consecutively, etc. In summary, the Commission notes that what must be negotiated is the method of determining which employees can be off duty, and at what times, but these negotiations must recognize the fundamental right of the employer to determine how many men are on duty (and, as a necessary consequence, off duty) at any given time.

The Commission further determines that the Town is required to negotiate with the IAFF regarding any proposed reassignment of work or duties or functions which have been performed by unit personnel to employees outside the unit. In accordance with its negotiability determinations, the Commission orders the IAFF refrain from insisting to the point of impasse upon the inclusion in a collective negotiations agreement with the Town, or from submitting to an interest arbitrator, absent mutual agreement, any provision relating to the number of men that may be off duty at any time. The Commission further ordered that the Town negotiate in good faith with the Local, and submit to interest arbitration any unresolved dispute regarding the procedures to be utilized in determining which employees, once the employer has determined the number, can be off duty at any given time, and regarding the reassignment of work, duties or functions performed by unit members to non-unit members.

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Appearances:

For the Petitioner, Phillip D. Neuer, Esq. and  
Marvin Corwick, Business Administrator

For the Respondent, Thomas P. Flynn, Vice-President,  
IAFF and Robert VanOostendorp, President, Local 692

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the Town of West Orange ("Town") with the Public Employment Relations Commission on January 10, 1978 alleging that certain matters in dispute between the Town and West Orange Fire Fighters Local 692, IAFF ("Local") are not within the scope of collective negotiations.

The Town submitted a brief in support of its petition on February 8, 1978. The Local supplied its response on March 29, 1978. Additionally, pursuant to a request from the Local, the parties argued orally before the Commission on April 20, 1978.

There are two issues in dispute. The first, set forth below, relates to the number of men permitted to be off duty at a given time:

"Issue #1 Number of men allowed off duty at one time because

of the following reasons or combinations:

- (a) Vacations
- (b) Personal Days
- (c) Seniority Days (A day off for each 5 years of service)
- (d) Limiting above when other men are sick or injured."

What is in dispute here is not the negotiability of the number of vacation, personal, seniority and sick leave days -- these the Town acknowledges are mandatorily negotiable -- but rather a limitation on when these days may be taken within the framework of manpower determinations.

The Town's position is that the number of people off duty is not a mandatorily negotiable term or condition of employment. It contends that the issue really is one of manning in that it relates to the number of employees on duty at a given time and that, if it were compelled to negotiate the number of people off duty, it would lose its ability to determine minimum manpower levels, a subject which the Commission has repeatedly determined to be outside the scope of mandatory negotiations.

The Local contends that the issue does not relate to the Town's determination as to the number of employees needed to carry out the employer's function but rather to when employees can take vacations, seniority days, sick days, and personal days. A major concern of the Local seems to be that the Town could, by taking certain positions regarding the number of employees who are permitted to be off duty at a given time, effectively deprive employees of benefits contained in the contract regarding the number of days off which an employee can take during the year.

To illustrate, in an oversimplified context, if an employer employs 13 people throughout the year, permits an employee to take one month of vacation each year, and determines that his manning requirement is 12 employees at all times (in an 8-hour per day, 5 day per week operation), then only one employee could be on vacation at any time. But in this example, only 12 months of vacation could be taken -- one month each by 12 employees assuming that the vacations were taken in indivisible one month blocks -- whereas the employees would be entitled to a total of 13 months of vacation: one month for each of the 13 employees. Thus, in this example, either there would be less than 12 employees on duty throughout the year or one employee would get no vacation.

In our view, this situation is analogous to the issue of work schedules or shift assignments which we decided today. In re Town of Irvington, P.E.R.C. No. 78- , 4 NJPER \_\_\_\_ (Para. \_\_\_\_ 1978) and In re Town of Northfield, P.E.R.C. No. 78- , 4 NJPER \_\_\_\_ (Para. \_\_\_\_ 1978). The number of men allowed off duty is really the converse of the number of men on duty. The latter is permissively but not mandatorily negotiable. We must reach the same result regarding the number of men who are permitted off duty at a given time because to do otherwise would, in effect, mandate negotiations on manning levels. However, within the framework of the number of employees that the employer has determined are necessary at a given time, the employer must negotiate as to which employees may be off duty, the method of selecting employees to be off duty, the amount of time that an employee can take consecutively, etc. It is apparent that, generally speaking, some times of the

year are more desirable vacation periods than others. It is equally apparent, at least in fire and police departments, that not all employees can be on vacation at the same time. What must be negotiated is the method of determining which employees can be off duty and at what times but these negotiations must recognize the fundamental right of the employer to determine how many men are on duty (and, as a necessary consequence, off-duty) at any given time.

We note that the employer does not have unfettered discretion in determining how many employees can be off duty at any time. As stated, the number of paid days off that an employee may receive in a year is mandatorily negotiable. The employer is obligated to provide employees with an opportunity to take these days in accordance with the negotiated agreement. Sometimes the parties negotiate a provision whereby the employer will pay an employee at a premium rate for working on vacation days. Some employees may volunteer to work for extra money rather than take the time off. Additionally, we recognize that emergencies may arise, perhaps unanticipated by the parties' agreement, which may require emergency action by the employer including a temporary curtailment of all paid days off.<sup>1/</sup> But generally speaking, we would regard it as a breach of good faith for an employer to agree to give employees a certain number of days off and then to establish manning levels that would not permit employees to take the negotiated number of

1/ Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969).

days off.<sup>2/</sup> This could also constitute a breach of contract. In a scope of negotiations case such as this one, we are simply empowered to determine whether the issue is within the required scope of negotiations.

The second issue in dispute relates to work assignments:

"Issue #2 The changing of work assignments of Firefighters

(a) The Town of West Orange maintains it is management's right to determine work assignments of the Firefighters such as, Firefighter assigned as Dispatcher, Training Officer, etc. The Town maintains its right to change, remove, add or delete assignments and the changes are not subject to negotiations or be included in any contract. The classification of Firefighter is not disturbed."

The context of this dispute is confusing. The Town did not point to any specific provision of the 1977 contract which it contends is a permissive subject of negotiations and which it wishes to exclude from any successor agreement. The Town has not proposed language for inclusion in the contract which would satisfy it in this regard. Rather, it appears that the Town is attempting to assure that disputes relating to changes in job assignment not be subject to grievance or rights arbitration. There have been several grievances regarding these matters. One of these arose when the Town converted to the use of the 911 emergency reporting system with a centralized dispatching procedure. Prior

<sup>2/</sup> If an employer, for some inexplicable reason, were to agree to give more days off than could be provided within the framework of its manning decisions, it could still effectuate its manning decisions by hiring additional personnel. Thus, our decision does not prevent the employer from providing the desired level of service.

to the implementation of this system, one fire fighter had been assigned as a dispatcher. With the new system, the Town used only civilians or a police officer as dispatchers. The Local grieved the loss of the assignment of one of its members as a dispatcher. It is grievances of this type which the Town is seeking to avoid apparently.

It is the Town's position that it has the right to change, remove, add or delete work assignments without mandatory negotiations as a managerial prerogative. It acknowledges the negotiability of the impact or effect, if any, of such decisions on employees' terms and conditions of employment. But the Town argues that it should be able to assign fire fighters to any functions which are consistent with the position of fire fighter and that it need not assign fire fighters to functions such as dispatching, administrations clerk and fire prevention which are not fire fighting functions.

The Local takes the position that, although it is not clear what contract language the Town is seeking to change, delete or add, duties such as dispatching and fire prevention which have been performed by unit personnel cannot unilaterally and without negotiations be taken from such personnel. The Local does not contest the right of the Town to eliminate certain functions, for example, the training officer, but it does claim the right to negotiate regarding changes in duties performed by employees which it represents when such duties or functions are not simply discontinued, but are transferred to employees outside the unit.

We have this day issued a decision on a similar issue. In re Piscataway Township Board of Education, P.E.R.C. No. 78- , 4 NJPER \_\_\_ (Para. \_\_\_ 1978). In that case, we held that the Board violated the Act by unilaterally hiring two non-unit health aides to perform work which had been done by two nurses who were on leave. Similarly, in In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (Para. 4023 1977), we held that while a decision to reduce services was a management prerogative, the mere shifting of work that had been performed by unit members to employees outside of the unit was mandatorily negotiable.

Consistent with those holdings, we hereby determine that the Town is required to negotiate with the Local regarding any proposed reassignment of work or duties or functions which have been performed by unit personnel to employees outside of the unit. On the other hand, there would be no obligation for the Town to negotiate any decision to eliminate or reduce services which have been provided by unit personnel. The Town would, however, negotiate in good faith with the Local regarding the effect, if any, on employees' terms and conditions of employment of its decision to reduce or curtail services performed by unit personnel.<sup>3/</sup>

#### ORDER

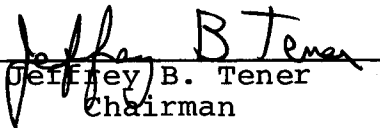
In accordance with the above decision, IT IS HEREBY ORDERED that the West Orange Fire Fighters Local 692, IAFF refrain

<sup>3/</sup> We note that the Town is under no obligation to agree to continue to use a firefighter as a dispatcher. It merely is obligated to negotiate its desire to effectuate such a change. State of New Jersey v. Council of New Jersey State College Locals, 147 N.J. Super. 470 ( App. Div. 1976).



from insisting to the point of impasse upon the inclusion in a collective negotiations agreement with the Town of West Orange or from submitting to an interest arbitrator, absent mutual agreement, any provision relating to the number of men that may be off duty at any time. IT IS FURTHER ORDERED that the Town negotiate in good faith with the Local and submit to interest arbitration any unresolved dispute regarding the procedures to be utilized in determining which employees, once the employer has determined the number, can be off duty at any given time and regarding the reassignment of work, duties or functions performed by unit members to nonunit employees.

BY ORDER OF THE COMMISSION

  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Graves, Hartnett, Parcels and Schwartz voted for this decision. None opposed.  
Commissioner Hipp was not present.

DATED: Trenton, New Jersey  
June 30, 1978  
ISSUED: July 5, 1978