

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NORTHFIELD,

Petitioner,

-and-

Docket No. SN-78-28

LOCAL 2364, IAFF, AFL-CIO,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission decides issues regarding the negotiability of a requirement that vacancies be filled, mandatory roll call, and work schedules. The parties' 1977 agreement contained provisions relating to these areas.

The first issue relates to a requirement that any vacancy which occurs shall be filled within a reasonable time. The Commission agrees with the City that this issue affects the City's ability to determine levels of employment, a subject previously held to be permissively but not mandatorily negotiable.

The mandatory roll call issue contained in the expired agreement required a certain number of employees to be on duty at a given time. Again, the Commission finds this to be a permissive subject of negotiations because it has the effect of dictating the number of men on duty at a given time, thereby relating to the level of manning in the department.

The final issue concerns the work schedule of employees. The old contract set forth the work schedule as two ten hour day tours followed by two fourteen hour night tours, immediately followed by four successive days off. The Commission concludes that hours of work and work schedules are required subjects of negotiations but that negotiations must take place within the framework established by the City as to the number of employees on duty at a given time. Thus, the City is free to establish unilaterally and without negotiations the number of men on duty at any time but that, once having made that determination, the City must, upon demand, negotiate in good faith with the employee organization regarding the work schedules of employees within the framework of the City's basic manning decision. In this case, therefore, the City's decision to reduce the number of employees on night duty is a permissive but not a required subject of negotiations.

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Appearances:

For the City, Pachman, Aron & Till, Esqs.
(Martin R. Pachman, of Counsel)

For the Local, Celestine Kelly, International Staff
Representative

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the City of Northfield (the "City") with the Public Employment Relations Commission on February 21, 1978 disputing the negotiability of several matters which Local 2364, IAFF, AFL-CIO (the "Local") was seeking to negotiate.^{1/}

The parties are presently engaged in compulsory interest arbitration in accordance with P.L. 1977, c. 85. The City filed its letter brief in this matter with the Commission on April 3, 1978 and the Local submitted its position on the disputed items

^{1/} Simultaneously, the City also filed a Petition for Issue Definition Determination in which it disputed the Local's classification of several items as noneconomic within the meaning of N.J.S.A. 34:13A-16f(2). These issues will be decided in a separate decision to be issued by the Chairman pursuant to N.J.A.C. 19:16-6.2(e).

on May 18, 1978.

The petition lists three items which the City contends are not mandatory subjects of negotiations and which, therefore, cannot be presented for interest arbitration absent mutual agreement.^{2/} The three items, all of which appear in the 1977 contract between these parties, relate to vacancies and promotions (Article 14), mandatory roll call (Article 20), and hours of work and work schedule (Article 21).

The first issue relates to vacancies and promotions. The 1977 contract contained the following provision:

The City agrees that when a permanent vacancy occurs in any position it shall be filled or abolished, within a reasonable time, upon official severance of the vacating Department member from the Fire Department. Filling of all vacancies and/or subsequent promotions shall be in accordance with the rules and regulations set forth by the Civil Service Commission for the State of New Jersey or its equivalent.

It is only the negotiability of the first sentence of this article which is in dispute. The Local seeks to change the existing provisions by deleting the words "or abolished" so as to require the City to fill a permanent vacancy within a reasonable time.

The City contends that both the existing sentence and the Locals's proposal relating to the disputed sentence would interfere with the City's ability to determine levels of employment and would serve to establish a table of organization, a subject which the

^{2/} N.J.S.A. 34:13A-16f(4) provides that, "Arbitration shall be limited to those subjects that are within the required scope of collective negotiations, except that the parties may agree to submit to arbitration one or more permissive subjects of negotiation."

Commission has ruled is a permissive subject of negotiations.

It is the Local's position that the provision should be changed to require that permanent vacancies be filled immediately because of the small number of superior officers in this department: one (1) lieutenant and one (1) captain.

We agree with the City that this issue is a permissive and not a required subject of negotiations. As the City points out, the provision goes to the number of employees in the department and we have consistently ruled that such matters are not required subjects of negotiations. See In re Rutgers, The State University, P.E.R.C. No. 7613, 2 NJPER 13 (1976), In re Newark Fireman's Union of New Jersey, P.E.R.C. No. 76-40, 2 NJPER 139 (1976), In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976), In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977).

The second issue concerns mandatory roll call. The 1977 contract provided that:

A. The City agrees that in order to protect the health and safety of the employees, the number of men on duty for responses with apparatus shall be a minimum of: two (2) employees on day shift, and two (2) employees on the night shift.

B. If an employee is called back to work to maintain the mandatory roll call at two (2) men because of sickness or injury, only such employee shall be paid at the rate of straight time.

The Local seeks to change that article by increasing from two (2) to three(3) the number of employees on each shift and by deleting section B.

manning to be a permissive as opposed to a required subject of negotiations and we believe that a mandatory roll call provision is substantially the same as a manning provision. See again the cases cited above.^{3/}

The final issue concerns hours of work and work schedule.^{4/} Section A defines the average number of hours of work per week. The City acknowledges that this is a required subject of negotiations and there is no dispute regarding this section.

The dispute relates to section B which provides as follows:

"Two (2) days of duty, ten (10) hours each day, (8 A.M. - 6 P.M.) immediately followed by two (2) night tours of duty, fourteen (14) hours each night (6 P.M. - 8 A.M.), immediately followed by four (4) consecutive days off."

At the outset, we would like to emphasize our awareness of the significance of this issue. The actual hours and days which an employee is required to work is of great importance to him or her. This is especially true of employees in fire

^{3/} For a more detailed discussion of this issue, see our decision in In re Township of Maplewood, P.E.R.C. No. 78- , 4 NJPER (Para. ____ 1978), decided this same date.

^{4/} During the pendency of this proceeding, the City announced its intention to change the work schedules of the paid fire fighters. The Local filed an unfair practice charge, Docket No. CO-78-201, and sought an ad interim order restraining the City from implementing any changed work schedule during the pendency of the interest arbitration proceeding. The parties appeared before the Chairman and entered into an agreement which provided, inter alia, that the City would not implement a changed work schedule during the pendency of the arbitration proceeding.

By way of background to the instant dispute, we note that in the City of Northfield, there are both paid and volunteer fire fighters. The volunteers, according to the City, are generally available at night and not during the day. The City wants to utilize the paid fire fighters, who are the subject of this dispute, more heavily in the daytime when many volunteers are not available and less heavily at night. However, the contractual provision regarding work schedules prevents it from doing this because it requires two (2) fire fighters to be on duty both days and nights. Thus, although the City could increase the number of paid fire fighters on duty during the day by hiring additional fire fighters, it cannot reduce below two (2) the number of fire fighters on duty at night.

The issue confronting us is the reconciliation of the City's right to determine its level of service and the number of men to be on duty at a given time (which the Local apparently concedes the City has the right to do) and the work schedules of employees (which the City concedes is mandatorily negotiable).

We believe that we can give effect to both of these legislative interests by holding, as we have previously, that the issue of manning is not a required subject of negotiations. Therefore, the City is free to establish unilaterally and without negotiations the number of men on duty at any time. However, once having made that determination, the City is required, upon demand, to negotiate with the Local regarding the work schedules of employees within the framework of the City's basic manning decision.

In this case, the City could decide to eliminate paid fire fighters entirely at night or to have one (1) rather than

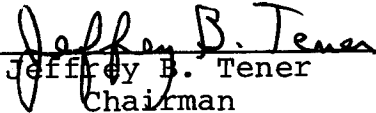
two (2) fire fighters on duty at night. Once that decision has been made, the City must negotiate work schedules with the Local that are compatible with the City's manning determinations. The Local, for example, could not propose a work schedule that would have two (2) employees on duty at night if the City has determined to have only one (1) paid fire fighter on duty at night.

We believe that this decision is consistent with our earlier decisions in which we have held the actual hours worked is a required subject of negotiations but that decisions as to the level of service and staffing levels are not required subjects of negotiations.^{5/} See In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975); In re Township of Saddle Brook, P.E.R.C. No. 78-72, 4 NJPER ____ (Para. ____ 1978); In re Galloway Township Board of Education, P.E.R.C. No. 76-31, 2 NJPER 182 (1976), affirmed in apposite part, reversed in part, 149 N.J. Super. 346 (App. Div. 1977), pet. for certif. granted 75 N.J. 29 (1977), appeal pending in Supreme Court Docket No. 13,819; In re Willingboro Township Board of Education, P.E.R.C. No. 78-20, 3 NJPER 369 (1977) and In re Borough of Roselle, P.E.R.C. No. 77-66, 3 NJPER 166 (1977).

^{5/} In addition to the cases cited on page 3 supra, see also the following cases decided by the New York State Public Employment Relations Board: In the Matter of the City of White Plains, 5 PERB, Par. 3008 (1972); In the Matter of City of Albany, 7 PERB, Par. 3079 (1974); and In the Matter of Corning Police Department Steuben County Chapter CSEA 9 PERB, Par. 3086 (1976). In White Plains, the Public Employment Relations Board stated: "It is the City alone which must determine the number of firemen it must have on duty at any given time. It cannot be compelled to negotiate with respect to this matter. However, there are

established by the City as to the number of employees on duty at any given time.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

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

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