

P.E.R.C. NO. 87-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY

Petitioner,

-and-

Docket No. SN-86-84

PERTH AMBOY P.B.A. LOCAL No. 13,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a proposal submitted by Perth Amboy PBA Local No. 13 during successor contract negotiations with the City of Perth Amboy is not mandatorily negotiable. The PBA proposed that transfers be made only when "just cause" exists. The Commission finds that this language significantly interferes with the City's ability to deploy its police force in the manner it deems best to provide efficient police services. The Commission declines to determine the negotiability of a second proposal submitted by the PBA because it is ambiguous and remands it back to the parties for clarification.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY,

Petitioner,

-and-

Docket No. SN-86-64

PERTH AMBOY P.B.A. LOCAL No. 13,

Respondent.

Appearances:

For the Petitioner, Fogarty & Hara, Esqs.
(Rodney T. Hara, of counsel and on the brief)

For the Respondent, Abramson & Liebeskind Associates
(Dr. Arlyne K. Liebeskind)

DECISION AND ORDER

On March 17, 1986, the City of Perth Amboy ("City") filed a Petition for Scope of Negotiations Determination. The City seeks a determination whether certain proposals made by Perth Amboy P.B.A. Local No. 13 ("PBA"), the majority representative of the City's police officers, during successor contract negotiations are mandatorily negotiable.^{1/} The City and the PBA are engaged in interest arbitration proceedings pursuant to N.J.S.A. 34:13A-14 et. seq. Both parties have filed briefs.

^{1/} Several proposals listed in the petition have been resolved or dropped. We decide only those issues still in dispute.

In Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981) ("Paterson"), our Supreme Court outlined the steps of a scope of negotiations analysis for police and fire fighters.^{2/}

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 fire fighters, 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 fire fighters, 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].

We will consider only whether the PBA's proposals are mandatorily negotiable. It is our policy not to decide whether

^{2/} The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13-16 provides for a permissive as well as a mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

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. Town of West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

The City challenges the negotiability of an Association proposal to supplement existing language in Article V entitled Promotion List. The PBA's proposed Section B would read:

When a vacancy occurs in any permanent assignments, the employee at the top of the seniority list shall be given the first opportunity to fill the vacancy, and if said employee does not avail himself of the opportunity, the next succeeding employee on the list to avail himself shall fill the vacancy.

After further negotiations, the PBA proposed to qualify its proposal with the following:

It is understood and agreed by the parties that the City may deviate from the seniority list in the event that the vacancy would require special qualifications for filling or an emergency situation required that a replacement be found immediately.

We cannot now decide the negotiability of this proposal in view of the parties' conflicting statements concerning its intent and the ambiguous language of the proposal. Our law is settled that the City has the managerial prerogative to assess the relative fitness and qualifications of the candidates and determine who is best qualified for that position. Tp. of Woodbridge, P.E.R.C. No. 86-46, 11 NJPER 679 (¶16234 1985). The City argues that this

principle is applicable. However, our law is also clear that such a clause would be mandatorily negotiable if it were to only apply where the City has determined that the candidates are equally qualified. Eastampton Tp. Bd. of Ed., P.E.R.C. No. 83-129, 9 NJPER 256 (¶14117 1983). The PBA argues that this principle is applicable. Under these circumstances, we cannot now decide the negotiability of this ambiguous proposal in view of the parties' conflicting statements concerning the meaning of the clause. We therefore remand the matter back to the parties. We will decide the dispute, if necessary, once the clause's intent is made clear.

Article XVII, Section C reads:

Transfers of Employees between divisions and/or bureaus shall be made subject only to just cause (just cause as provided herein shall be defined as "just cause" as defined in the Civil Service Regulations of the State of New Jersey and as it may be amended during the term of this contract).

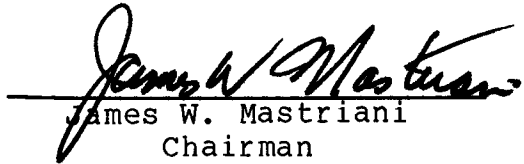
The City contends that this language significantly interferes with its ability to deploy its police force in the manner it deems best to provide efficient police services. We agree. Transfers are generally not mandatorily negotiable. See Local 195; Ridgefield Pk. Ed. Ass'n v. Ridgefield Pk. Bd. of Ed., 78 N.J. 144 (1978). The just cause requirement could subject each transfer decision to review by an arbitrator, regardless of whether the City's motivation was disciplinary. We further agree with the City that Section A of the same article, which bars discharge or discipline except for just cause, adequately protects the PBA's right to negotiate disciplinary

review procedures. A transfer made for reasons of governmental policy is not reviewable in arbitration, while a transfer imposed as a disciplinary measure is. Compare Hudson Cty., P.E.R.C. No. 86-147, 12 NJPER 531 (¶17199, 1986) with Hudson Cty., P.E.R.C. No. 87-20, 12 NJPER ____ (¶_____ 1986).

ORDER

The PBA's proposed addition to Article XVII, Section C, is not mandatorily negotiable. For the reasons stated in the opinion, we do not decide whether Article V is mandatorily negotiable.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
December 22, 1986
ISSUED: December 23, 1986