

P.E.R.C. NO. 91-58

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-90-32

JERSEY CITY POLICE OFFICERS  
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds two grievances filed by the Jersey City Police Officers Benevolent Association against the City of Jersey City to be legally arbitrable. After a designee denied interim relief, I.R. No. 90-15, 16 NJPER 148 (¶21059 1990), recon. den. I.R. No. 90-17, 16 NJPER 213 (¶21086 1990), the grievances were sustained by an arbitrator. The City asserted that the arbitrator enforced an illegal parity agreement. The Commission concludes that the contract clauses relied upon by the arbitrator are not parity clauses and were not applied as parity clauses.

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Appearances:

For the Petitioner, Martin R. Pachman, P.C., attorneys  
(Joel G. Scharff, of counsel)

For the Respondent, Schneider, Cohen, Solomon, Leder &  
Montalbano, attorneys (David Solomon, of counsel)

DECISION AND ORDER

On January 5, 1990, the City of Jersey City petitioned for a scope of negotiations determination. The petition sought a restraint of arbitration of two grievances seeking additional holidays for members of a negotiations unit represented by the Jersey City Police Officers Benevolent Association ("POBA"). After a Commission designee denied interim relief, I.R. No. 90-15, 16 NJPER 148 (¶21059 1990); recon. den. I.R. No. 90-17, 16 NJPER 213 (¶21086 1990), the grievances were sustained by an arbitrator. The City asserts that the arbitrator has enforced an illegal parity agreement.<sup>1/</sup>

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<sup>1/</sup> The City also filed an unfair practice charge which alleged that the POBA violated N.J.S.A. 34:13A-5.4(b)(1) by relying on an illegal parity agreement to secure additional holidays. This charge was untimely. P.E.R.C. No. 91-6, 16 NJPER 437 (¶21187 1990).

The parties have filed briefs and documents and also rely on the submissions in the interim relief and unfair practice proceedings. A request by the City for an evidentiary hearing has been denied. We also deny its request for oral argument.

The material facts are recited in I.R. No. 90-15. The ensuing arbitration award granted unit employees compensatory days off for the extra days off given to fire personnel during November 1988, and for days off given to some, but not all, POBA unit members during December 1988 and January 1989.<sup>2/</sup>

Clauses which automatically extend holidays negotiated by one group of employees to other employee groups are illegal. See City of Plainfield, P.E.R.C. No. 78-77, 4 NJPER 255 (¶4130 1978). These parity clauses interfere with good faith negotiations by permitting a second employee organization, not a party to the negotiations, to affect those negotiations. But clauses providing for parity when benefits are unilaterally granted by an employer are legal. See Montclair Tp., P.E.R.C. No. 90-9, 15 NJPER 499, 500 (¶20206 1989).

Article 16(A)(2) of the expired POBA agreement is not, on its face, an illegal parity agreement. Montclair. The arbitrator, whose function it is to interpret the parties' agreement, rejected the employer's argument that the POBA was trying to apply it to

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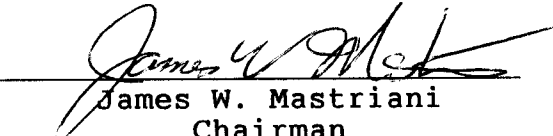
<sup>2/</sup> Christmas day and New Year's day fell on Sunday. Certain POBA unit members who worked in City offices were given the following Mondays off because City offices were closed Mondays.

grant employees in its negotiations unit benefits that had been negotiated for fire personnel. Instead the arbitrator found that the holidays given to fire personnel had been unilaterally and perhaps mistakenly bestowed rather than negotiated. Given our limited role in a scope of negotiations case, Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), we accept this finding. As Article 16(A)(2) has not been applied to extend benefits negotiated by one unit to those in another, it is not an illegal parity clause and is within the scope of mandatory negotiations.

The second grievance seeks additional holidays based on additional days off given to members of the POBA unit. Whether a particular benefit is to be enjoyed by all unit members or only a certain category of unit members is not a "parity" problem under Plainfield. Thus the second grievance is legally arbitrable.

Since arbitration is complete and we have been advised that proceedings to confirm the award have been commenced, we do not issue any order.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
December 17, 1990  
ISSUED: December 18, 1990