

L.D. NO. 92-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
LITIGATION ALTERNATIVE PROGRAM

In the Matter of

TOWNSHIP OF BLOOMFIELD
Public Employer,

-and-

Docket Nos. CI-L-91-30
CI-L-91-31

F.M.B.A. LOCAL 19
Employee Representative.

-and-

JOHN KATINSKY,
Employee.

Appearances:

For the Township:
Ruderman & Glickman, Attorneys
Mark Ruderman, Of Counsel

For FMBA Local 19
Fox and Fox
(Dennis Alessi, of Counsel)

For John Katinsky
Balk, Oxfeld, Mandell & Cohen
(Sanford Oxfeld, of Counsel)

DECISION

The above-named parties have a dispute concerning the proper salary guide placement of Firefighter John Katinsky. All parties have agreed to submit the issue to the Commission's Litigation Alternative Program and to be bound by the results. Documentary evidence was submitted by the Township. All parties were given an opportunity to respond with additional factual assertions and/or arguments. Letter briefs were filed by all parties.

The issue before me is,

"What credit, if any, should John Katinsky have been given for his prior experience in placing him on the contractual salary guide?"

The Township of Bloomfield ("Township") operates a paid fire department. FMBA Local 19 ("FMBA") is the exclusive representative of the Township's firefighters. The Township and Local 19 were parties to a collective negotiations agreement covering firefighters for the period January 1, 1988, through December 31, 1989. At the time this dispute arose, that agreement was still in effect as the parties had not completed negotiations for its successor. Contract Article 21 provides for salaries for all unit employees pursuant to the Schedule A. This schedule provides, in relevant part:

Effective January 1, 1989, the following salaries shall be fixed and paid as follows:

<u>Fire Fighter</u>	
1st year of service	\$21,053
2nd year of service	24,190
3rd year of service	27,324
4th year of service	30,460
5th year of service	33,597

The contract is silent concerning placing new employees on the salary guide or crediting employees for related experience.

The Township hired John Katinsky as a firefighter on January 22, 1990. He was placed on the first step of the salary guide at the entry level salary of \$21,053.

Katinsky contends that he was entitled to be given credit for his past experience as a volunteer firefighter in Wayne Township, and thus that he should have been placed at a higher starting salary.

The Township submitted records of all firefighters hired over the last ten years. The records show that three other firefighters hired prior to Katinsky also came to Bloomfield with firefighting experience: S. Cooper, a three-year federal firefighter for Lyons Veterans' Hospital, was hired in March, 1984; T. Murphy, a five-year County institutional firefighter was hired in March 1984; and A. Rosamilia, a one-year volunteer firefighter for Nutley Fire Department, was hired in February, 1985. The records also show that, of the 38 firefighters hired in the ten-year period prior to Katinsky's hire, all firefighters, including those with prior experience, were hired at the entry level.

ANALYSIS

Terms and conditions of employment can either be set forth in the parties' agreement or found in the parties' past practice. Galloway Tp. Bd. of Ed., v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978). Generally, a past practice defining a term and condition of employment is entitled to the same status as a term and condition of employment defined by statute or by the provisions of a collective agreement. Where the agreement is silent or ambiguous on the particular issue in dispute, then past practice controls. County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982); Rutgers, The State University, P.E.R.C. No. 82-98, 8 NJPER 300 (¶13132 1982;

Barrington Bd. of Ed., P.E.R.C. No. 81-122, 7 NJPER 240 (¶12108 1981), appeal dismissed App. Div. Docket No. A-4991-80 (1982).

Here, there is no provision in the parties' current or expired collective agreements which controls the placement on the salary guide for new employees. The Township is not contractually obligated to give new hires credit for their prior experience. Where the contract does not cover the issue, we look to the parties' past practice to determine whether a term and condition of employment has been established through the parties' experience. Thus, the key to whether Katinsky was properly hired at step 1 on the guide is found in the parties' past practice concerning initial guide placement.

The records show that, at the time the Township hired Katinsky, there was no past practice of crediting employees with prior experience in placing them on the salary guide. To the contrary, the Township never gave employees credit for past experience outside Bloomfield.

The Township hired another firefighter, Anthony Galioto, in July, 1990, at a higher step on the salary guide. However, even if the hiring of this employee amounted to a deviation from the prior practice, this has no effect on Katinsky or on any other employee

hired before.^{1/} Katinsky's salary guide placement was determined by the past practice at the time of his hire, not by subsequent events. When the Township hired Katinsky, it did so in accordance with the then current practice of placing employees at the first step on the guide. Thus, I find that the Township's placement of Katinsky at step one of the guide was proper.^{2/}

Susan W. Osborn

Susan Osborn, LAP Hearing Officer

Public Employment Relations Commission

DATED: November 4, 1991

1/ Even if Galioto's guide placement amounted to a change in the past practice, the parties may alter or deviate from employment practices from time to time if neither party objects, just as the parties to agree to change contractual terms if both parties agree.

2/ It should be noted that the FMBA did not act improperly by not grieving Katinsky's hiring rate. Since the Township hired Katinsky consistent with the past practice, there was nothing to grieve. If the FMBA seeks changes in the salary guide or the initial step placement practice, it may do so through negotiations for its successor contract.

ATTACHMENT TO L.D. NO. 92-3:

DATED: November 4, 1991

In the matter of

TOWNSHIP OF BLOOMFIELD

-and-

F.M.B.A. LOCAL 19

-and-

JOHN KATINSKY

DOCKET NOS. CI-L-91-30

CI-L-91-31

Service on the following:

Mark S. Ruderman, Esq.
Ruderman & Glickman
56 Park Place
Newark, NJ 07102

Dennis J. Alessi, Esq.
Fox & Fox
570 Broad Street
Newark, NJ 07102

Sanford R. Oxfeld, Esq.
Balk, Oxfeld, Mandell & Cohen
50 Commerce Street
Newark, NJ 07102