

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. SN-84-17

FIREMAN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL NO. 25,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants a request of the Township of Maplewood for a restraint of binding arbitration of a grievance which the Fireman's Mutual Benevolent Association, Local No. 25 has filed against the Township. The grievance had alleged that the Township violated its collective negotiations agreement with the FMBA when it reduced from two to one the number of firefighters on each platoon to take simultaneous vacations. The parties agree that the contractual provision in dispute concerns a permissive subject of negotiations which ordinarily may be submitted to grievance arbitration. Here, however, the Township asserts and the Commission agrees that the reduction was not effective until after the expiration of the collective negotiations agreement and was therefore consistent with the Township's right under Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) not to adhere to permissive contract provisions following the expiration of the contract.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Petitioner,

-and-

Docket No. SN-84-17

FIREMAN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL NO. 25,

Respondent.

Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, P.C.  
(M. Joan Foster, of Counsel)

For the Respondent, Baumgart & Genova, Esqs.  
(Angelo J. Genova, of Counsel)

DECISION AND ORDER

On October 28, 1983, the Township of Maplewood ("Township") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Township seeks a restraint of binding arbitration of a grievance which the Fireman's Mutual Benevolent Association, Local No. 25 ("FMBA") has filed. The grievance alleges that the Township violated its collective negotiations agreement with the FMBA when it reduced from two to one the number of firefighters on each platoon permitted to take simultaneous vacations.<sup>1/</sup>

<sup>1/</sup> On October 11, 1983, the FMBA filed an unfair practice charge with the Commission alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), when it made the reduction involved in this case. The Administrator of Unfair Practice Procedures is considering that charge.

The parties have submitted letter briefs and documents. The following facts appear.

The FMBA is the exclusive representative of the Township's firefighters, excluding the Chief. The Township and the FMBA have entered a collective negotiations agreement<sup>2/</sup> which contains a grievance procedure culminating in binding arbitration. Article XVI, entitled Vacations, provides:

Vacations shall be granted to officers and members of the Fire Department in accordance with the revised vacation rules for 1979 and 1980, posted by the Chief of the Fire Department. There shall be two (2) men off per platoon and they shall receive their regularly scheduled three (3) off days prior to the start of their vacation. Vacations shall be taken throughout the year....

On September 28, 1983, the Fire Chief unilaterally amended the department's 1984 vacation schedule to provide that only one firefighter from each platoon would be permitted on vacation at any one time. The Township specifically informed the FMBA that the amendment would not be effective until the parties' collective negotiations agreement expired on December 31, 1983.

The parties negotiated Article XVI when the department had 50 or 51 firefighters with 11 or 12 firefighters per platoon. Following the retirement of four firefighters in 1983, the department now operates with 43 firefighters.<sup>3/</sup>

<sup>2/</sup> The agreement was to remain in effect from January 1, 1981 through December 31, 1982, Article XXXVI, entitled Termination Clause, provides, however, that the agreement will remain in effect unless written notice of the desire to cancel, modify, or terminate the agreement is served by either party upon the other at least 60 days prior to the date of expiration. The agreement was in effect when the instant petition was filed.

<sup>3/</sup> This number includes the Chief and two firefighters assigned to fire prevention duties, thus leaving 40 firefighters to man the Township's two firehouses.

There are four platoons with ten firefighters each. The platoons work a rotating schedule consisting of two 10 hour days on, one day off, two 14 hour nights on, and three days off.

Of the ten firefighters on duty at any given time, seven are assigned to headquarters and three to the second firehouse. The department's minimum manning requirements for the headquarters firehouse provide for one firefighter to cover the dispatch desk; two to operate the aerial truck; and three to operate Engine #1. The requirements for the second firehouse provide for the three assigned firefighters to operate Engine #2. The Township asserts that the attrition of four firefighters in 1983 necessitated the change in the number of firefighters permitted to take vacations simultaneously so that the fire departments could still meet their minimum manning requirements.

On October 4, 1983, the parties commenced negotiations for a successor agreement. Additional sessions were conducted on October 12 and October 21. The Township asserted that it was not obligated to negotiate over the number of firefighters permitted to take vacations simultaneously.<sup>4/</sup>

On October 4, 1983, the FMBA filed a grievance asserting that the amendment of the 1984 vacation schedule violated the agreement.<sup>5/</sup> The Township denied this grievance, and the

<sup>4/</sup> In its letter brief, the Township asserts that it offered to negotiate over the manner in which vacations are selected and other matters pertaining to vacation benefits.

<sup>5/</sup> The parties agreed to stay arbitration until the Commission issued its decision. We also note that the Township has filed another scope petition involving different clauses.

FMBA then sought binding arbitration. The instant petition ensued.

The Township asserts that the number of firefighters permitted to take simultaneous vacations is a permissive subject of negotiations and that it had no obligation to adhere to a contractual provision concerning that subject following the expiration of the parties' agreement on December 31, 1983. It relies upon Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 88 (1981) ("Paterson"); In re Town of Harrison, P.E.R.C. No. 83-114, 9 NJPER 160 (¶14075 1983); In re Town of West Orange, P.E.R.C. No. 78-93, 4 NJPER 266 (¶4136 1978); and Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978).

The FMBA agrees with the Township that Article XVI involves a permissive, instead of mandatory, subject and that the amendment to the 1984 vacation schedule will not be effective until after the expiration of the parties' contract. It asserts, however, that the Township's announcement of the amendment and the commencement of the vacation selection process for 1984 during the final months of 1983 violated the contract.<sup>6/</sup> It relies upon In re City of Elizabeth, P.E.R.C. No. 83-33, 8 NJPER 567 (¶13261 1982)

We accept the parties' shared position that the disputed provision is a permissive subject of negotiations.<sup>7/</sup>

<sup>6/</sup> In its letter brief, the Township states that the department's vacation schedule stems from a lengthy process under which firefighters pick their preferred vacation dates by seniority and that this process by necessity must start months in advance of the vacation year.

<sup>7/</sup> Under different circumstances, the number of employees permitted to take simultaneous vacations may be a

Given that assumption and given the undisputed fact that the change was not effective until after the contract's expiration, we conclude that the instant dispute is non-arbitrable.

Since both parties agree that the instant dispute involves a permissive subject of negotiations, Paterson sets forth the relevant rule of law concerning the Township's obligation to negotiate:

[A] permissive item remains in effect only during the term of the agreement. The public employer is free to delete any permissive item from a successor agreement by refusing to negotiate with respect to that item. Its inclusion in an existing agreement does not convert such an item into a mandatory subject. 88 N.J. at 88.

The Township thus had a right to change the vacation proposal following the contract's expiration. That is what it did here: the change, although announced in September 1983, was not effective until the next year. Thus, under all the circumstances of this case, it appears that the grievance, in contravention of Paterson, seeks to bind the Township to maintain a permissive subject following the expiration of a contract. Accordingly, we restrain arbitration in this case.

7/ (Continued)

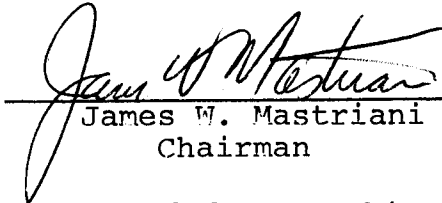
mandatory subject of negotiations. In In re Township of Edison, P.E.R.C. No. 84-89, 10 NJPER \_\_\_\_ (¶ \_\_\_\_ 1984), relying on In re City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982), we held:

a clause permitting two employees (out of 150) per shift to be on vacation at the same time and expressly conditioning such permission on manpower and squad strength does not impose a sufficient limitation on the City's managerial prerogatives to displace the general presumption that proposals concerning vacations are mandatorily negotiable.

ORDER

The request of the Township for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hipp, Newbaker, Suskin, Butch and Wenzler voted for this decision. None opposed. Commissioner Graves was not present.

DATED: Trenton, New Jersey  
April 12, 1984  
ISSUED: April 13, 1984