

P.E.R.C. NO. 2000-30

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-2000-4

NEWARK DEPUTY POLICE CHIEFS  
ASSOCIATION,

Respondent

SYNOPSIS

The Public Employment Relations Commission decides the negotiability of two contract proposals made by the Newark Deputy Police Chiefs Association for inclusion in a successor collective negotiations agreement with the City of Newark. The Commission finds a proposal that would require the City to waive its right to file a clarification of unit petition is not mandatorily negotiable. A proposal concerning the conversion of vacation days into accrued compensatory time is mandatorily negotiable.

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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Respondent.

Appearances:

For the Petitioner, Michelle Hollar-Gregory, Corporation  
Counsel (Phillip R. Dowdell, Assistant Corporation  
Counsel, on the brief)

For the Respondent, Markowitz & Richman, attorneys  
(Stephen C. Richman, on the brief)

DECISION

On July 6, 1999, the City of Newark petitioned for a  
scope of negotiations determination. The City seeks a declaration  
that two successor contract proposals made by the Newark Deputy  
Police Chiefs Association are not mandatorily negotiable.

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

The Association represents deputy police chiefs employed  
by the City. The City and the Association are parties to a  
collective negotiations agreement that expired on December 31,  
1997. The Association has petitioned for interest arbitration.

The scope of negotiations for police officers and firefighters 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). Paterson Police PBA No. 1 v. City of Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers and firefighters:

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

We will consider only whether contract proposals are mandatorily negotiable. We do not decide whether proposals are permissively negotiable since the employer need not negotiate over such proposals or consent to their submission to interest arbitration. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The Association has proposed that "it be afforded permanent status as a union for the length of the contract, in that the City would agree to refrain from any action that would disenfranchise, disband or attempt to dissolve the Association." The Association notes that the City has filed clarification of unit petitions asserting that the deputy chiefs are confidential employees and/or managerial executives. See City of Newark, D.R. No. 82-21, 7 NJPER 644 (¶12291 1981); City of Newark, P.E.R.C. No. 86-140, 12 NJPER 513 (¶17192 1986). It then argues that a public employer may waive its right to file such a petition in certain circumstances. Passaic City Bd. of Ed., D.R. No. 88-14, 14 NJPER 3 (¶19001 1987). The City responds that it will not waive its right to file a petition in the event the deputy chiefs act as managerial executives as defined by N.J.S.A. 34:13A-3(f). See also City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998).

Issues of negotiations unit inclusion or exclusion are permissively negotiable in the private sector. See Hardin, The Developing Labor Law, 931-934 (3d ed. 1992). We will assume that the City could legally agree to waive its right to file a petition invoking a statutory exclusion from the Act's coverage, but we will not compel the City to negotiate over such a waiver. Compare Borough of Mountainside, P.E.R.C. No. 83-94, 9 NJPER 81 (¶14044 1982) (holding non-negotiable proposal waiving majority representative's statutory right to negotiate over new or modified working conditions).

The second issue concerns a proposal to allow employees to convert vacation leave into compensatory time off. The relevant facts follow.

Article X of the parties' most recent contract is entitled Vacations. This provision grants deputy chiefs 29 paid vacation days each year and sets certain conditions for using or deferring such days.

Article XIV is entitled Accrued Compensatory Time. This provision grants deputy chiefs three calendar days of accrued compensatory time for each year of service, up to a maximum of 75 calendar days. These days are granted to employees "upon honorable separation from the department after a minimum of fifteen (15) years of service" and thus appear to be a form of terminal leave. Section 3 gives deputy chiefs the option of choosing a lump sum payment upon separation.

The Association has apparently proposed allowing deputy chiefs to convert unused vacation days under Article X into accrued compensatory time under Article XIV. This conversion would increase the amount of terminal leave under that article. The City asserts that the increase may affect employees' retirement benefits and the Police and Firemen's Retirement System.

Terminal leave is a mandatorily negotiable subject. See, e.g., Borough of Pompton Lakes, P.E.R.C. No. 95-103, 21 NJPER 223 (¶26141 1995); Middlesex Cty. Prosecutor, P.E.R.C. No. 91-83, 17 NJPER 219 (¶22093 1991), aff'd NJPER Supp.2d. 280 (¶227 App. Div.

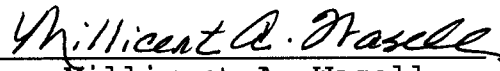
1992). The City's concern about retirement benefits is not particularized. In any event, its questions about retirement benefits and pension plans should be presented to the Division of Pensions. Galloway Tp., P.E.R.C. No. 98-133, 24 NJPER 261 (¶29125 1998).

ORDER

The proposal requiring the City of Newark to waive its right to file a clarification of unit petition is not mandatorily negotiable.

The proposal concerning the conversion of vacation days into accrued compensatory time is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. None opposed.

DATED: October 28, 1999  
Trenton, New Jersey  
ISSUED: October 29, 1999