

P.E.R.C. NO. 96-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCHELLE PARK TOWNSHIP,

Petitioner,

-and-

Docket No. SN-95-64

ROCHELLE PARK SUPERIOR OFFICERS
ASSOCIATION, PBA LOCAL NO. 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Rochelle Park Township for a restraint of binding arbitration of a grievance filed by the Rochelle Park Superior Officers Association, PBA Local No. 102. The grievance asserts that the employer violated the parties' collective negotiations agreement when it refused to allow two police lieutenants to retain their service weapons when they retired. The Commission finds that binding arbitration of this grievance would place substantial limitations on the government's ability to decide whether and which private citizens should be provided weapons by governmental bodies.

P.E.R.C. NO. 96-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCHELLE PARK TOWNSHIP,

Petitioner,

-and-

Docket No. SN-95-64

ROCHELLE PARK SUPERIOR OFFICERS
ASSOCIATION, PBA LOCAL NO. 102,

Respondent.

Appearances:

For the Petitioner, Richard J. Donohue, attorney

For the Respondent, Loccke & Correia, attorneys
(Joseph Licata, on the brief)

DECISION AND ORDER

On January 17, 1995, Rochelle Park Township petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by the Rochelle Park Superior Officers Association, PBA Local No. 102. The grievance asserts that the employer violated the parties' collective negotiations agreement when it refused to allow two police lieutenants to retain their service weapons when they retired.

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

The SOA represents the employer's police sergeants, lieutenants and captains. The parties entered into a collective negotiations agreement effective from January 1, 1992 through December 31, 1994. The contract's grievance procedure ends in binding arbitration.

During 1994, the Township purchased new service weapons for each officer in the department at a cost of \$650.00 per officer. Two police lieutenants then chose to take early retirement effective at the end of the year. They requested that they be allowed to retain their service revolvers. The SOA asserts a past practice of letting retiring officers retain their service weapons. The Township denied the officers' request and the SOA filed a grievance. After arbitration was demanded, this petition ensued.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.^{1/} 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

^{1/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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

The employer argues that N.J.S.A. 40A:11-36 precludes a municipality from giving away unneeded municipal property and prescribes the manner as to how such property can be sold. N.J.S.A. 40A:11-36 provides, in part:

Any contracting unit^{2/} by resolution of its governing body may authorize the sale of its personal property not needed for public use.
(1) If the estimated fair value of the property to be sold exceeds \$2500.00 in any one sale ... it shall be sold at public sale to the highest bidder.

* * *

(4) If no bids are received the property may then be sold at private sale without further publication or notice thereof, but in no event at less than the estimated fair value....

The Township has not explained how this statute would prohibit a practice of letting a retiring officer retain a service revolver valued at approximately \$650 as recompense for past service. Nor has the employer identified any other statutes or regulations which prohibit this benefit and thus preempt negotiations.

The employer also contends that department regulations provide that the revolver, belt, and holster shall remain the

^{2/} Contracting unit includes municipalities. N.J.S.A. 40A:11-2.

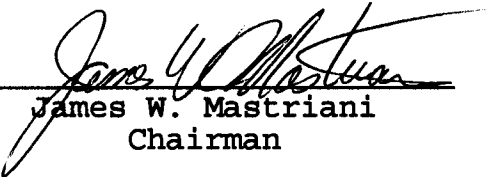
property of the department and shall be returned when leaving office. This argument goes to the merits of the SOA's claim that retiring officers are entitled to retain their service weapons. A departmental regulation is not a statute or regulation that preempts negotiations over an agreement setting terms and conditions of employment.

Having found that no statute or regulation controls this issue, we next consider whether enforcement of the alleged past practice would place substantial limitations on government's policymaking powers. It is well established that whether active police officers should carry firearms while on duty is a managerial prerogative because it implicates how a public service is to be performed. Nutley Tp., P.E.R.C. No. 88-90, 14 NJPER 254 (¶19095 1988); South Brunswick Tp., P.E.R.C. No. 86-115, 12 NJPER 363 (¶17138 1986); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Hunterdon Cty., P.E.R.C. No. 83-46, 8 NJPER 607 (¶13046 1982); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13287 1982); Brookdale Community College, 3 NJPER 156 (1977). Related considerations apply here. Negotiations and arbitration over providing weapons to retired officers does not simply involve questions of compensation for past services, but implicates the broader policy question of whether and which private citizens should be provided weapons by governmental bodies. Binding arbitration of this grievance would place substantial limitations on the government's ability to decide this question. Accordingly, arbitration must be restrained.

ORDER

The request of Rochelle Park Township for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: March 28, 1996
Trenton, New Jersey
ISSUED: March 29, 1996