

P.E.R.C. NO. 2000-29

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-99-96

NEWARK FIRE OFFICERS UNION,  
LOCAL 1860, IAFF, AFL-CIO,

Respondent.

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of proposals made by the Newark Fire Officers Union Local 1860, IAFF, AFL-CIO for inclusion in a successor collective negotiations agreement with the City of Newark. The Commission concludes that a proposal to include clothing allowance and hazardous duty pay in base pay is mandatorily negotiable. A proposal concerning transfer procedures is also mandatorily negotiable.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Michelle Hollar-Gregory, Corporation  
Counsel (Phillip R. Dowdell, Assistant Corporation  
Counsel, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,  
P.C., attorneys (Paul L. Kleinbaum, on the brief)

DECISION

On June 8, 1999, the City of Newark petitioned for a  
scope of negotiations determination. The employer seeks a  
declaration that two successor contract proposals made by the  
Newark Fire Officers Union, Local 1860, IAFF, AFL-CIO are not  
mandatorily negotiable. The two proposals concern base salary and  
transfer procedures.<sup>1/</sup>

The parties have filed briefs and exhibits. These facts  
appear.

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<sup>1/</sup> The City also disputed the negotiability of a proposal  
concerning promotions. Local 1860 no longer seeks to have  
that proposal included in a successor contract. We  
therefore do not address it.

Local 1860 represents all uniformed fire officers above the rank of firefighter. The parties' last contract expired on December 31, 1998. They are in negotiations for a successor agreement. Local 1860 has petitioned for interest arbitration.

Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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 firefighters, 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 firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking 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 will only consider whether contract proposals are mandatorily negotiable. We do not decide whether proposals are permissively negotiable since the employer need not negotiate over such proposals or consent to their retention in a successor agreement. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Article 20 of the previous contract is entitled Clothing Maintenance Allowance. It provides:

All employees of the Newark Fire Department covered by this Agreement shall be entitled to an annual clothing maintenance allowance of \$950.00. This payment is to be made on the first non-pay Friday in December.

Article 7.06 is entitled Hazardous Duty Pay. It provides:

All members of Firefighting Divisions, including the Arson Squad, shall receive hazardous duty pay in the amount of \$850.00 per year. Payment shall be made on the first non-pay Friday in December. Members who do not serve the full year in the Firefighting Division shall have their hazardous duty pay pro rated. The above amount of \$850.00 will be increased by \$53.00 effective January 1, 1996 to \$903.00, by an additional \$25.00 effective January 1, 1997 to \$928.00, and by an additional \$25.00 effective January 1, 1998 to \$953.00.

Local 1860 has proposed including clothing allowance and hazardous duty pay in base pay. The City asserts that only the Division of Pensions can decide what payments can be allowed in base salary for pension purposes. Local 1860 responds that its proposal also affects overtime compensation and is thus mandatorily negotiable under Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999).

In Delran Tp., we affirmed an interest arbitration award including holiday pay in the base salaries of police lieutenants. We noted that the award could legally require that holiday pay be included in base pay for overtime compensation. That ruling

applies here and establishes that Local 1860's proposal is mandatorily negotiable.

No statute or regulation expressly addresses whether or not clothing allowances and hazardous pay can be included in base pay for pension purposes. That question must be addressed to and answered by the Division of Pensions. Delran; Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998).

The second issue concerns transfer procedures. Local 1860 has proposed including the following clause in the next contract:

Permanent lateral transfers among field members shall be made on the seniority and rank basis where all qualifications are equal. Vacancies shall be posted in all fire department installations twenty (20) days prior to the formulation of the transfer list. All employees covered by this agreement will have an opportunity to submit transfer papers (bids) for the opening positions. After the first round of bids are processed the second round of bidding shall commence immediately consistent with the above procedures. All assignments of newly promoted officers shall be temporary until the bid process has been completed. The transfer process shall be utilized as needed by the Department, with the exception of the transfer process must be initiated twice each year in January and September.

Article 5 of the previous contract recognizes the exclusive authority of the fire department's director to assign or transfer all officers. That provision would not be changed by the new proposal.


The City asserts that this proposal, if adopted, would significantly interfere with its substantive power to transfer

officers. Local 1860 argues that we held a virtually identical proposal to be mandatorily negotiable in a previous case involving these parties, City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988). The City has not specified how the proposal would interfere with its power to transfer officers or why we should reconsider our earlier decision. We therefore hold that the proposal is mandatorily negotiable.

ORDER

Local 1860's proposals concerning base salary and transfer procedures are mandatorily negotiable.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: October 28, 1999  
Trenton, New Jersey  
ISSUED: October 29, 1999