

P.E.R.C. NO. 88-87

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-87-83

PROFESSIONAL FIRE OFFICERS'
ASSOCIATION, LOCAL 1860, I.A.F.F.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several proposals made by the Professional Fire Officers' Association, Local 1860, I.A.F.F., to the City of Newark during successor contract negotiations. The Commission determines that a preservation of work clause and procedural aspects of a transfers clause are mandatorily negotiable. The Commission further determines, however, that the proposed work schedule clause is not mandatorily negotiable because superior officers would not be able to supervise firefighters effectively.

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Appearances:

For the Petitioner, Glenn A. Grant, Corporation Counsel
(Joanne Y. Johnson, First Assistant Corporation Counsel)

For the Respondent, Zazzali, Zazzali, & Kroll, Esqs.
(Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On June 11, 1987, the City of Newark ("City") filed a Petition for Scope of Negotiations Determination. The petition seeks a determination whether several proposals made by the Professional Fire Officers' Association, Local 1860, I.A.F.F., ("PFOA") during successor contract negotiations are within the scope of negotiations.

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

The PFOA is the majority representative of "supervisory employees, Captain, Battalion Chief, and their equivalent titles in the line and construction divisions." The parties entered interest arbitration proceedings to resolve an impasse in successor contract

negotiations. The PFOA submitted three non-economic proposals which the City believes are non-negotiable and should not be submitted to interest arbitration. The instant petition ensued.

We will consider only whether the instant proposals are mandatorily negotiable. It is the Commission's policy not to decide whether contract proposals, as opposed to contract 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. Bridgewater Tp., P.E.R.C. No. 84-63, 10 NJPER 16, 17 (¶14123 1983); Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

In Paterson Police PBA Local 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 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 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]

The first proposal, entitled "Preservation of Unit Work," reads:

No full time employee covered by this agreement shall be replaced by any non-superior officer, part-time or other personnel. No post presently filled by a full time employee covered by this agreement shall be covered by any non-superior officer, part-time or other personnel.

The same proposal was found mandatorily negotiable in a prior decision affecting these same two parties. City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985). The City asks us to reconsider. The PFOA states that res judicata applies. See Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83).

Once the negotiability of a proposal or provision has been determined, its negotiability may not be challenged each time the contract expires. The City hypothesizes that the provision may prevent its changing job specifications or realigning positions. However, it does not contend that this has occurred. If at some future time the PFOA attempts to rely on this provision to thwart a non-negotiable prerogative, the City can seek to block arbitration of such a grievance. See Newark, 11 NJPER at 301.

The second proposal, entitled "Transfers," reads:

Permanent lateral transfers shall be made on a seniority in rank basis where all qualifications are equal. Vacancies shall be posted in all fire department installations, twenty (20) days prior to formulation of a transfer list. After first round bids are processed a second round of bidding shall commence immediately consistent with the above procedure. All assignments of newly promoted officers shall be temporary until the bid process has been completed.

In Lacey Tp., P.E.R.C. No. 87-120 13 NJPER 291 (¶18122 1987) and Franklin Tp., P.E.R.C. No. 85-97 11 NJPER 224 (¶16087 1985), we held that an employer may legally agree to assign officers to shifts in accordance with contractual seniority provisions where all qualifications are equal. The proposals allowed deviation from assignment by seniority, where special skills are required or in an emergency. The first sentence of the Association's proposal is similar to those in Lacey and Franklin. It preserves the City's right to make transfers and assignments based on qualifications and accordingly is mandatorily negotiable.^{1/} The second and third sentences are procedural and are mandatorily negotiable. See State Supervisory. The fourth sentence is also procedural and mandatorily negotiable. It follows from the second and third sentences that the City could not make a permanent assignment until it identified the pool of senior officers of the

^{1/} Neither party has specified whether the transfers would involve shift selection, fire station assignment or duty assignment. So long as management's right to deploy personnel on the basis of qualifications is preserved, the provision is mandatorily negotiable.

same rank desiring the assignment. If the City determined that no one in that pool was equally or more qualified, it could permanently assign the newly promoted officer.

The last issue is a proposal to change the work hours clause. The current agreement reads:

17.01 Hours of Work

The work week for all employees who perform firefighting duties shall be an average of not more than forty-two (42) hours computed over periods of duty in an eight (8) week cycle based on the schedule of two (2) days of ten (10) hours each, followed by forty-eight (48) hours off, followed by two (2) nights of fourteen (14) hours each, followed by seventy-two (72) hours off, followed by two (2) days of ten (10) hours each and so on.

The PFOA proposes to change this schedule to read:

17.01 Hours of Work

The work week for all employees who perform firefighting duties shall be an average of not more than forty-two (42) hours computed over periods of duty in an eight (8) week cycle based on the schedule of one (1) twenty-four (24) hour tour, followed by seventy-two (72) hours off, followed by one (1) twenty-four (24) hour tour, followed by seventy-two (72) hours off and so on. Said tours shall commence at 0800 hours.

Unlike Mt. Laurel Tp. v. Mt. Laurel Tp. Police Officers Ass'n, 215 N.J. Super. 108 (App. Div. 1987) and Newark v. IAFF, Loc. 1860, P.E.R.C. No. 81-124, 7 NJPER 245 (¶12110 1981), aff'd App. Div. Dkt. No. A-4143-80T3 (3/25/83), the PFOA proposes to change a work schedule which has existed for 28 years and which covers the firefighters supervised by the PFOA. If the interest arbitration were to adopt the PFOA's proposals, supervisory firefighters would

be on a 24 hour schedule, while rank and file firefighters would remain on a 10 hour/14 hour schedule. Since the two units would be placed on different work schedules, superior officers would not be able to supervise firefighters effectively. For this reason we hold that the proposal is not mandatorily negotiable. Bor. of Closter, P.E.R.C. No. 85-86, 11 NJPER 132 (¶16059 1985).

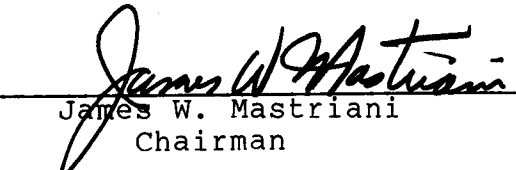
ORDER

The Association proposal concerning transfers is mandatorily negotiable.

The Association proposal to change to 24 hour tours of duty for superior officers is not mandatorily negotiable.

The portion of the City's petition challenging the negotiability of the Preservation of Unit Work Clause is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Wenzler voted in favor of this decision. None opposed. Commissioner Smith abstained.

DATED: Trenton, New Jersey
March 18, 1988
ISSUED: March 21, 1988