

P.E.R.C. NO. 88-107

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF TEANECK,

Petitioner,

-and-

Docket No. SN-88-20

PROFESSIONAL FIRE OFFICERS
ASSOCIATION OF TEANECK,

Respondent.

SNNOPSIS

The Public Employment Relations Commission determines the negotiability of three proposals the Professional Fire Officers Association of Teaneck seeks to submit to interest arbitration. The Commission finds that the proposals that fire officers be supplied with portable radios and the duration clause are mandatory subjects of negotiation and may be submitted to interest arbitration. The Commission further finds, however, that the proposed "early relief" clause is not a mandatory subject of negotiations and may not be submitted to interest arbitration.

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Appearances:

For the Petitioner, Grotta, Glassman & Hoffman, Esqs.
(M. Joan Foster, of counsel)

For the Respondent, Loccke & Correia, Esqs.
(Richard D. Loccke, of counsel)

DECISION AND ORDER

On August 4, 1987, the Township of Teaneck ("Township") filed a Petition for Scope of Negotiations Determination. The Township seeks a declaration that three proposals the Professional Fire Officers Association of Teaneck ("Association") seeks to submit to interest arbitration are not mandatory subjects of negotiation. Both parties have filed briefs.

The Association seeks to include the following provisions in a successor agreement:

Portable Radios - Each Fire Officer while on duty shall be supplied with a portable radio in good working condition.

Early Relief - The Fire Officer on the succeeding shift can mutually arrange with the officer in the current shift to come in up to one (1) hour early as the current officer's relief. The employer shall not incur any expense by virtue of such an early relief.

Duration - This agreement shall have a term from January 1, _____ through December 31, _____. If the parties have not executed a successor agreement by December 31, _____, then this Agreement shall continue in full force and effect until a successor agreement is executed. Negotiations for a successor agreement shall be in accordance with the rules of the Public Employment Relations Commission.

In Paterson Police P.B.A No. 1 v. City of Paterson, 87 N.J.

78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters. The Court stated:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [Id. at 92-93; citations omitted]

We consider only whether the proposal is mandatorily negotiable. It is our policy not to decide whether contract proposals, as opposed to contract grievances, concerning police and fire department employees are permissively negotiable since the Township has no obligation to negotiate over such proposals or to consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The portable radio proposal predominantly concerns employee safety and is mandatorily negotiable. South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in part App. Div. Dkt. No. A-3564-78, 6 NJPER 338 (¶11169 1980); contrast Egg Harbor Tp., P.E.R.C. No. 86-20, 11 NJPER 518, 519 (¶16181 1985) (scanner radios allowing communication with neighboring agencies predominantly concerns management's prerogative to determine how best to deliver information).

The "early relief" clause, as written, is not mandatorily negotiable because it does not condition the exchanges upon the approval of the Fire Chief or his designee. Teaneck Tp., P.E.R.C. No. 85-51, 10 NJPER 644 (¶15309 1984).

The "Duration" clause is mandatorily negotiable. It pertains to terms and conditions of employment and simply preserves the contractual status quo during negotiations. W. Windsor Tp. v. Public Employment Rel. Comm'n., 78 N.J. 98 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978).^{1/}

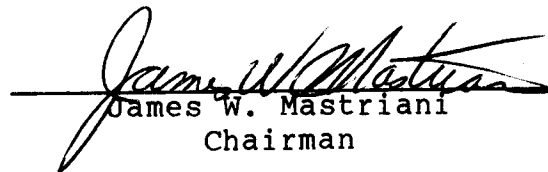
^{1/} Contrary to the Township, we do not read it to include non-negotiable subjects.

ORDER

The Association's "early relief" proposal is not mandatorily negotiable and may not be submitted to interest arbitration.

The Association's "contract duration" and "portable radio" articles are mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
April 27, 1988
ISSUED: April 28, 1988