P.E.R.C. NO. 2010-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT LAUREL FIRE DISTRICT NO. 1,

Petitioner,

-and- Docket Nos. SN-2010-058

MOUNT LAUREL PROFESSIONAL FIREFIGHTERS ASSOCIATION, I.A.F.F. LOCAL 4408 and MOUNT LAUREL PROFESSIONAL FIRE FIGHTERS ASSOCIATION, I.A.F.F. LOCAL 4408-0,

Respondents.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of a proposal the Mount Laurel Professional Firefighters Association, I.A.F.F. Local 4408 and the Mount Laurel Professional Fire Fighters Association, I.A.F.F. Local 4408-0 seek to submit to interest arbitration for inclusion in a successor agreement. The proposal is entitled "Successors and Assigns" and addresses what happens after a possible dissolution of the Mount Laurel Fire District No. 1. The employer argues that the proposal is preempted by N.J.S.A. 40A:65-11d. The Commission holds that the proposal on its face is mandatorily negotiable absent specific facts about a possible merger or consolidation.

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Appearances:

For the Petitioner, Lane J. Biviano, attorney

For the Respondents, Kroll Heineman, attorneys (Raymond G. Heineman, of counsel)

DECISION

On February 11, 2010, Mount Laurel Fire District No. 1 filed a petition for scope of negotiations determination. The District asserts that a proposal that the Mount Laurel Professional Firefighters Association, I.A.F.F. Local 4408 and the Mount Laurel Professional Fire Fighters Association, I.A.F.F. Local 4408-O, seek to include in successor collective negotiations agreements is not mandatorily negotiable. The proposal is entitled "Successors and Assigns" and addresses what happens after a possible dissolution of the District or merger with a neighboring fire district.

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

Local 4408 represents firefighters and Local 4408-O represents supervisory fire officers. The most recent agreements between the District and each Local expired on December 31, 2009. The parties are in negotiations for successor agreements. On January 19, 2010, the Locals petitioned for interest arbitration and the District then filed this petition pursuant to N.J.A.C. 19:16-5.5(c).

Our jurisdiction is narrow. We do not consider the wisdom of the proposals, only the abstract issue of their negotiability. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 30 (App. Div. 1977).

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), sets the standards for determining whether a contract proposal is mandatorily negotiable:

> 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.
>
> [87 N.J. at 92-93; citations omitted]

Where a statute or regulation is alleged to preempt a negotiable term and condition of employment, it must do so expressly, specifically and comprehensively. See Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Assn, 91 N.J. 38, 44-45 (1982).

Article XXXIII of the most recent agreements is entitled "Term and Renewal." The Locals have proposed to re-designate the article as Article XXXIV and add this paragraph:

> C. Nothing in this Agreement shall preclude the Fire District from consolidating or merging into or with, and/or transferring all or substantially all of its assets to another corporation or government agency, which assumes this Agreement and all obligations and undertakings of the Fire District hereunder. Upon such consolidation, merger, or transfer of assets and assumption, the "Fire District" as used herein shall mean said other corporation or government agency and this Agreement shall continue in full force and effect.

The District asserts that this proposal is preempted by N.J.S.A. 40A:65-11d, part of the laws encouraging the consolidation or sharing of services currently provided by two or more public employers. That statute provides:

> d. If the local unit that will provide the service is not subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, but the local unit that will

> receive the service is subject to that Title and the parties desire that some or all employees of the recipient local unit are to be transferred to the providing local unit, the transferred employees shall be granted tenure in office and shall only be removed or suspended for good cause and after a hearing; provided, however, that they may be laid-off in accordance with the provisions of N.J.S.11A:8-1 et seq., and the regulations promulgated thereunder. The transferred employees shall be subject to layoff procedures prior to the transfer to the new entity. Once transferred, they will be subject to any employment contracts and provisions that exist for the new entity. The final decision of which employees shall transfer to the new employer is vested solely with the local unit that will provide the service and subject to the provisions of any existing collective bargaining agreements within the local units.

The Locals respond that several Commission decisions have followed the private sector successorship doctrine explained in two United States Supreme Court decisions.[1/] The Locals cite interim relief decisions applying that case law as well as our decision in Berkeley Hgts. Bd. of Ed., P.E.R.C. No. 98-6, 23 NJPER 452 (¶28213 1997), where we applied an education statute and restrained a school district that had absorbed teachers from a dissolved regional school district from unilaterally increasing the number of instructional periods during successor contract negotiations. The Locals also cite Gauer v. Essex Cty. Div. of Welfare, 108 N.J. 140 (1987) and Weiner v. Essex Cty., 262 N.J.

1/ NLRB v. Burns International Security Services, 406 U.S. 272 (1972) and NLRB v. Fall River Dyeing, 482 U.S. 27 (1987)

Super. 270 (App. Div. 1992), for the proposition that a successor public employer is obligated to honor contractual commitments made by predecessor agencies that it had merged with or absorbed.

We conclude that N.J.S.A. 40A:65-11d, on its face, does not preempt the proposed contract language. The statute addresses local Civil Service units that merge with non-Civil Service units. That may or may not be the circumstances should this fire district be consolidated or merge with another unit. Should the circumstances addressed by N.J.S.A. 40A:65-11d occur, the provisions of that statute would preempt any conflicting contract language and should the Locals try to enforce through binding arbitration any conflicting provision, the District or the successor entity may file a new scope of negotiations petition seeking a restraint of that arbitration. However, based on this record and absent specific facts about a possible merger or consolidation, we cannot find that N.J.S.A. 40A:65-11d would necessarily preempt the contract proposal.[2/]

2/ Cherry Hill Fire Co. No. 1 v. Cherry Hill Fire Dist. No. 3, 275 N.J. Super. 632 (Ch. Div. 1994), a case cited by the District, is not controlling. That case applied a different statute to the dissolution of a municipal utilities authority. As we stated above, depending on the circumstances of any merger or consolidation, the appropriate statutory provisions would have to be applied.

ORDER

The Locals' proposed changes to Article XXXIV are mandatorily negotiable and may be submitted to interest arbitration.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: June 24, 2010

Trenton, New Jersey