

P.E.R.C. NO. 80-159

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Petitioner,

Docket No. SN-80-92

-and-

JERSEY CITY POLICE OFFICERS  
BENEVOLENT ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding the Chairman denies the request of the City for a permanent restraint of arbitration. The grievance arose from the denial by the City to an employee of a compensatory day off. The Association claimed that the denial breached a contract article regarding procedures relating to the taking of compensatory time off. The Commission has previously held that compensatory time relates to working hours and days and is, therefore, mandatorily negotiable and arbitrable.

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Appearances:

For the Petitioner, Louis P. Caroselli, Corporation  
Counsel  
(William C. Gerrity, Assistant Corporation  
Counsel, on the brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.  
(David Solomon, of Counsel)

DECISION AND ORDER

On February 14, 1980, the City of Jersey City ("City") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission ("PERC") seeking a determination of the negotiability/arbitrability of a matter in dispute with the Jersey City Police Officers Benevolent Association ("POBA"). A brief was filed by the City in support of its petition, which seeks a permanent restraint of arbitration of a grievance which the POBA seeks to process pursuant to the grievance procedure in the parties' collectively negotiated agreement.

After a conference conducted by the Special Assistant to the Chairman of the Commission at which both parties were present, the City agreed to allow the grievance to proceed to arbitration, preserving its right to contest the negotiability and arbitrability of the subject matter involved.

The grievance in dispute relates to the denial of a compensatory day off on July 9, 1979 for Police Officer Donald Verney. Verney, who did not report for his shift on the day in question, filed a grievance alleging that the City violated Article XVI, Section 3, paragraphs 1-3 of the agreement in refusing to allow him the compensatory day off.<sup>1/</sup> That section of the contract provides:

It is understood that every effort will be made in accordance with guidelines set forth below to provide officers with the opportunity to utilize their compensatory time. Therefore, the following guidelines for the awarding of compensatory time are adopted by the parties:

1. There shall be no blanket denials of compensatory time use except during holiday periods as follows:

- (a) Thanksgiving day and night
- (b) Easter day and night
- (c) Christmas Eve
- (d) Christmas Day and night
- (e) New Year's Day

2. Compensatory time shall be granted during other periods except during emergencies. An emergency shall not be declared for the sole purpose of eliminating compensatory time use but shall be based upon objective facts as determined by the Director.

3. During non-emergency situations, use of compensatory time may not be withheld provided the member requesting compensatory time off submits his request (5) days in advance. He is to be advised no later than forty-eight (48) hours following the submission of his request as to whether the compensatory time request is granted.

In the event a man is denied his request for the use of compensatory time because of a holiday period as set forth above or an emergency situation, he shall be given first preference on his next request for such use.

<sup>1/</sup> For failing to report for his tour of duty on that date, Officer Verney was charged with a violation of departmental rules and was suspended following a disciplinary hearing for 15 working days in the Fall of 1979. The City does not allege that the grievance in question challenges the disciplinary action, and accordingly, the negotiability/arbitrability of police disciplinary actions is not presented by this case.

The City argues that the above provisions are non-negotiable because they would -- if construed as urged by the grievant -- interfere with the City's ability to determine the number of officers on duty each day. It thus seeks to restrain arbitration regarding the department's decision to deny a compensatory day for Officer Verney and a declaration that the department's decisions to grant or deny compensatory days are not subject to review by an arbitrator.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the Chairman the authority to issue scope of negotiations decisions when the negotiability of the issue(s) in dispute has been previously determined by the Commission and/or the judiciary.

The Commission, in an unfair practice case, has previously addressed the negotiability of procedures relating to the taking of compensatory time off. In re Mayor and Council of Sayreville, P.E.R.C. No. 79-60, 5 NJPER 117 (¶10069 1979). There the Commission held that the public employer violated the Act by changing procedures relating to the taking of compensatory time without negotiating with the representatives of its police force, finding the dispute concerned required subjects for negotiations. P.E.R.C. No. 79-60 at 6. The relevant contract article in Sayreville, moreover, made reference to the ability of the Chief of Police to control utilization of compensatory time in order to meet departmental needs.

Both Sayreville and the instant case concern the use of compensatory time by police and the conditions under which such leave is to be granted. Compensatory time relates to working hours, working days and the length of the work year, areas that obviously are mandatorily negotiable. An employer cannot frustrate negotiated

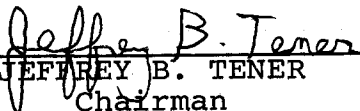
provisions regarding hours of work by raising questions concerning the levels of employment. The level of employment and ability to hire are managerial prerogatives which are not subject to the duty to negotiate. See Board of Education of Englewood v. Englewood Teachers Assn, 64 N.J. 1 (1973). Thus, it follows from the above and the Commission's holding in the former situation that the instant grievance also concerns mandatorily negotiable terms and conditions of employment and may proceed to arbitration if otherwise arbitrable pursuant to the parties' contract.<sup>2/</sup>

ORDER

The City's request for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION

BY

  
 \_\_\_\_\_  
 JEFFREY B. TENER  
 Chairman

DATED: June 25, 1980

<sup>2/</sup> Even assuming that the instant grievance relates to a managerial prerogative as suggested by the City, such a determination would not render the topic non-arbitrable. Managerial prerogatives are permissively negotiable in public police and fire departments, and hence may be the subject of negotiated agreements and binding arbitration. See N.J.S.A. 34:13A-16(f)(4); Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Assn, 81 N.J. 582, 588, n. 1 and In re Paterson Police PBA Local No. 1, \_\_\_ N.J. Super. \_\_\_ (App. Div. Docket No. A-257-79 (6/10/80)), where the Appellate Division noted: "Once a permissive item is agreed upon and becomes part of the parties' collective negotiations agreement, it is subject to all of the terms of the parties' grievance procedure." (slip opinion at p. 6).