P.E.R.C. NO. 79-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF WEEHAWKEN,

Petitioner,

Docket No. SN-79-29

-and-

WEEHAWKEN FMBA, LOCAL 267,

Respondent.

SYNOPSIS

In a scope of negotiations determination, the Commission, relying upon In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (Para. 4130 1978), found that a disputed clause was a reopener provision rather than a parity clause and, as such, related to a required subject of negotiations. The clause reads as follows: "Upon the Police Department receiving a 32 hour work week negotiations for the Fire Department benefits will begin in November of 1977." The Commission reiterated that consideration of traditional patterns of similarity of terms and conditions of employment of employees in different units is permissible. Furthermore, a negotiations demand pursuant to a reopener clause which, if agreed to, would result in parity, does not change a reopener clause into a parity clause.

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Appearances:

For the Petitioner, Office of the County Counsel, Division of Labor
(Francis X. Hayes, of Counsel)

For the Respondent, Osterweil, Wind & Loccke, Esqs.
(Alfred G. Osterweil, of Counsel)

DECISION AND ORDER

On November 22, 1978, a Petition for Scope of Negotiations Determination was filed by the Township of Weehawken (the "Township") with the Public Employment Relations Commission seeking a determination as to whether a particular clause is a parity clause and, therefore, an illegal subject of negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act").

The context of this dispute is unusual. The parties entered into a two year agreement on July 27, 1977 covering the 1977 and 1978 calendar years. Additionally, they signed a memorandum of agreement covering that same period which set forth wage scales, holidays, and the disputed clause. Pursuant

to that clause, which the Weehawken FMBA, Local 267 (the "FMBA") contends is a reopener clause, the FMBA, in the absence of a voluntary agreement with the Township, filed with the Commission a request for interest arbitration in accordance with N.J.S.A. 34:13A-16. The Township takes the position that the disputed clause is in fact a parity clause which is an illegal subject of negotiations. Therefore, the Township seeks a permanent restraint of the interest arbitration proceeding.

The clause which precipitated the instant dispute and which appears in the memorandum of agreement follows:

> 1978 - Upon the Police Department receiving a 32 hour work week negotiations for the Fire Department benefits will begin in November of 1977.

The Township does not dispute the existence of this clause nor that it entered into the agreement containing this clause. But it contends that the clause is an illegal parity clause which cannot be utilized by the FMBA as the vehicle to engage in compulsory interest arbitration. The Township contends that the disputed clause, although admittedly not conforming to the "classical phraseology" of a parity clause, nontheless was intended to be and in actuality has served as a parity clause. The Township also concedes that reopener provisions of existing agreements are subject to compulsory interest arbitration under the Act.

The Township's position is based on both procedural and substantive grounds. Procedurally, it takes the position

that, because the disputed clause is claimed by the Township to be an illegal subject of negotiations, it can only be charged with a refusal to negotiate by the FMBA. This position is simply unsupportable. Our rules, N.J.A.C. 19:16-5.5, specifically provide for the filing of a scope petition by a party asserting that a disputed issue is not within the required scope of negotiations. That is precisely what the Township has done. The FMBA is under no obligation to file an unfair practice charge with the Commission.

Substantively, the Township contends that the clause at issue, "in substance if not in form" [1/] is an illegal parity clause.

Both parties cite our decision in In re City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978) to support their position.[2/] In that decision, we held that parity clauses are illegal subjects of negotiations because they unlawfully limit the right of an employee organization to negotiate fully its own terms and conditions of employment. We stated that our determination did not preclude a public employer "...from considering the historical background of collective negotiations and traditional patterns of wage and benefit relationships including 'comparability' with different employee organizations..." (at 256). We specifically held that "...a

1/ Township's Brief at 7.
2/ The FMBA relies upon a short letter submission, stating that the disputed clause is simply a reopener clause as discussed in Plainfield. The Township also filed a reply brief.

reopener clause does not offend the Act because there is no predetermined result..." (at 256)

The clause at issue here is clearly a reopener provision as opposed to a parity clause. It contains no predetermined result nor any automatic conferral of a benefit upon the members of the Local in the event that the Police Department receives a 32 hour work week. This clause provides nothing further than an agreement to negotiate if a certain event occurs.

The Township contends that the history of collective negotiations of the uniform services and the demand by the Local at the first arbitration session clearly evidences that this clause is an illegal parity clause. We cannot agree. As noted above, we recognized in Plainfield that a public employer could consider the traditional patterns of similarity of terms and conditions of employment of employees in different units. This does not violate the Act. As to the demands made by the Local, a demand in negotiations is not equivalent to a predetermined result as contemplated in a parity clause. The Commission cannot agree with the Township that a reopener clause can be transformed into a parity clause by a demand at negotiations. The duty to negotiate does not connote an obligation to agree.[3/]

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), the Commission hereby determines that the matter in dispute involves a mandatorily negotiable reopener clause and it is hereby ORDERED

3/ Council of New Jersey State College Locals, 1 NJPER 39 (1975), aff'd, 141 N.J. Super. 470 (App. Div. 1976).

that the Township of Weehawken negotiate in good faith with the Weehawken FMBA, Local 267 and submit to compulsory interest arbitration any unresolved dispute regarding this issue in accordance with the Act.

BY ORDER OF THE COMMISSION

Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hipp, Hartnett, Parcells and Schwartz voted for this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey
January 16,1979
ISSUED: January 17, 1979