

P.E.R.C. NO. 2001-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF EAST ORANGE,

Petitioner,

-and-

Docket No. SN-2000-93

EAST ORANGE F.M.B.A. LOCAL 23,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal made by East Orange F.M.B.A. Local 23 for inclusion in a successor collective negotiations agreement with the City of East Orange. The proposal seeks to increase the number of acting captains from three to five that may be assigned before a captain is called in on overtime and proposes a policy for assignment of acting captains on a rotating basis in accordance with seniority. The Commission finds the proposal to increase the acting captains from three to five may be permissively negotiable, but is not mandatorily negotiable. The second proposal concerning the rotation of acting captain assignments by seniority is mandatorily negotiable.

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, McCormack & Matthews, P.C., attorneys  
(Thomas M. McCormack, on the brief)

For the Respondent, Courter, Kobert, Laufer & Cohen,  
P.C., attorneys (Fredric M. Knapp, on the brief)

DECISION

On March 23, 2000, the City of East Orange petitioned for a scope of negotiations determination. The City seeks a determination that a proposal made by East Orange F.M.B.A. Local 23 during negotiations for a successor collective negotiations agreement is not mandatorily negotiable and may not be submitted to interest arbitration.

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

The FMBA represents all uniformed firefighters, linemen and dispatchers in the fire department. The parties' last collective negotiations agreement expired on December 31, 1995.

That agreement was superseded by an interest arbitration award effective from January 1, 1996 through June 30, 1999. The parties are involved in negotiations for a successor agreement and the FMBA has petitioned for interest arbitration.

The FMBA has proposed the following provisions for inclusion in a successor contract:

Acting Captains. Increase the number of acting captains who may be assigned before overtime is called for in the officer ranks from three (3) acting captains to five (5) acting captains.

Acting Captain Policy. Provide for an equitable plan for assignment of acting captains on a rotating basis in accordance with seniority.

As indicated by the first proposal, the previous contract provided for three acting captains to be assigned before superior officers were called at overtime rates.

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the 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]

We will consider only whether the proposals are mandatorily negotiable. We do not decide whether contract proposals concerning firefighters are permissively negotiable since the employer need not negotiate over such proposals or consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

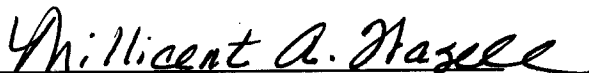
Consistent with West New York, we ask only whether the acting captain proposals are mandatorily negotiable. The first proposal is not. The decision to use lower-ranked public safety officers in an acting capacity to replace absent higher-ranked officers may be permissively negotiable, but it is not mandatorily negotiable. See City of New Brunswick, P.E.R.C. No. 97-141, 23 NJPER 349 (¶28162 1997), and the cases collected therein. Indeed, the FMBA argues only that the acting captain proposal is permissively negotiable. We therefore hold that the City is not required to negotiate over it or consent to its submission to interest arbitration. Paterson at 88.

The second proposal calls for an equitable plan for the assignment of acting captains on a rotating basis in accordance with seniority. We analyze this proposal based on the assumption that the employer has previously agreed to and/or decided to use acting captains. Under these circumstances, rotation of acting captain assignments among employees the employer deems qualified to serve as acting captains is mandatorily negotiable. See City of Atlantic City, P.E.R.C. No. 90-125, 16 NJPER 415 (121172 1990).

ORDER

The acting captain proposal of East Orange F.M.B.A. Local 23 is not mandatorily negotiable. The acting captain policy proposal is mandatorily negotiable consistent with this decision.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, Muscato, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner McGlynn abstained from consideration.

DATED: July 20, 2000  
Trenton, New Jersey  
ISSUED: July 21, 2000