

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ASBURY PARK,

Petitioner,

-and-

Docket No. SN-79-64

ASBURY PARK P.B.A. LOCAL
NO. 6,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission issues a decision in a scope of negotiations proceeding finding that the issue of work schedules and tours of duty, within the framework established by an employer as to how many employees would be on duty at a given time, are mandatory subjects for collective negotiations and may be submitted to compulsory interest arbitration.

With regard to the second issue in dispute - a proposal by the PBA that the City specify in any contracts with lessees of city owned property that regular police officers be hired for security purposes - the Chairman found that this proposal is an illegal subject for collective negotiations since the PBA is not authorized to represent private contractors for the purposes of collective negotiations and cannot legally negotiate with respect to non-unit members or individuals. Such proposal may not be the subject of collective negotiations between the City and P.B.A. Local No. 6, nor may such a proposal be submitted to compulsory interest arbitration.

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Appearances:

For the City of Asbury Park,
Mark A. Steinberg, Esq., on the Brief
For Asbury Park PBA Local No. 6,
Joseph N. Dempsey, Esq.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the City of Asbury Park ("City") with the Public Employment Relations Commission on February 6, 1979 disputing the negotiability of certain matters which the Asbury Park P.B.A. Local No. 6 ("PBA") was seeking to negotiate.

The parties are presently engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. The City filed its brief in this matter on February 22, 1979. The PBA filed a letter memorandum dated March 30, 1979.^{1/}

^{1/} The PBA had delayed filing its memorandum in the hope that ongoing negotiations would resolve the negotiability disputes. On May 22, 1979 the City Attorney informed the Commission that it appeared that a formal decision would be necessary in this matter, since negotiations had not yet conclusively resolved the negotiability disputes.

The issues placed before the Commission for determination in this instant proceeding are the negotiability of the following proposals:

1. Work Week

The work week shall consist of thirty six (36) hours on a shift basis. The tours of the uniformed members of the Police Department shall be divided into three parts as follows:

Tour 1 7:00 AM to 4:00 PM

Tour 2 4:00 PM to 1:00 AM

Tour 3 10:00 PM to 7:00 AM

2. Extra Work

The city to require regular police officers to be hired for any event, requiring uniformed officers, at the Convention Hall, Casino, or any other city owned property. All officers to be paid hourly at the regular overtime rate, by the city. All officers needed for any extra work detail shall be selected from a rotating list maintained by the Chief of Police. One Sergeant selected from a rotating list, to be appointed in charge of each detail. Each officer to be limited to 8 hours per day for any extra duty detail described above.

Only those extra duty details not chosen by regular officers shall be offered to special officers.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute have previously been determined by the Commission. This particular expeditious procedure will enable parties to receive a decision concerning certain negotiability disputes shortly after positional

statements or briefs have been received from the parties and will assist in the avoidance of protracted delays in the impasse resolution process affecting public employers and employee organizations.

The first proposal relates to the negotiability of the work schedules and tours of duty for police officers within the unit represented by the PBA. The Commission in numerous decisions has determined that work schedules and tours of duty, within the framework established by an employer as to how many employees would be on duty at a given time, are mandatory subjects for collective negotiations. The Commission has held that an employer has the right to unilaterally determine the number of employees that must be on duty at any given time. However, the Commission has concluded that within the framework of these manning levels an employer must negotiate over such matters as which employees may be off duty, at what time, the amount of consecutive time they may be off, the method of selecting those employees to be off, what hours during the day employees work, and the schedules employees are required to work.^{2/} The Commission in these prior decisions has considered the arguments raised by the parties in the present case and has consistently ruled that

^{2/} In re Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978), In re Township of Cinnaminson, P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978), In re City of Northfield, P.E.R.C. No. 79-82, 4 NJPER 247 (¶4125 1978), In re Town of Irvington, P.E.R.C. No. 78-84, 4 NJPER 251 (¶4127 1978), In re Borough of Roselle, P.E.R.C. No. 77-66, 3 NJPER 166 (1977), In re City of Garfield, P.E.R.C. No. 79-16, 4 NJPER 457 (¶4207 1978) and In re County of Bergen, P.E.R.C. No. 79-100 5 NJPER _____ (¶ 1979).

contractual provisions relating to tours of duty within the parameters set forth are mandatorily negotiable.

The second issue in dispute concerns a PBA proposal that would require that the City specify in any contracts with lessees of city owned property that regular police officers be hired for security purposes.^{3/} The City would be responsible for the payment of these officers and would apparently be reimbursed by its lessees. The remainder of the proposal deals with various procedural matters concerning these "extra duty details".

The Commission in the past has emphasized that contract proposals must relate exclusively to the employment relationship between unit members and their public employer and cannot attempt to control the actions of third parties who are neither public employers nor public employees. See e.g. In re Middlesex County College, P.E.R.C. No. 78-13, 4 NJPER 47 (14023 1977). In the instant case the PBA has submitted a proposal that would directly control specific hiring and other personnel practices of lessees, who are not parties to a contract with the PBA and who are not even public employees within the meaning of the New Jersey Employer-Employee Relations Act.^{4/} Given the nature of this proposal it is not relevant, from a negotiability standpoint, that the intended purpose of this proposal is to provide additional

^{3/} The City leases its public buildings -- apparently mostly boardwalk properties -- to private entrepreneurs, primarily for the conduct of concerts, boat shows, trailer home shows, etc.

^{4/} See N.J.S.A. 34:13A-3(c).

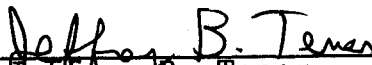
compensation or work for police officers. The proposal is an illegal subject for collective negotiations since the PBA is not authorized to represent private contractors for the purposes of collective negotiations and cannot legally negotiate with respect to non-unit members or individuals.

ORDER

With respect to the proposal we have determined to relate to a required subject of collective negotiations, i.e., the work schedule provision, the City of Asbury Park, is ordered, upon demand of P.B.A. Local No. 6, to negotiate in good faith with P.B.A. Local No. 6. This proposal may be submitted to compulsory arbitration in accordance with the procedures and requirements of N.J.S.A. 34:13A-14 et seq. (P.L. 1977, c. 85) and N.J.A.C. 19:16-1.1 et seq.

With respect to the extra work proposal which we have determined to relate to an illegal subject for collective negotiations, we order that such proposal may not be the subject of collective negotiations between the City of Asbury Park and P.B.A. Local No. 6, nor may such a proposal be submitted to compulsory interest arbitration.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
June 7, 1979