

P.E.R.C. NO. 85-120

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE TOWNSHIP,

Petitioner,

-and-

Docket No. SN-85-71

FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL NO. 10,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several proposals made by the Firemen's Mutual Benevolent Association, Local No. 10, to the City of Orange Township during contract negotiations. The Commission finds the following to be mandatorily negotiable: work week to be an average of 42 hours in an eight week cycle. The Commission finds the following to be not mandatorily negotiable: limitation on the Town's right to assign firefighters to related duties and limitation of the subcontracting of work.

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Appearances:

For the Petitioner, Mulcahy & Wherry, S.C.  
(Mark L. Olson, Of Counsel) and Gerald L. Dorf, Esq.

For the Respondent, Rinaldo & Rinaldo, Esqs.  
(Anthony D. Rinaldo, Jr., Of Counsel)

DECISION AND ORDER

On February 11, 1985, the City of Orange Township ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a determination whether certain proposals of FMBA, Local No. 10 ("Local No. 10") for inclusion in a successor collective negotiations agreement are mandatorily negotiable.

The Township has filed a brief and documents. The FMBA has also filed a brief. The following facts appear.<sup>1/</sup>

<sup>1/</sup> The FMBA does not dispute that two of its proposals (Article IV, Manpower, Section A and Article XIII, Insurance, Section A (underlined language only) that are subject to the City's petition are not mandatorily negotiable. Accordingly, we need not and do not address those items.

appear.

Local No. 10 is the majority representative of the Township's firefighters. The Township and Local No. 10 entered a collective negotiations agreement effective from January 1, 1983 through December 31, 1984. The parties have reached impasse in successor contract negotiations, and an interest arbitrator has been appointed. Local No. 10 seeks to retain certain provisions of the previous contract.

This opinion will consider only whether the instant proposals are mandatorily negotiable. It is the Commission's policy not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the employer has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981). We will apply the tests set forth in Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) for determining whether a subject is mandatorily negotiable. Id. at 92-93.

Article VI, entitled Hours and Overtime, Section A provides:

- A. The work week for all employees who perform fire-fighting duties shall be an average of not more than forty-two (42) hours in an eight (8) week cycle, pursuant to the present tour system.

The Township does not seek to change the present tour system now, and has not alleged this system is burdensome. Instead, it argues

solely that someday it may be necessary to make a change. We recently held that a proposal to retain an existing work schedule is mandatorily negotiable in the abstract. Franklin Township, P.E.R.C. No. 85-97, 11 NJPER \_\_\_\_ (¶ \_\_\_\_ 1985). We added, however, that if the employer agreed to the clause (or if it were awarded by an arbitrator) and then decided to change the schedule for governmental policy reasons, it could file another scope petition and we would decide that case in a specific factual setting.

Article XVII, entitled Responsibilities, provides: Employees covered by this Agreement shall not be required to perform any police duties, guard school crossings, fire or safety mobile patrols.

We held an almost identical proposal not mandatorily negotiable in City of Newark, P.E.R.C. No. 85-107, 11 NJPER \_\_\_\_ (¶ \_\_\_\_ 1985) since it would restrict the Township's right to assign firefighters to duties related to their normal responsibilities. See also City of Plainfield, P.E.R.C. No. 84-159, 10 NJPER 451 (¶15202 1984); City of Camden, P.E.R.C. No. 83-116, 9 NJPER 163 (¶14077 1983).<sup>2/</sup>

Article XIX, entitled Miscellaneous, Section E provides:

- E. The Township agrees that there shall be no subcontracting or transfer of unit work currently being performed by unit members when, as a direct result, such subcontracting leads to the involuntary layoff of uniformed employees.

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<sup>2/</sup> We express no opinion as to whether school crossing guard duties, where not directly related to firefighting functions, would be mandatorily negotiable. See In re Byram Twp. Bd. of Ed., 152 N.J. Super. 12 (App. Div. 1977); Town of Kearny, P.E.R.C. No. 81-12, 7 NJPER 456 (¶12202 1981).

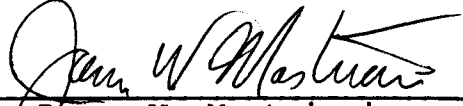
This proposal is not mandatorily negotiable. Local 195, IFPTE v. State, 88 N.J. 393 (1982).

ORDER

The following Articles are not mandatorily negotiable:

Articles XVII and XIX(E). Article VI(A) is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Butch, Graves, Hipp, Suskin and Wenzler voted in favor of this decision. None opposed. However, Commissioner Graves dissented from that portion of the order finding the first three issues non-negotiable.

DATED: Trenton, New Jersey  
May 15, 1985  
ISSUED: May 16, 1985