

P.E.R.C. NO. 2010-96

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-2010-059

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 proposals 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 "Promotions and Transfers" and seeks promotion by seniority when all other qualifications are equal and the posting of a notice for transfer vacancies. The employer argues the proposals are preempted by the Civil Service regulation "Rule of Three." The Commission holds the proposals are mandatorily negotiable and are not preempted by Civil Service regulations.

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, 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 provision and a proposed change to the provision 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 4408-0, seek to include in successor collective negotiations agreements are not mandatorily negotiable. The provision is entitled "Promotions and Transfers." We find the provision and proposed changes to it to be mandatorily negotiable.

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

Local 4408 represents firefighters and Local 4408-0 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.

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 XXXII of each expired agreement provides:

A. Department of Personnel ("Civil Service") regulations shall apply to all permanent appointments. Seniority shall prevail where all else is equal and the Department of Personnel "Rule of Three" does not apply.<sup>1/</sup>

B. If Management decides to create a promotional position or to transfer a position, a notice shall be posted in each District facility informing officers of the availability of a position, the nature of the position and the qualifications of the position. A copy of this notice shall be sent to the Local Representatives.

C. All employees shall be given time off without loss of pay for the purpose of taking the promotional examination and for attending their own promotional swearing in ceremony, including a reasonable amount of

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1/ The Rule of Three refers to a Civil Service appointing authority's ability to appoint one of the top three interested eligibles from an open competitive or promotional list provided that certain conditions are met. N.J.A.C. 4A:4-4.8.

time for traveling to and from the examination and swearing-in ceremony.<sup>2/</sup>

The Locals propose that the references in paragraph A to the Department of Personnel be changed to refer to the Civil Service Commission.

The Locals also propose to add this new paragraph:

D. If Management decides to fill a position with an interim or provisional appointment, a notice shall be posted in each District facility informing employees of the availability of the position, the nature and job duties of the position and the qualifications needed to obtain the position. Seniority shall prevail when all qualifications of the candidates is [sic] equal. If more than one rank is eligible, the employee with a greater amount of service time shall prevail when qualifications are equal.

The District argues that paragraph A and the proposed addition of paragraph D are not negotiable because they conflict with Civil Service regulations. While acknowledging that the Locals have not advanced any specific proposals about transfers, the District also argues that Article XXXII should not refer to transfers because they are not negotiable.

The Locals respond that their proposed change in paragraph A is cosmetic only and that it does not seek to infringe on the

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<sup>2/</sup> The underlined language concerning swearing-in ceremonies appears in the most recent agreement between the District and Local 4408-0, representing fire officers. The same language is not in the firefighters' agreement. The petitions and supporting arguments do not specifically challenge the negotiability of this paragraph.

"Rule of Three." It notes that paragraph A recognizes the primacy of that principle. With respect to transfers, the Locals note that no specific issues are in dispute and that the language in the most recent agreements refers to transfers between fire houses, which are akin to shift assignments.

The changes sought by the Locals in paragraph A reflect changes from the Department of Personnel to the Civil Service Commission. The District does not challenge that proposal.

We reject the District's overall challenge to paragraphs A and D on the ground that they are preempted by the Civil Service "Rule of Three." Paragraph A specifically states that seniority shall be a tiebreaker only where the Rule of Three does not apply. Thus, the District's reliance on City of Elizabeth, P.E.R.C. No. 2004-34, 29 NJPER 515 (¶165 2003), is misplaced. In that case, we restrained arbitration of a grievance challenging the employer's exercise of the Rule of Three. Paragraph A applies only when the Rule of Three does not. Seniority may be a tiebreaker in those appointments when all qualifications are equal. Edison Tp., P.E.R.C. No. 98-14, 23 NJPER 487 (¶28235 1997); Middlesex Cty. Bd. of Social Services, P.E.R.C. No. 92-93, 18 NJPER 137 (¶23065 1992). As for paragraph D, it applies only to interim and provisional appointments, neither of which is governed by the Rule of Three. Thus, there is no conflict with

that rule or the employer's prerogative to determine qualifications for those appointments.

As for the issue of transfers, the provision provides for the posting of a notice of a proposed transfer. Such notice provisions are mandatorily negotiable. State v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981); In re Byram Tp. Bd. of Ed., 152 N.J. Super. 12, 26 (App. Div. 1977). As for the possible application of seniority to transfer decisions, seniority would come into play only when all else is equal. Thus, there is no significant interference with any managerial prerogatives. Edison.

ORDER

Article XXXII and the proposed changes to Article XXXII are mandatorily negotiable.

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