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P.E.R.C. NO. 83-143

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PROFESSIONAL FIRE OFFICERS  
ASSOCIATION, LOCAL 1860,

Petitioner,

-and-

Docket No. SN-83-79 and  
ID-83-3

CITY OF NEWARK,

Respondent.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated to him by the full Commission, holds that a provision allowing a retiring employee the option of immediately receiving a lump sum payment for all accrued compensatory time-off rather than remaining on the payroll until the expiration of all accrued compensatory time off is mandatorily negotiable and is not preempted by statutes on pensions and retirement benefits for firefighters. The Chairman also holds that the proposal is economic in nature and should be considered in interest arbitration as part of an economic package.

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Appearances:

For the Petitioner, Brian C. Doherty, Esquire

For the Respondent, John J. Teare, Corporation  
Counsel (Rosalind L. Bressler, Asst. Corporation  
Counsel)

DECISION AND ORDER

The City of Newark ("City") and the Professional Fire Officers, Local 1860 ("Association") have reached an impasse in their successor contract negotiations and are now participating in compulsory interest arbitration proceedings pursuant to N.J.S.A. 34:13A-16. During the negotiations, the Association presented a proposal allowing an employee the option of receiving on the date of retirement a lump sum in the amount owed him for accrued compensatory time-off. (compensatory days, vacation days, personal days, and holidays) and which he otherwise would have received by remaining on the payroll until the accrued compensatory time-off had expired.<sup>1/</sup> The parties have filed a Joint Petition for Scope of Negotiations Determination pursuant to N.J.S.A. 34:13A-5.4(d) asking whether this proposal is mandatorily

<sup>1/</sup> A copy of this proposal is attached as Appendix A.

negotiable.<sup>2/</sup> The City has also filed a Petition for Issue Definition Determination pursuant to N.J.S.A. 34:13A-16(f)(2) asking whether this proposal is economic or non-economic.<sup>3/</sup>

The full Commission has delegated authority to me to decide issues in dispute during, as here, the pendency of interest arbitration proceedings. Because the scope petition and the issue identification petition concern the same proposal, I have consolidated these petitions for consideration. Both parties have filed briefs.

Employees of the Newark Fire Department are members of the Police and Firemen's Retirement System of New Jersey. N.J.S.A. 43:16A-1 et seq. governs retirement and pension benefits for such employees. In particular, N.J.S.A. 43:16A-5(1) and (2) provide:

(1) Any member in service who has attained age 55 years may retire on a service retirement allowance upon filing a written and duly executed application to the retirement system, setting forth at what time, not less than 1 month subsequent to the filing thereof, he desires to be retired. Any member in service who attains age 65 years shall be retired on a service retirement allowance forthwith on the first day of the next calendar month.

(2) Upon retirement for service a member shall receive a service retirement allowance which shall

<sup>2/</sup> The negotiability of certain other proposals came into question during these proceedings, but the Association has since withdrawn the other proposals from the table.

<sup>3/</sup> An interest arbitrator must consider each party's offer on all economic issues as a single package and choose between them on a package basis; an interest arbitrator must consider each party's offer on each non-economic issue independently and must choose between them on a proposal-by-proposal basis. N.J.S.A. 34:13A-16(c)(6).

consist of:

(a) An annuity which shall be the actuarial equivalent of his aggregate contributions and

(b) A pension in the amount which, when added to the member's annuity, will provide a total retirement allowance of one-sixtieth of his average final compensation multiplied by the number of years of his creditable service, or 2% of his average final compensation multiplied by the number of years of his creditable service up to 30 plus 1% of his average compensation multiplied by the number of years of creditable service over 30, whichever is greater.

N.J.S.A. 43:16A-11.1 provides, in part:

Should a member resign after having established 25 years of creditable service, he may elect "special retirement," provided, that such election is communicated by such member to the retirement system by filing a written application, duly attested, stating at what time subsequent to the execution and filing thereof he desires to be retired. He shall receive, in lieu of the payment provided in section 11(1) a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his aggregate contributions, and

(2) A pension in the amount which, when added to the member's annuity will provide a total retirement allowance of 60% of his average final compensation, plus 1% of his average final compensation multiplied by the number of years of creditable service over 25 but not over 30; provided, however, that any member who has earned, prior to the effective date of this 1979 amendatory act, more than 30 years of creditable service, shall receive an additional 1% of his average final compensation for each year of his creditable service over 30.

The board of trustees shall retire him at the time specified or at such other time within 1 month after the date so specified as the board finds advisable.

Pursuant to the existing contract between the City and the Association, an employee who terminates active service with the City receives terminal leave in the event and the amount that the employee has accrued compensatory time for days off earned, but not taken. These additional days off may be due an employee for holidays, vacation days, personal days, or compensatory days off earned, but not taken during the years of service. Under the present system, an employee who decides to cease active employment remains on the City's payroll until his accrued compensatory time off has expired. Thereafter he becomes eligible to receive pension benefits. According to an affidavit submitted by a Deputy Chief of the Newark Fire Department, a typical fire officer has accrued approximately nine months of time off for terminal leave purposes and thus waits nine months after he stops active employment before he begins to receive pension benefits.<sup>4/</sup>

Under the Association's proposal, an employee wishing to cease active employment would have the option of either: (a) remaining on the City's payroll pursuant to the existing procedure and receiving deferred payments over the period of terminal leave, or (b) leaving the City's payroll immediately and receiving at that time a lump sum payment of 100% of the total cost (base salary, longevity pay, clothing allowance and hazardous

<sup>4/</sup> The Association does not contest this estimate. Further, as the above description evidences, there is no dispute concerning such matters as the type of days which can be credited for terminal leave, the manner in which terminal leave is taken or computed, and the administration of the terminal leave system.

duty pay) the City would have incurred had the employee remained on the payroll if he had taken a terminal leave. Thus, based upon the City's estimate of approximately nine months of accrued compensatory time off for each retiring employee, an employee exercising the lump sum option would receive nine months annual salary immediately upon ceasing active employment rather than remaining on the City's payroll and receiving regular paychecks for an extra nine months after ceasing active employment. Also, an employee choosing to take a terminal leave would not be eligible to receive pension benefits until his accrued compensatory time off had expired and he was removed from the payroll while an employee choosing the lump sum option would receive his lump sum and his pension benefits immediately upon ceasing active employment.

The City argues that the lump sum option is non-negotiable because it may encourage employees to retire earlier than under the existing terminal leave procedure and thus may affect the actuarial integrity of the state pension plan. The City cites Fair Lawn Ed. Assn. v. Fair Lawn Bd. of Ed., 79 N.J. 574 (1979) ("Fairlawn") and Jacobs v. New Jersey Highway Auth., 54 N.J. 393 (1969) ("Jacobs").

The Association argues that the lump sum proposal is mandatorily negotiable because it concerns the mandatorily negotiable subject of the timing of deferred compensation payments and does not abrogate or alter any pension statute.

Acting pursuant to the authority the full Commission

has delegated to me pursuant to N.J.S.A. 34:13A-6(f), I find the lump sum option proposal to be mandatorily negotiable. This proposal concerns the mandatorily negotiable subject of the timing of accrued compensation payments, In re Trenton Bd. of Ed, P.E.R.C. No. 81-98, 7 NJPER 137 (¶12059 1981). Unlike Fairlawn, in which the Supreme Court invalidated a bonus for early retirement, and Jacobs, in which the Supreme Court invalidated a requirement that Turnpike employees retire at age 65, the proposal is directly and primarily tied to compensation for services actually rendered and does not directly pertain to entitlement for retirement or pension benefits. Contrast also State v. State Supervisory Employees Association, 78 N.J. 54, 83 (1978) (entire subject matter of public employee pensions is insulated from negotiated agreement). This proposal would be perfectly consistent with the contemplation of N.J.S.A. 43:16A-5 and N.J.S.A. 43:16A-11.1 that fire-fighters who attained age 55 or who established 25 years of creditable service would be eligible to receive pension benefits starting when they decided to retire; the proposal would not allow any employee under 55 or with less than 25 years creditable service to receive benefits.

I recognize that economic proposals such as this one dealing with compensation or customary fringe benefits may have an incidental effect of encouraging an employee who already meets the statutory criteria for pension benefits to retire earlier or later than he otherwise might have. Thus, for example, negotiation for higher rates of compensation may ultimately have an incidental effect of encouraging employees to retire earlier

because of their higher compensation base for pension benefits. Similarly, negotiation over the amount and type of accrued compensatory time-off to which an employee is entitled may effect the technical date of retirement and the City's terminal leave program.<sup>5/</sup> The statutory retirement system for firefighters, however, does not preempt negotiation over such mandatorily negotiable matters as compensation and the timing of payment for accrued time-off so long as any negotiated proposals do not alter the statutory eligibility criteria for retirement benefits. Accordingly, I find the lump sum option proposal is mandatorily negotiable. I, of course, intimate no opinion as to the merits or the wisdom of the proposal. In re Byram Township Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

I also find the lump sum option proposal to be economic in nature. The essence of the proposal concerns the timing of accrued compensation payments, a matter directly related to such forms of employee income as wages, salaries, hours in relation to earnings, paid vacation, and paid holidays. N.J.S.A. 34:13A:- (6)(f)(2). Accordingly, this proposal must be included as part of the Association's package on economic issues. N.J.S.A. 34:13A-16C(6).

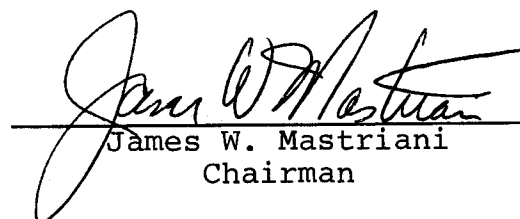
#### ORDER

The lump sum option proposal of the Professional Fire

<sup>5/</sup> Under the City's theory, it presumably would be illegal to negotiate a lesser amount or cessation of accrued compensatory time-off afforded employees since the reduction or elimination of such accrued time-off would advance the date of retirement under its terminal leave program. There is, however, no unalterable right to a certain amount of accrued time-off.



Officers Association, Local 1860 is mandatorily negotiable and may be submitted to interest arbitration. The lump sum option proposal is economic in nature and, if submitted to interest arbitration, must be submitted as part of the Association's package on economic issues.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
May 4, 1983

## APPENDIX A

The Association proposed the following terminal leave and optional lump sum terminal leave provisions:

### 9.08 Terminal Leave

An employee, upon separation for any reason, shall at the employee's option continue on the payroll for a period of time equal to:

1. Three calendar days per year of service and a pro-rata time for a partial year.

2. Accumulated compensatory time due for holidays for the period of 7/1/65 to 12/31/70 as contained in Article 7-Holidays. Each holiday is multiplied by two (2) to compute calendar days.

3. Accrued Vacation Days: Each vacation day is multiplied by two (2) to compute calendar days.

4. Accrued Personal Days: Each personal day is multiplied by two (2) to compute calendar days.

5. Time Accrued in Lieu of Time Off for Holidays: If any, each holiday is multiplied by two (2) to compute calendar days.

Subsection 1, 2, 3, 4 and 5 of Article 9.08 Terminal Leave are deferred compensation vested to the individual and as such are irrevocable by either party or their successors of this contract.

### 9.09 Optional Lump Sum Terminal Leave

Upon separation for any reason, an employee may elect a lump sum payment of 100% of the total cost that the City would have incurred had the retiree remained on the payroll under the current procedure in lieu of terminal leave as provided in 9.08 Terminal Leave.

Base salary, longevity, holiday pay, clothing allowance, hazardous pay, will be computed for the length of the time due the separated employee as terminal leave.

This sum of money will be paid to the employee on the date of retirement.

In the event the employee is entitled to a payment that encompasses two (2) fiscal years, one payment will be made upon retirement and another payment will be made in the second week of January of the next fiscal year.

In the event that a contract is subsequently executed for the time period of the employee's terminal leave, the City shall make a payment adjustment to the employee when the City pays the active employees their retroactive adjustment.