

P.E.R.C. NO. 92-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Petitioner,

-and-

Docket No. SN-92-28

UNIFORMED FIRE OFFICERS  
ASSOCIATION, LOCAL 2A,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a salary article in an expired contract between the Uniformed Fire Officers Association, Local 2A and the City of Paterson may not be submitted to interest arbitration. That article indexes fire officers' salaries to those negotiated by the firefighters' unit. The Commission holds that a salary proposal based upon this contract language may not be submitted to interest arbitration unless and until the salaries of the other negotiating units are already established. This is dictated by the way the interest arbitration law is designed to operate.

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Appearances:

For the Petitioner, Genova, Burns and Schott, attorneys  
(Nancy J. Kaloud, of counsel)

For the Respondent, Joseph P. McMenamin, attorney

DECISION AND ORDER

On August 28, 1991, the City of Paterson petitioned for a scope of negotiations determination. The City seeks a declaration that the salary article in its expired contract with the Uniformed Fire Officers Association, Local 2A ("UFOA") is an illegal parity agreement. That article indexes fire officers' salaries to those negotiated by the firefighters unit.

The parties have filed briefs. These facts appear.

The UFOA represents paid, full-time, uniformed captains and fire department mechanics. The parties entered into a collective negotiations agreement effective from August 1, 1988 to July 31, 1990. Article 5.10 reads:

Salaries paid to all members of the UFOA shall not exceed 30% differential above the top grade

firefighter, and shall be paid in accordance with the following schedule of steps which represent a differential above a top grade firefighter.

Upon promotion: One third (1/3) of the dollar difference between a top firefighter and the maximum for Captain.

After one (1) year in Rank: An additional one third (1/3) of the dollar difference between a top firefighter and the maximum for Captain.

After two (2) years in Rank: Thirty percent (30%) above a top grade firefighter.

The parties are engaged in interest arbitration proceedings to resolve an impasse over a successor contract. The City has proposed that Article 5.10 be deleted. The UFOA's interest arbitration petition lists as an unresolved issue a proposal to condense the salary guide from three steps to two and notes that an issue was raised concerning the legality of a "salary reopener" clause. This petition ensued. The City has not yet reached a successor agreement with Paterson FMBA Local 2, the representative of the firefighters.

Clauses which guarantee one unit additional benefits based upon the outcome of an employer's future negotiations with other units have been found illegal and unenforceable. See City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978). The City acknowledges that we have distinguished from Plainfield

clauses worded similarly to Article 5.10 where the salaries of the other negotiating unit have already been established. Edison Tp. Bd. of Ed., P.E.R.C. No. 92-61, 18 NJPER 44 (¶23017 1991); Westwood Reg. Bd. of Ed., P.E.R.C. No. 90-31, 15 NJPER 609 (¶20253 1989).

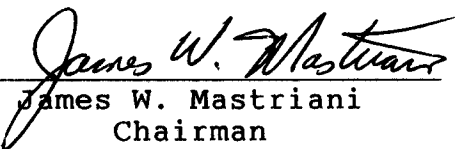
We hold that a salary proposal based upon language similar to Article 5.10 may not be submitted to interest arbitration unless and until the salaries of the other negotiating unit are already established. This result is dictated by the way the interest arbitration law is designed to operate. In interest arbitration, each side presents its offer on all economic issues as a single package. N.J.S.A. 34:13A-16(f)(1). The arbitrator must then choose between the two packages based upon statutory criteria which include: "comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally" and "[t]he financial impact on the governing unit, its residents and taxpayers." N.J.S.A. 34:13A-16(g)(2) and (6). In order to apply these criteria, the arbitrator must know how much each economic package will cost. If the union's salary proposal is based on salaries which have not been set, then it is impossible to "cost out" the union's economic package, compare it to the salaries of other employees and gauge the proposal's financial impact.

Because we find that the operation of the interest arbitration law bars submission of the union offer at this time, we need not address the parties' other arguments. The employer does not contest the legality of the clause if it is applied to already established salaries.

ORDER

Article 5.10 may not be submitted to interest arbitration for inclusion in a successor agreement because the salaries for the top grade firefighters for the years in question are not established.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992  
Trenton, New Jersey  
ISSUED: April 29, 1992