

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CINNAMINSON TOWNSHIP,

Petitioner,

-and-

Docket No. SN-78-41

CINNAMINSON POLICE ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines that the following subjects relevant to a pending interest arbitration proceeding are not mandatorily negotiable: the size of the police force, either in total or a particular crew size; a no layoff clause; and criteria for temporary appointment to Acting Sergeant. The Commission further determines that the following subjects are mandatorily negotiable: the impact on terms and conditions of employment resulting from the Township's decisions concerning manning requirements, the impact on the remaining employees and those employees laid off as a result of the Township's decision to reduce the size of its police force, and procedures for temporary appointments. The Commission further notes that the issue of whether or not certain patrolmen absent from duty on November 22 and 23, 1977 were on sick leave or engaging in an illegal job action was not an appropriate question in a scope of negotiations proceeding. The Commission did note that, of course, the question of sick leave benefits was a mandatory subject of collective negotiations.

As to those subjects not found to be mandatorily negotiable, the Association has been ordered to refrain from insisting to the point of impasse that the issues be negotiated, or submitted to compulsory interest arbitration absent mutual agreement of the parties. As to those subjects found to be mandatorily negotiable, the Township is ordered to negotiate and submit any unresolved disputes to compulsory arbitration in accordance with the Commission's Rules.

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Appearances:

For the Petitioner, Green and Lundgren, Esqs.
(Mr. William L. Lundgren, III, of Counsel)

For the Respondent, Avena and Hendren
(Mr. James R. Hendren, of Counsel)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by Cinnaminson Township (the "Township") on June 5, 1978 requesting a determination by the Public Employment Relations Commission as to whether the size of the police force, either in total or a particular crew size; payment for "strike" days for 1977; a no lay-off clause; and selection of a temporary replacement for an absent sergeant are within the scope of collective negotiations.^{1/}

The Cinnaminson Police Association (the "Association") contends that the present petition is procedurally defective

^{1/} The petition itself contained only a very cursory statement of the disputed topics. However, the parties' briefs do amplify and clarify the instant dispute.

and should be dismissed. The Association initially filed a Petition to Initiate Compulsory Interest Arbitration on December 30, 1977, while the present scope petition was not filed by the Township until June 5, 1978. N.J.A.C. 19:16-5.5(c) calls for a scope petition to be filed within 10 days of receipt of the petition to initiate arbitration when a dispute exists with regard to whether any unresolved issues are within the scope of negotiations. Failure to submit a timely scope petition is deemed to constitute an agreement to submit all unresolved issues to arbitration. Since the Township failed to comply with the 10 day time limit, the Association argues that it thereby agreed to arbitrate regarding those subjects contained in the petition for arbitration. Therefore, there is no scope of negotiations dispute for the Commission to consider.

The Commission notes that the current contractual dispute between the parties has had a long history of procedural difficulties. Initially negotiations were for a two year agreement covering 1977 and 1978. The Association requested compulsory interest arbitration for both years. The Township contended that since this was a single agreement which would be retroactive to January 1, 1977, the Commission was without authority to order compulsory interest arbitration.^{2/} Therefore, only fact-finding

^{2/} N.J.S.A. 34:13A-16, which provides for compulsory interest arbitration, was adopted on May 10, 1977 and states that it applies only to agreements which become effective during the first full fiscal year of the public employer after the effective date of the Act.

could be invoked for both 1977 and 1978. In an apparent effort to break the deadlock concerning the appropriate procedure, the Township, by letter dated March 10, 1978, suggested a compromise: arbitration for a three year contract covering 1977, 1978 and 1979. The Township would waive its position that the Commission lacked jurisdiction to compel arbitration for the 1977-78 contract in return for the Association's agreement to arbitrate for the year 1979. This letter explicitly stated that the Township objected to the inclusion of any non-mandatory negotiations subjects in any petition for arbitration.

On May 22, 1978, John J. Pearce, fact-finder/arbitrator appointed by the Commission, conducted a meeting at which the Association agreed to an issue by issue submission to arbitration under the Township's three year compromise offer. Accordingly, the parties are proceeding to arbitration pursuant to this May 22, 1978 agreement of submission to issue by issue arbitration for 1977 through 1979^{3/} and not the Association's initial December 30, 1977 petition to initiate arbitration for 1977-78 under the compulsory arbitration procedures provided by N.J.S.A. 34:13A-16(d) (2).^{4/} Considering these facts,^{5/} the Commission concludes

^{3/} N.J.S.A. 34:13A-16 provides that the parties may utilize any mutually agreeable terminal procedure for resolving the contractual issue in dispute subject to Commission approval.

^{4/} The December 30, 1977 petition to initiate arbitration stated that the parties had not agreed upon a terminal procedure and requested compulsory arbitration pursuant to N.J.S.A. 34:13A-16(d) (2).

^{5/} The Association does not allege that in the May 22, 1978 submission to arbitration the Township agreed to submit all non-mandatory issues to arbitration or waived its right to petition the Commission as to whether certain issues raised by the Association were mandatorily negotiable and arbitrable.

that the 10 day time limit should begin to run as of May 22, 1978. While the instant scope of negotiations petition was docketed on June 5, 1978, it is undisputed that it is dated and was mailed on May 30, 1978. Additionally, June 5, 1978 was a Monday and therefore allowing three days for mail plus the intervening weekend, we find that the petition was filed within the requisite time period. See N.J.A.C. 19:10-2.1(a) and (b). See also N.J.A.C. 19:10-3.1 on the liberal construction of the Commission's Rules to effectuate the purposes of this Act.

Procedurally, the Association also objects to the Township's having been granted until June 22, 1978 to submit a brief in support of its scope petition. N.J.A.C. 19:13-3.3 provides that a brief should be submitted within seven days of the filing of the petition. The Commission notes that under its Rules, there is discretionary authority to extend procedural time limits. The Association has made no showing that there was an abuse of this discretion or that it suffered any detriment as a result of this particular time extension. Thus, we reject this argument.

Concerning the merits of this petition, the Township contends that under N.J.S.A. 40A:14-118, which grants to municipalities the right to establish a police department, the total number of police officers on the force and the number of officers assigned to a particular shift are basic managerial decisions within the Township's exclusive control. As to a no lay-off clause, the Township argues that mandatory negotiations over such a provision would limit its managerial authority to determine the number of employees needed to provide adequate police protection.

Since members of the Association failed to perform their duties during November 22 and 23, 1977, and strikes by public employees are illegal in New Jersey, the Township believes that it was fully justified in withholding salaries for those days and cannot now be required to negotiate over this dispute. On the issue of selecting a temporary replacement for an absent sergeant, the Township's position is that under N.J.S.A. 40A:14-144, which permits municipalities to appoint individuals to temporary positions under certain circumstances, this decision is a matter of managerial prerogative beyond the scope of mandatory negotiations.

The Association takes a different view as to issues in dispute. It considers a no lay-off clause to be an element of the dispute involving the size of the total police force. The Association acknowledges that the Commission has held that the Township has the right to determine in the abstract the number of personnel in the overall department or the need for a reduction in personnel. But it frames the issue as follows: "Is there a right to mandatorily negotiate that the impact of the Township Committee's decision to offer certain terms and conditions of an economic and non-economic package at mandatory arbitration hearings will not result in lay-offs as a result of the Committee's offer of said package?"

Concerning the question of minimum manning on each shift, the Association contends that there was an established practice of manning each shift with a minimum of four on-duty uniformed

personnel. This practice has allegedly been unilaterally altered by the Township and the Association contends that this action constitutes a violation of N.J.S.A. 34:13A-5.3.^{6/} In the alternative, the Association's position is that at least the impact on terms and conditions of employment of the decision to reduce manning levels is mandatorily negotiable. On the question of temporary promotion to acting sergeant, the Association states that the dispute actually involves the procedures and not the ultimate criteria for promotion. With respect to those Association members who were absent from duty on November 22 and 23, 1977, the Association argues that the dispute is over verification of illness and compensation for having taken sick leave on those dates. The Association alleges that it is not attempting to negotiate over compensation for "strike" days.

The Commission finds that the size of the police force, either in total or a particular crew size, relates to questions of manning requirements which is a permissive subject for negotiations. The Commission has consistently stated in the past that the number of employees needed to carry out the employer's function is a basic managerial decision beyond the scope of required subjects for negotiations. The Commission notes, however, that the impact of this decision on terms and conditions of employment - e.g. work load and job safety - is mandatorily negotiable.^{7/}

^{6/} This section states in pertinent part that "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

^{7/} In re Newark Firemen's Union of N.J. and City of Newark, P.E.R.C. 76-40, 2 NJPER 139 (1976); In re Rutgers, The State University,

The Association's proposed no lay-off provision provides that no police officer would be laid off except for just cause relating specifically to job performance. The Commission holds that a provision which would limit the authority of the Township to reduce its work force is not mandatorily negotiable^{8/} as it also relates to questions of manpower levels. To require negotiations of a no lay-off clause would limit the Township in exercising its managerial authority to reevaluate its determination of the number of policemen necessary to adequately provide police protection for the town.^{9/}

While the actual decision to reduce the size of the force is not a term and condition of employment, the impact of that decision on both the remaining employees and those laid-off is mandatorily negotiable. Accordingly, the Township must

^{7/} (Continued) P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re Township of Weehawken, P.E.R.C. No. 77-63, 3 NJPER 175 (1977) and In re Township of Maplewood, P.E.R.C. No. 78-89, 4 NJPER (Para. 1978).

^{8/} It is noted that N.J.S.A. 40A:14-143 grants to municipalities the authority to decrease the number of police officers for reasons of economy.

^{9/} The Association contends that the Township must negotiate over the question of whether acceptance of a particular economic package will result in the lay off of police officers for economic reasons. While the decision to lay off employees is not mandatorily negotiable, during the course of negotiations the Association has a legitimate right to know whether, as a result of the particular economic proposals, it will probably have to lay-off police officers to meet the increased economic burden, while the acceptance of a smaller economic offer will probably not result in such lay offs. Good faith negotiations would require an honest answer by the Township. Knowledge of such information by the Association can only facilitate the negotiations process, thereby fostering the policies of the Act. Cf NLBR v. Truitt Mfg. Co., 351 U.S. 149, 38 LRRM 2042 (1952).

negotiate over issues such as increased work load, overtime, and any other terms and conditions of employment which are affected for the remaining employees. As to the laid-off employees, the Township must negotiate over issues such as, for example, severance pay as well as procedures for reemployment.^{10/}

Consistent with prior decisions, the Commission holds that the determination of the ultimate criteria for selection of employees to perform particular duties and the right to select candidates for promotions including temporary ones is within the scope of managerial authority and not subject to mandatory negotiations.^{11/} Accordingly, the criteria and selection for temporary appointment of a patrolman to Senior Patrol Officer - i.e., acting sergeant on a shift where no sergeant is present, is a permissive subject. The procedures for temporary appointments, however, are mandatory subjects for negotiation. In its brief, the Association asserts that the use by the Township of merit and fitness as a method of selecting the acting sergeant is the procedure for selection. However, the Commission and the Courts have consistently

^{10/} In Union County Bd. of Ed. v. Union County Teachers Assn, 145 N.J. Super. 435 (App. Div. 1976), the court, citing specific provisions of Title 18A, held that non-tenure teachers cannot negotiate reemployment procedures. There is no comparable Title 40A provision although any contractual procedures for reemployment must not contravene the provisions of N.J.S.A. 40A:14-143 relating to the reemployment rights of laid-off police officers.

^{11/} In re Borough of Roselle, P.E.R.C. No. 76-29, 2 NJPER 142 (1976); Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976) and In re City of Plainfield, P.E.R.C. No. 76-42, 2 NJPER 169 (1976). Again, while it does not appear to be an issue, the Association could demand negotiations on the impact of such temporary appointments, e.g. compensation while serving as acting sergeant, etc.

held that such items are the criteria used to make the appointment. Procedures have been limited to notice, posting and similar subjects.^{12/}

Finally, whether or not those patrolmen absent from duty on November 22 and 23, 1977 were on sick leave or engaging in an illegal job action is not an appropriate question in a scope of negotiations proceeding. However, the Commission notes, and doubts that the Township would contest, that the question of sick leave benefits^{13/} is a mandatory subject for negotiations.^{14/}

N.J.S.A. 34:13A-16(f)(4) requires arbitration of only those subjects which are mandatorily negotiable. Permissive subjects may be submitted to arbitration only on agreement of the parties. Accordingly, as to those subjects not found to be mandatorily negotiable, the Association must refrain from insisting to the point of impasse that these issues be submitted to compulsory interest arbitration. As to those subjects found to be mandatorily negotiable, the Township must submit any unresolved disputes to such arbitration.

^{12/} See cases cited in footnote 11 and Board of Education of the Township of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976) and Byram Township, supra, affmd 152 N.J. Super. 12 (App. Div. 1977).

^{13/} The procedures to be followed in proving qualification for sick leave benefits - i.e., doctors certificate or report, medical examinations, etc. - are mandatory subjects for negotiations to the extent that any negotiated provision does not contravene the specific authority granted public employees covered by Civil Service under N.J.A.C. 4:1-17.18 to require verification of sick leave.

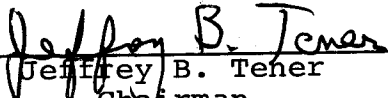
^{14/} In re City of Somers Point, P.E.R.C. No. 77-48, 3 NJPER 99 (1977); In re Hillside Board of Education, P.E.R.C. No. 76-11, 1 NJPER 55 (1975).

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) the Commission hereby determines that the following subjects are not mandatorily negotiable: the size of the police force, either in total or a particular crew size; a no lay-off clause; and criteria for temporary appointment to acting sergeant. The Commission further determines that the following subjects are mandatorily negotiable: the impact on terms and conditions of employment resulting from the Township's decision regarding manning requirements, the impact on the remaining employees and those employees laid-off as a result of the Township's decision to reduce the size of its police force, and procedures for temporary appointments.

As to those subjects not found to be mandatorily negotiable, the Association is ordered to refrain from insisting to the point of impasse that the issues be negotiated, or submitted to compulsory interest arbitration absent mutual agreement of the parties. As to those subjects found to be mandatorily negotiable, the Township is ordered to negotiate and submit any unresolved disputes to compulsory arbitration in accordance with N.J.S.A. 34:13A-16 of the Commission's Rules.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Schwartz voted for this decision. Commissioners Graves and Hipp abstained. None opposed.

DATED: Trenton, New Jersey
August 1, 1978
ISSUED: August 2, 1978