

P.E.R.C. NO. 98-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH PLAINFIELD,

Petitioner,

-and-

IAFF LOCAL 2958,

Respondent.

Docket No. SN-98-7

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of two contract provisions which IAFF Local 2958 has proposed for inclusion in a successor contract with the Borough of North Plainfield. One proposal seeks to have Emergency Medical Services ("EMS") responsibilities currently performed by the fire department recognized to be the work of the negotiations unit and to have such assignments performed by those qualified firefighters who volunteer for the duty, rather than assigned by the Borough, unless there are insufficient volunteers. The Commission finds the portion of this proposal requiring that assignments first go to volunteers in a firefighter/EMT job classification to be not mandatorily negotiable. The second proposal would bar the performance of certain non-emergency duties during late night hours. The Commission finds this proposal to be not mandatorily negotiable.

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, Weiner, Lesniak, attorneys  
(Eric Martin Bernstein, of counsel)

For the Respondent, Fox and Fox, attorneys  
(Stacey B. Rosenberg, of counsel; Matthew M. Collins on the  
brief)

DECISION

On July 24, 1997, the Borough of North Plainfield petitioned for a scope of negotiations determination. The Borough seeks a declaration that two successor contract proposals made by IAFF Local 2958 are not mandatorily negotiable. One proposal seeks to have Emergency Medical Services ("EMS") responsibilities currently performed by the fire department recognized to be the work of the negotiations unit and to have such assignments performed by those qualified firefighters who volunteer for the duty, rather than assigned by the Borough, unless there are insufficient volunteers. The other IAFF proposal would bar the performance of certain non-emergency duties during late night hours.

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

The IAFF represents "all full-time paid Firefighters in the Borough's Department of Fire Prevention and Protection." There are 18 such employees.

The parties' most recent contract covered January 1, 1994 through December 31, 1996. The parties are engaged in successor contract negotiations and the IAFF has petitioned to begin interest arbitration. During negotiations, the IAFF proposed to add the title firefighter/EMT to the contractual recognition clause. It has also proposed a stipend for firefighter/EMT. The Borough has not challenged the negotiability of those proposals.

Article III of the contract defines firefighters' duties. The IAFF has proposed to add this language to Article III:

The Borough shall only assign ambulance duties and rescue and basic life support duties to career, paid and uniformed firefighters. The Borough shall assign these duties to those career, paid and uniformed firefighters who volunteer to accept this assignment. If the number of career, paid and uniformed firefighters who volunteer for this assignment is not sufficient to satisfy the Borough's staffing requirements, only then may the Borough assign these duties to qualified career, paid and uniformed firefighters.

The IAFF proposes this restriction on work late at night:

The Borough shall not assign firefighters to any non-emergency details after 2200 hours. These non-emergency details include, but are not limited to, the following: hydrant maintenance (annual and snow removal), fire safety patrol,

inspection details, and non-emergency maintenance on either the firehouse or department vehicles.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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 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]

We need only consider whether the disputed proposals are mandatorily negotiable since neither party is required to negotiate over a permissive subject. No preemption issues have been raised.

#### The EMS Issue

Before August 1995, the Borough relied on volunteer ambulance services to provide EMS coverage. When it appeared that such coverage would no longer be available during the weekdays, the

Borough's mayor and business administrator came to a Local 2958 meeting and proposed that the firefighters assume EMS duties between 8:00 a.m. and 6:00 p.m. on weekdays. Civilian volunteers would continue to provide the services at other times. The IAFF agreed and three members of its unit acquired EMS certifications and provided EMS coverage. According to its president's certification, the IAFF agreed to the proposal with the understanding that during negotiations for a successor agreement, the parties would address proposals pertinent to the performance of EMS duties by firefighters including salary or stipends, duties, work hours and the creation of a firefighter/EMT title.

The IAFF asserts that there have always been enough firefighters who were willing to perform the duties and the Borough has never had to assign duties to any firefighter who would prefer not to do EMS work. The chief submitted a certification acknowledging that there have always been enough paid firefighters who are available, willing and able to perform EMS duties and that 12 firefighters now hold the appropriate certification. The chief asserts, however, that the IAFF proposal on volunteers would limit the Borough's flexibility to make future assignments as it deems necessary.

Both sides have argued the relevance of Maplewood Tp., P.E.R.C. No. 97-80, 23 NJPER 106 (128054 1997), in which we held that a public employer has a managerial prerogative to decide that its fire department will assume EMS responsibilities and to direct that

employees in the title of firefighter/EMT drive the ambulances on weekdays when volunteers are not available. The lack of volunteer EMS personnel during weekday hours is what motivated both Maplewood and this employer to have firefighters perform EMS duties. The employer and the union have agreed that firefighters will perform such work on weekdays and there are no plans to change that arrangement. The IAFF has proposed inclusion of the firefighter/EMT title in the contractual recognition clause and seeks to preserve this work for unit employees. See Rutgers, the State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1983); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant pt., 6 NJPER 338 (¶11169 App. Div. 1980); Rutgers, the State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980). That portion of the proposal does not appear to be challenged by the employer.

We will assume that a separate firefighter/EMT title with a separate stipend has been or will be created. Given that understanding, we hold that the second and third sentences of the IAFF proposal are not mandatorily negotiable as proposed. In making assignments among employees who already hold the job title of firefighter/EMT, the employer must be free to determine which of those employees are best suited for a particular task. See Local 195, IFPTE v. State, 88 N.J. 393 (1982); Ridgefield Pk. Ed. Ass'n v.

Ridgefield Pk. Bd. of Ed., 78 N.J. 144 (1978); New Jersey Transit Corp., P.E.R.C. No. 97-127, 23 NJPER 304 (¶28139 1997); City of Elizabeth, P.E.R.C. No. 97-115, 23 NJPER 234 (¶28112 1997). Even if all unit personnel have the appropriate certification, it does not mean that the employer must deem them equally qualified to perform the various duties required of their position. Requiring that assignments first go to volunteers does not grant the employer sufficient flexibility.

#### The Late Work Issue

The IAFF characterizes its proposal that certain "non-emergency" work not be performed after 10 p.m. as a safety proposal because such assignments may expose firefighters to safety hazards including the possibility of being hit by a car while maintaining fire hydrants on multi-lane highways. The Borough disputes the listing of some of the duties as "non-emergency" tasks and asserts that safety issues can be addressed by contract language dealing directly with such concerns.

In Maurice River Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987), we found mandatorily negotiable a proposal that employees shall not have to perform tasks or work under conditions that would endanger their health, safety or well-being. See also Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985) (operating unsafe vehicles); Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983) (safety-related proposals concerning facilities and

vehicle maintenance proposals). However, we cautioned that a refusal of an assignment could not be based upon speculation or subjective beliefs, but only on a compelling threat to personal welfare. Because the IAFF proposal would bar the performance of certain assignments, it intrudes too much into the Borough's prerogative to determine how and when services should be performed and on balance is not mandatorily negotiable. See, e.g., Sea Isle City, P.E.R.C. No. 96-83, 22 NJPER 240 (127125 1996). The IAFF may make proposals more tailored to employee safety concerns.

ORDER

The second and third sentences of the IAFF proposal addressing the performance of ambulance, rescue and basic life support duties by career, paid and uniformed firefighters are not mandatorily negotiable. The proposal addressing the performance of "non-emergency" duties after 2200 hours is not mandatorily negotiable.

BY ORDER OF THE COMMISSION

*Millicent A. Wasell*

Millicent A. Wasell  
Chair

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

DATED: November 20, 1997  
Trenton, New Jersey  
ISSUED: November 21, 1997