

P.E.R.C. NO. 2004-45

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WALDWICK,

Petitioner,

-and-

Docket No. SN-2004-11

P.B.A. LOCAL 217,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a longevity proposal made by the Borough of Waldwick for inclusion in a successor collective negotiations agreement with P.B.A. Local 217 is mandatorily negotiable. The proposal would eliminate longevity for new hires and provide that current employees would receive longevity until they retire. The Commission concludes that the Borough is proposing to eliminate longevity for new hires which is a mandatorily negotiable compensation issue. It further concludes that the proposal does not seek to prevent future changes through negotiations or arbitration.

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, Ruderman & Glickman, P.C.,
attorneys (Ellen M. Horn, on the brief)

For the Respondent, Loccke & Correia, P.A., attorneys
(Merick H. Limsky, on the brief)

DECISION

On August 26, 2003, P.B.A. Local 217 petitioned for a scope of negotiations determination. The PBA contends that a longevity proposal made by the Borough of Waldwick for inclusion in a successor collective negotiations agreement is not mandatorily negotiable. The proposal would eliminate longevity for new hires and provide that current employees would receive longevity until they retire.

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

The PBA represents patrol officers and sergeants. The parties' most recent collective negotiations agreement expired on December 31, 2002.

Article V of the expired agreement is a longevity provision. It provides:

Longevity shall be paid at one 1% percent of base pay beginning at the fifth (5th) year of service and .375% for each additional year of service up to the twenty-second (22nd) year of service. Effective with the twenty-third (23rd) year of service and thereafter, each employee shall receive a ten (10%) percent annual longevity benefit. Longevity payments shall be made to coincide with regular payments.

On January 7, 2003, the PBA petitioned for interest arbitration. It listed salary and longevity as economic issues. On January 7, the Borough responded and listed the "elimination of longevity for new hires" as an additional issue. In its final offer, it proposed the following:

All employees hired after July 1, 2003 shall not be eligible for longevity benefits and guarantee employees get longevity until [they] retire.

It also proposed that current employees' longevity be converted from a percentage of their salary to a flat dollar amount, and frozen at 2003 levels.

One day of hearing was held on July 23, 2003. During the hearing, the Borough's attorney explained that the Borough's

proposal would "guarantee current employees get the longevity until they retire." The hearing closed on July 23.

On September 12, 2003, following the filing of the PBA's scope petition, the Borough wrote to the arbitrator seeking to withdraw its proposal to guarantee longevity for current employees for the duration of their careers. On October 9, the arbitrator denied the Township's request, citing N.J.A.C. 19:16-5.7(f) (revisions to final offer may be approved prior to the close of hearing, if the parties agree to permit revisions and the agreement is approved by the arbitrator).

The PBA contends that the proposal to guarantee longevity benefits to current employees is not mandatorily negotiable and violates N.J.S.A. 34:13A-5.3 because it would eliminate the ability of future negotiations representatives to negotiate over longevity for current employees and bind both parties to a term and condition of employment beyond the term of the awarded contract. It maintains that an interest arbitrator does not have the authority to bind parties beyond the awarded contract term.

The PBA also stresses that, under N.J.S.A. 34:13A-18, an interest arbitrator is barred from issuing any "finding, opinion, or order" regarding any aspect of pension "rights, duties [or] obligations." It contends that the proposal to eliminate longevity for new hires is not mandatorily negotiable because its implementation could reduce pension benefits for current

employees. It appears to read the pension regulations as requiring that longevity be included in the base salary of all employees in order for any unit employee to have longevity considered part of creditable compensation.

The Borough counters that its longevity guarantee proposal does not violate N.J.S.A. 34:13A-5.3 because nothing in the proposal precludes the parties from negotiating future changes in the longevity benefit for current employees. It reasons that the proposal is analogous to mandatorily negotiable contract clauses providing retiree health benefits for current employees. Those clauses set or "guarantee" future benefits but may be altered in subsequent negotiations or interest arbitration. It also argues that N.J.S.A. 34:13A-18 does not preclude an interest arbitrator from awarding a proposal eliminating longevity for newly hired employees and asserts that the proposal would not affect current employees' pension benefits.

In Paterson Police PBA 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 officers 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 and 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 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 consider only whether a contract proposal is mandatorily negotiable. It is our policy not to decide whether proposals, as opposed to grievances, concerning police and fire department employees are permissively negotiable since the employer 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).

We turn first to the contention that the Borough's proposal impermissibly seeks to guarantee benefits beyond the awarded contract term. Both parties agree that an arbitrator may not award a proposal that would preclude future negotiations or arbitration over current employees' longevity benefits. Such a provision would be inconsistent with N.J.S.A. 34:13A-5.3, which

states that a majority representative "shall be entitled to act for and to negotiate agreements covering all employees in the unit." That provision would be contravened if an arbitration award attempted to permanently remove a mandatorily negotiable subject from all post-award negotiations.

Both parties also agree that a proposal to maintain existing longevity benefits for current employees for the term of the awarded contract would be mandatorily negotiable. Therefore, the issue is whether, because of the word "guarantee," we must consider that the proposal seeks to prevent future changes in negotiations and arbitration, despite the Borough's representation that such is not its intent. We conclude that the answer to this question is "no."

Parties negotiate agreements and arbitrators issue awards with the understanding that they are establishing an overall benefit and compensation structure that will continue unless changed. City of Newark, P.E.R.C. No. 99-97, 25 NJPER 242 (¶30103 1999). Thus, contract clauses that provide for salaries or benefits for a contract term ordinarily "guarantee" those benefits for the duration of the agreement - and any post-contract status quo period.^{1/} But by operation of law they cannot guarantee that the benefits will be maintained in

^{1/} There may be exceptions where the contract provides that certain benefits will change or expire on a particular date or upon the occurrence of specified conditions.

subsequent contracts. The Borough states that it is proposing that the current agreement provide for continuation of current employees' longevity, unless and until it is changed through future negotiations or interest arbitration. In this posture, we find the clause to be mandatorily negotiable.

We next turn to the PBA's contention that an award eliminating longevity for new hires would in effect be an impermissible pension ruling.

Pension statutes and regulations do not automatically preempt proposals relating to terminal leave, longevity or holiday pay, even though those proposals may trigger questions about how the compensation will be treated for pension purposes. City of Orange, P.E.R.C. No. 2002-4, 27 NJPER 323 (¶32115 2001); Delran Tp., P.E.R.C. No. 99-86, 25 NJPER 166 (¶30076 1999). Stated another way, our case law has focused on whether or not a proposal is negotiable separate and apart from its pension implications. Thus, Delran reasoned that while N.J.S.A. 34:13A-18 would bar an arbitrator from ordering that holiday pay be included in police superiors' base pay for pension purposes, it did not prohibit the arbitrator from changing the method of payment for holiday pay or specifying that it could be included in base pay for overtime purposes. Those were mandatorily negotiable compensation issues that were separate and apart from

how holiday pay was treated for pension purposes, a question that was within the jurisdiction of the Division of Pensions.

Delran also noted the employer's argument that, pursuant to a Division of Pensions opinion letter included in the record, the arbitrator's award would in fact increase pensionable salary, if holiday pay was also included in the base salary of rank-and-file officers. However, we reasoned that any such pension outcome would flow not from the arbitrator's having impermissibly ruled on pension matters but from the combined effect of the arbitrator's ruling on a mandatorily compensation issue and developments in the rank-and-file unit.^{2/} Accord Orange (award is not invalid because the Division of Pensions determines that a compensation component also affects pension benefits).

A similar analysis pertains here. The Borough is proposing to eliminate longevity for new hires, a mandatorily negotiable compensation issue. It is not proposing to affect the pensions of current employees who, under its proposal, will continue to

^{2/} Since Delran, the position of the Division of Pensions on this issue appears to have changed. An October 2001 fact sheet issued by the Division states that a superior officer's longevity will be considered to be creditable compensation as long as the longevity payments for all those "similarly situated" - i.e., in the same negotiations unit, satisfy the regulations. See New Jersey Division of Pensions and Benefits, Fact Sheet #56. This is so even if longevity is not creditable compensation for the rank-and-file unit. Ibid.


receive longevity. Under Delran, N.J.S.A. 34:13A-18 does not bar consideration of the proposal simply because, if awarded, the proposal might trigger a pension ruling on, or different pension treatment of, current employees' longevity.^{3/}

For the foregoing reasons, the Borough's longevity proposal is mandatorily negotiable.

ORDER

The longevity proposal of the Borough of Waldwick is mandatorily negotiable.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Mastriani and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: January 29, 2004
Trenton, New Jersey
ISSUED: January 29, 2004

^{3/} While we make no finding on the issue, the Borough maintains that, under N.J.A.C. 17:4-4.1, longevity benefits would continue to constitute creditable compensation for current employees because employees would continue to receive longevity in their regular paychecks, as opposed to in lump-sum payments, and because longevity would be paid in this manner to all employees in the unit who are entitled to receive it.