

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

-and-

Docket No. SN-80-56

JERSEY CITY FIRE OFFICERS
ASSOCIATION, LOCAL 1064, IAFF,

Respondent.

SYNOPSIS

In a scope of negotiations determination rendered by the Chairman, the Chairman concludes that a grievance relating to claimed contractual violations resulting from an order of the Fire Director is arbitrable. The alleged charges involve provisions in the parties' agreement relating to transfers, salaries, past practices, and retention of Civil Service rights. It does not matter whether the provisions are mandatorily or permissively negotiable since the Supreme Court has recognized the existence of permissive negotiations for employees of police and fire departments. Therefore, the City's requested restraint of arbitration is denied.

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Appearances:

For the Petitioner, Louis P. Caroselli, Corporation
Counsel (Mr. Thomas Fodice, of Counsel)

For the Respondent, Sterns, Herbert & Weinroth, Esqs.
(Mr. Michael J. Herbert, of Counsel)

DECISION AND ORDER

On November 27, 1979, the City of Jersey City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking a ruling as to whether certain matters in dispute between the City and the Jersey City Fire Officers Association, Local 1064, IAFF, ("Association") are negotiable and/or arbitrable under the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Briefs were submitted by both parties, the last of which was received on January 8, 1980.

On September 28, 1979, the Fire Director issued an order specifying the duties of certain ranks of fire officers and designating that specific captains would be station commanders.

A grievance was filed by the Association alleging that

the order would result in breaches of certain provisions of the contract between the parties dealing with transfer, salaries, past practices and retention of Civil Service rights.

The City argues that this order relates solely to managerial prerogatives - assignment of duties - and therefore is neither negotiable nor arbitrable. It further argues that no change in terms and conditions of employment has taken place, but that goes beyond the parameters of a scope of negotiations determination and will not be considered herein.^{1/}

In response, the Association disclaims any challenge to the order itself, and maintains that it simply seeks to arbitrate alleged contract violations resulting from the order. It is urged that there is no real dispute within the meaning of N.J.S.A. 34:13A-5.4(d) and the petition should be dismissed, P.E.R.C. No. 80-76, 5 NJPER 554 (¶10288 1979).

This decision is being issued by the undersigned on behalf of the Commission in accordance with authority delegated to the undersigned by the Commission pursuant to N.J.S.A. 34:13A-6(f). This procedure permits an expeditious disposition of this matter.

We believe this case may be decided on very simple grounds. Although our Supreme Court has abolished the permissive category of negotiations for public employees in Ridgefield Park Ed. Assn. v. Ridgefield Park Board of Education, 78 N.J. 144 (1978), it recognized

^{1/} Such an argument would be relevant in the unfair practice charge the Association has filed alleging a unilateral change in terms and conditions of employment [Docket No. CO-80-100]. It could also be relevant in the arbitration proceeding.

one major exception. By passage of c. 85, P.L. 1977 (N.J.S.A. 34:13A-14 et seq.), the Legislature specifically authorized permissive negotiations for police and fire units. See 78 N.J. at 158. The City nowhere presents any argument that the contract clauses at issue in the arbitration^{2/} are illegal, merely claiming that no need to negotiate further arises from changes flowing from a management decision not in itself directed at terms and conditions of employment.^{3/} Even though it could be shown that a transfer,^{4/} for example, is not mandatorily negotiable, it is permissively negotiable and so any clause having been included in the contract on that score is arbitrable if arbitrable under the contractual grievance procedure. It does not matter whether the disputed provisions are mandatory or permissive. See e.g. In re Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 77-21, 3 NJPER 23 (1976) and In re City of Paterson, P.E.R.C. No. 80-16, 5 NJPER 369 (110189 1979), appeal pending App. Div. Docket No.

- ^{2/} Three days of hearing have already been held by the arbitrator and a decision is imminent.
- ^{3/} The City's argument is based upon several Appellate Division decisions which held that the "impact" on terms and conditions of employment of non-negotiable decisions is not negotiable. See Maywood Ed. Assn. v. Maywood Bd. of Ed., 168 N.J. Super. 45 (App. Div. 1979), pet. for certif. denied 81 N.J. 292 (1979); Cinnaminson Tp. Bd. of Ed. v. Cinnaminson Teachers' Assn., (Docket No. A-2682-77, 6/1/79, unreported, pet. for certif. denied N.J. (9/24/79) and Edison Tp. Bd. of Ed. and Edison Twp. Ed. Assn., App. Div. Docket No. A-5164-77, 9/20/79, unreported, pet. for certif. denied N.J. (12/20/79). However, these all arose in the area of public education and did not involve police and fire fighters who are subject to c. 85, P.L. 1977. The Maywood decision was predicated in part at least upon the absence of permissive negotiations, a situation not applicable in this case.
- ^{4/} A transfer clause was in dispute in Ridgefield Park, supra, and was held not to be mandatorily negotiable.

A-257-79. Only a showing that a clause relates to an illegal subject of negotiations would allow this Commission to stay arbitration in a case involving police and fire employees and none has been made. A determination as to contractual arbitration is properly left to the arbitrator and/or the courts. Ridgefield Park, supra, 78 N.J. at 153-156.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the request for a stay of arbitration is denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
February 1, 1980