

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-80-13

I.A.F.F., LOCAL 1860, AFL-CIO,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, finds that the filling of vacancy provision at issue (Article 13.01) is a permissive subject for collective negotiations. The I.A.F.F., Local 1860, AFL-CIO was ordered to refrain from insisting to the point of impasse upon inclusion of such an article in a collective negotiations agreement with the City. Such an article may not be submitted to compulsory interest arbitration unless both parties agree.

P.E.R.C. NO. 80-111

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Appearances:

For the Petitioner, Salvatore Perillo, Esq.
(Ms. Rosalind L. Bressler, Esq., Asst
Corporation Counsel, on the Brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(Mr. David Solomon, on the Letter Memorandum)

DECISION AND ORDER

On August 23, 1979 a Petition for Scope of Negotiations Determination was filed by the City of Newark (the "City") with the Public Employment Relations Commission seeking a determination as to whether a matter in dispute between the City and I.A.F.F. Local 1860, AFL-CIO (the "IAFF") is within the scope of collective negotiations.

At the time that this petition was filed the parties were engaged in compulsory interest arbitration in accordance with Public Laws of 1977, Chapter 85. During the course of the arbitration process the parties agreed that the Commission should decide the negotiability of the following portion of a provision

contained in the contract between the parties that expired on December 31, 1978:

13.01 Promotions

Budgeted vacancies in all officers ranks shall be filled within thirty (30) days by promotion from a valid Civil Service list.

The parties filed briefs in support of their respective positions, all of which were received by February 27, 1980.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission or the State judiciary.

The Commission has determined that a provision requiring the filling of vacancies within a delineated period of time relates to a permissive subject for collective negotiations. See, In re State of New Jersey (State Troopers), P.E.R.C. No. 79-68, 5 NJPER 160 (¶10089 1979), In re City of Paterson, P.E.R.C. No. 80-16, 5 NJPER 369 (¶10189 1979), appeal pending App. Div. Docket No. A-257-79 and In re City of Paterson, P.E.R.C. No. 80-99, 6 NJPER ____ (¶ 1980). The Commission in the past has rejected claims that there is no permissive category of negotiations for employees covered by Chapter 85, P.L. 1977. That statute specifically refers to permissive subjects at two points ^{1/} and the

1/ N.J.S.A. 34:13A-16(b) and 34:13A-16(f)(4).

Commission has found the existence of permissive subjects in police and fire disputes subsequent to Ridgefield Park Board of Education v. Ridgefield Park Education Assn, 78 N.J. 144 (1978).^{2/}

One argument raised by the IAFF warrants additional comment in this decision. The IAFF asserts that even if Article 13.01 is merely a permissive subject of negotiations, that Article may not be deleted from the contract until, and only after the parties agree, to delete same in negotiations. In the past, the Commission has held that the inclusion of a permissive subject of negotiations in a contract does not convert that issue into a mandatory one. In State of New Jersey (State Troopers), supra, at page 162, the Chairman of the Commission stated the following:

...But a permissive subject is only negotiable if both parties voluntarily agree to negotiate concerning it. It is bad faith negotiations for either party to insist upon such a subject to the point of impasse. N.J.S.A. 34:13A-16(b) and (f)(4) expressly provide that permissive subjects may only go to factfinding or interest arbitration if both parties agree. Therefore, the State can remove any aspect of the promotion article found to be a nonmandatory subject of negotiations from the successor agreement by simply refusing to negotiate concerning it. It has thus exercised its right to retain unilateral control over that managerial prerogative.

(emphasis added)

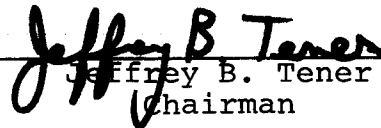
^{2/} See In re City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979); In re Township of Mount Holly, P.E.R.C. No. 79-51, 5 NJPER 91 (¶10050 1979); In re City of Paterson, supra; and In re State of New Jersey (State Troopers), supra. See also Bd of Ed Woodstown-Pilesgrove v. Woodstown-Pilesgrove Education Assn, ___ N.J. ___ (1980).

The Commission does not find that the two cases cited by the City, N.J. State PBA, Local 29 v. Town of Irvington, 80 N.J. 271 (1979) and City of Atlantic City v. Laezza, 80 N.J. 255 (1979), mandate the conclusion that the instant contract provision is an illegal subject for collective negotiations.

ORDER

Based upon the above discussion, it is hereby determined that the "filling of vacancy" provision at issue is a permissive subject for collective negotiations. The I.A.F.F., Local 1860, AFL-CIO is ordered to refrain from insisting to the point of impasse upon inclusion of such an article in a collectively negotiated agreement with the City of Newark. Such an article may not be submitted to compulsory interest arbitration unless both parties agree.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: March 7, 1980
Trenton, New Jersey