

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY TRANSIT,

Respondent,

-and-

Docket No. CO-H-95-244

NEW JERSEY TRANSIT PBA LOCAL 304,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that New Jersey Transit violated the New Jersey Employer-Employee Relations Act by unilaterally requiring police applicants to agree to repay certain training costs if they leave the employ of New Jersey Transit within two years of completing police academy training. The Commission finds the disputed requirement to be a term and condition of employment which intimately and directly concerns the duration of employment of police trainees while they are included in PBA Local 304's negotiations unit. The Commission orders the employer to restore the status quo and make former employees whole for any losses incurred.

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 Respondent, Peter Verniero, Attorney General
(David Griffiths, Deputy Attorney General)

For the Charging Party, Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel; David L. Rosenberg, on
the brief)

DECISION AND ORDER

On January 23, 1995, New Jersey Transit PBA Local 304 filed an unfair practice charge against New Jersey Transit. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} by unilaterally

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

requiring police applicants to agree to repay certain training costs if they leave the employ of New Jersey Transit within two years of completing police academy training.

On March 17, 1995, a Complaint and Notice of Hearing issued. The parties stipulated the facts and waived an evidentiary hearing and a Hearing Examiner's report. They filed briefs and responses by August 2, 1996. The charging party's brief was in the form of a motion for summary judgment. The respondent's brief was in the form of a cross-motion.

Verbatim Stipulation of Facts

1. New Jersey Transit PBA Local 304 is the recognized majority representative for all non-supervisory Transit Police employed by New Jersey Transit.

2. New Jersey Transit is a public employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to the Act's provisions.

3. The New Jersey Transit PBA Local 304 (hereinafter the "PBA") and New Jersey Transit (hereinafter "Transit") are the parties to a collective negotiations agreement that expired as of June 30, 1992.

4. The parties have recently concluded negotiations with regard to a successor collective bargaining agreement covering the period between July 1, 1992 and June 30, 1996. A copy of that agreement is annexed as Exhibit "A".

5. Prior to August 11, 1994, police trainees employed by New Jersey Transit who were required to attend the Middlesex County Police Training Academy for training as a Police Officer had all of their Academy training costs paid by Transit during the pertinent time period. There were no restrictions placed on the ability of these trainees to leave the employ of Transit at any time and be free from any obligation to indemnify Transit for the Academy training costs at issue. After August 11, 1994, Transit has paid for the training costs also, subject to the disputed repayment obligation set forth in Exhibit "B," referred to in Paragraph 7, infra.

6. On or about August 11, 1994 all new applicants for employment as police officers were required to sign an agreement (Exhibit "B") which obligated those applicants to agree to repay Transit for portions of the Academy training costs at issue if those Officers left the employ of Transit at any time within two years of the completion of their Academy training. The requirement to sign such agreement pertained to all applicants who were offered employment; signing the agreement was a condition of initial employment.

7. The affected Officers were required to sign the attached agreement (Exhibit "B") as a condition for their continued employment by Transit, for those accepting initial employment [as] set forth in Paragraph 6, supra.

8. At no time did any agent or representative of Transit attempt to negotiate the issue dealing with training costs reimbursements with the PBA as the majority representative of the affected Officers.

9. According to Transit, the cost to Transit to train a probationary police officer at the police academy for 22 weeks includes approximately \$1,200.00 for the academy and equipment, uniforms, etc., and approximately \$20,000.00 in salary and benefit costs for that period.

10. For recruits who so attend the academy (not every new hiree goes through academy training), approximately 14 weeks in service training is given before the recruit can actually begin to function as an independent officer. According to Transit, this involves an additional \$13,000.00 in salary and benefits costs, for a total of approximately \$33,000.00 in costs for recruits so trained.

11. The parties agree that the stipulated facts constitute the complete record.

The charging party acknowledges that to the extent the stipulated facts are insufficient to sustain its burden of proof by a preponderance of the evidence, the Complaint may be dismissed. Similarly, the respondent acknowledges that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted, or to rebut or disprove the prima facie case established by the charging party.

Analysis

N.J.S.A. 34:13A-5.3 requires that mandatorily negotiable employment conditions be negotiated before they are implemented. Unilateral implementation violates the obligation to negotiate in good faith. N.J.S.A. 34:13A-5.4.

The charging party alleges that the disputed employment condition concerns compensation and is mandatorily negotiable. The charging party analogizes this condition to the mandatorily negotiable subjects of sabbatical leave for teachers and initial placement of employees on salary guides. The employer responds that the matter is not mandatorily negotiable because it obligates the individual employee to the employer only after he or she is no longer employed and, axiomatically, no longer included in the negotiations unit. It cites federal sector precedent permitting an employer to alter "otherwise" negotiable terms and conditions of retirees because of their employment status.

The Act does not define "terms and conditions of employment." N.J.S.A. 34:13A-5.3. Negotiable terms and conditions of employment are "those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent managerial prerogatives...." Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10, 14 (1973). Examples of terms and conditions of employment include working hours, compensation, physical arrangements, facilities and

fringe benefits. Englewood Bd. of Ed. v. Englewood Teachers, 64 N.J. 1, 7 (1973); State v. State Supervising Employees' Ass'n, 78 N.J. 54 (1978). "[O]ur courts have upheld findings by [the Commission] that modest amounts of compensation, or even seemingly minor non-economic benefits, can sufficiently affect the work and welfare of employees to trigger mandatory negotiability." Hunterdon Cty. and CWA, 116 N.J. 322, 332 (1989).

A public employer has a managerial prerogative to determine the training needs of its police force. Franklin Tp., P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985). However, the cost of training and compensation during training are severable and mandatorily negotiable issues. Id., Burlington Cty. College, P.E.R.C. No. 90-13, 15 NJPER 513 (¶20213 1989). Cf. City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, 198 N.J. Super 382 (App. Div. 1985).

The disputed requirement is quite literally a term and condition of employment. That employment condition intimately and directly concerns the duration of employment of police trainees while they are included in the PBA's unit. Each day of employment at New Jersey Transit represents partial and incremental consideration for the individual employment contracts signed by trainees. The prospect of having to reimburse New Jersey Transit for training costs is a condition of employment which "sufficiently affects the work and welfare of employees to trigger mandatory negotiability." Hunterdon Cty.

We believe that a unilateral effort to retain staff by negative inducement is no less negotiable than an effort by positive inducement, such as a unilateral increase in wages. Both actions implicate the exclusivity principle. Moreover, we are not persuaded that the obligation to reimburse New Jersey Transit, occurring after unit employees leave employment, is non-negotiable. Majority representatives may negotiate benefits for future retirees. For example, health benefits for employees upon separation for reason of retirement are mandatorily negotiable as long as the benefit at issue is not preempted by statute or regulation. Atlantic Cty., P.E.R.C. No. 95-66, 21 NJPER 127 (¶26079 1995). Similarly, employee obligations upon separation for other reasons are mandatorily negotiable. Accordingly, by unilaterally imposing this employment condition, New Jersey Transit violated subsections 5.4(a)(1) and (5). We order the employer to restore the status quo and make former employees whole for any losses incurred. Accord City of Mount Vernon, 18 N.Y. PERB 3020 (1985); City of Hollandale, 15 FPER 426 (¶20214 1989); Franklin Police Dept., State Employees Ass'n of N.H., N.H. PELRB, Decision No. 84-76 (1984).

ORDER

New Jersey Transit is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the

Act, particularly by unilaterally imposing a pre-hire agreement requiring applicants to reimburse New Jersey Transit for training costs if they quit employment within two years of completing police academy training.

2. Refusing to negotiate in good faith with New Jersey Transit PBA Local 304 concerning terms and conditions of employment of negotiations unit employees, particularly by unilaterally imposing a pre-hire agreement requiring applicants to reimburse New Jersey Transit for training costs if they quit employment within two years of completing police academy training.

3. Collecting money to reimburse training costs from any employee quitting employment within two years of completing police academy training.

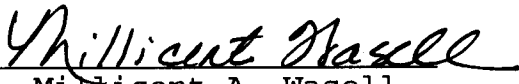
B. Take this action:

1. Return all monies collected as reimbursements of training costs from employees quitting New Jersey Transit within two years of completing police academy training.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioners Boose and Wenzler were not present.

DATED: April 24, 1997
Trenton, New Jersey
ISSUED: April 25, 1997



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally imposing a pre-hire agreement requiring applicants to reimburse New Jersey Transit for training costs if they quit employment within two years of completing police academy training.

WE WILL cease and desist from refusing to negotiate in good faith with New Jersey Transit PBA Local 304 concerning terms and conditions of employment of negotiations unit employees, particularly by unilaterally imposing a pre-hire agreement requiring applicants to reimburse New Jersey Transit for training costs if they quit employment within two years of completing police academy training.

WE WILL cease and desist from collecting money to reimburse training costs from any employee quitting employment within two years of completing police academy training.

WE WILL return all monies collected as reimbursements of training costs from employees quitting New Jersey Transit within two years of completing police academy training.

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NEW JERSEY TRANSIT
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"