

P.E.R.C. NO. 96-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF SEA ISLE,

Petitioner,

-and-

Docket No. SN-96-24

FRATERNAL ORDER OF POLICE
LODGE NO. 7,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that a contract proposal that Fraternal Order of Police Lodge No. 7 seeks to include in a successor collective negotiations agreement with the City of Sea Isle is not mandatorily negotiable. The proposal concerns the deployment of additional police officers in certain situations. The disputed contract proposal significantly interferes with the employer's prerogatives to set staffing levels and deploy officers to ensure the public safety. Neither party has broken apart the various aspects of the provision to assess their impact on safety and governmental policy.

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, Horn, Goldberg, Gorny, Daniels,
Plackter & Weiss, attorneys (Timothy Crammer, of counsel)

For the Respondent, Selikoff and Cohen, attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On September 5, 1995, the City of Sea Isle petitioned for a scope of negotiations determination. The employer seeks a declaration that a contract proposal is not mandatorily negotiable. That proposal concerns the deployment of additional police officers in certain situations.

The parties have filed exhibits and briefs. These facts appear.

Fraternal Order of Police Lodge No. 7 represents the City's patrol officers, detectives, sergeants, and lieutenants. A predecessor employee organization, PBA Local #59, and the City entered into a collective negotiations agreement effective from

January 1, 1993 through December 31, 1994. Article XXVIII was entitled Safety Procedures. It provided:

Police officers are charged with the prevention and detection of crime, the apprehension of suspected criminals, investigation of suspect conduct, executions of warrants and various other duties and responsibilities. In the course of carrying out these responsibilities, an officer is often threatened, abused and even assaulted.

The City, therefore, agrees to implement the following safety practices and procedures which are designed to provide minimum basic protection for the police officers employed by the City.

- (a) There shall be at least two police officers present at all motor vehicle stops.
- (b) If it is necessary for a police officer to settle a dispute or to investigate a disturbance, he shall not be required to do so unless there is another police officer present and ready to assist the officer.
- (c) If it is necessary for a police officer to serve a warrant on any individual who is suspected of committing a violent act or who has a history of engaging in violent or other anti-social behavior, there shall be at least two police officers present.
- (d) The City agrees to have available and on duty at all times additional officer(s) to provide backup if so requested.

The foregoing is not intended to be all-inclusive. The City shall establish a committee to meet with representatives of the PBA to establish additional safety practices and procedures.

Lodge No. 7 proposed that Article XXVIII be included in the next contract covering the City's police department. The City responded that this provision is not mandatorily negotiable and filed this petition. The parties are engaged in interest arbitration proceedings.

The City is a shore resort. Its police force consists of 21 officers: a police chief, two captains, one lieutenant, five sergeants, and twelve police officers. Each officer works on one of four rotating shifts and each officer is on duty for five days and then off duty for two days each week. Four officers are normally assigned to each of three duty shifts while four other officers are off duty.

Our jurisdiction is narrow. We consider only the abstract negotiability of a contract proposal, not its wisdom. In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

The scope of negotiations for police and fire officers is broader than for other police employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981); compare Local 195, IFPTE v. State, 88 N.J. 393 (1982). Paterson 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]

Because this dispute involves a contract proposal and the employer need not negotiate over a permissive subject, we need only decide whether the proposal is mandatorily negotiable. Paterson; Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Article XXVIII directly and intimately affects police officers because it provides for safer working conditions than would obtain if an officer had to respond alone to the situations described. Nevertheless, municipal decisions about how to organize and deploy police officers are not mandatorily negotiable. Paterson. Thus, public employers are not required to negotiate about overall staffing levels or how many police officers will be assigned to be on duty at a particular time or deployed on a particular duty. Paterson; Local 195, IFPTE v. State, 88 N.J. 393 (1982); Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Bergen Cty, P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den. 88 N.J. 476 (1981).

The disputed contract proposal significantly interferes with the employer's prerogatives to set staffing levels and deploy officers to ensure the public safety. It requires the City to have backup officers on duty at all times. It also would appear to require two officers to be present for routine motor vehicle stops and to permit delays in protecting the public safety even though immediate intervention may be required. Neither party has broken apart the various aspects of the provision to assess their impact on safety and governmental policy. See East Orange; City of Newark, P.E.R.C. No. 76-40, 2 NJPER 139 (1976) (suggesting safety protections that do not interfere with staffing levels). We will not do so either. We simply hold that Article XXVIII, as written, significantly interferes with the determination of governmental policy and is not mandatorily negotiable.

ORDER

Article XXVIII is not mandatorily negotiable.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Finn abstained from consideration.

DATED: June 20, 1996
Trenton, New Jersey
ISSUED: June 21, 1996