

P.E.R.C. NO. 96-77

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF VOORHEES,

Petitioner,

-and-

Docket No. SN-96-01

VOORHEES TOWNSHIP POLICE
SERGEANTS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that a dispute in an unfair practice charge filed by the Voorhees Township Police Sergeants Association against the Township of Voorhees is mandatorily negotiable. The dispute involves an alleged past practice of increasing a police sergeant's salary during the last year of employment to the highest rate of pay under the negotiated salary schedule. Any issues of pension eligibility being raised by the Township can be presented to the Division of Pensions.

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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Appearances:

For the Petitioner, Ferreri & Wade, attorneys
(John D. Wade, of counsel)

For the Respondent, Kenneth Plotts, President, Voorhees
Township Police Sergeants Association

DECISION AND ORDER

On July 7, 1995, the Township of Voorhees petitioned for a scope of negotiations determination. The employer seeks a declaration that a dispute in a related unfair practice proceeding is not mandatorily negotiable. That dispute involves an alleged past practice of increasing a police sergeant's salary during the last year of employment to the highest rate of pay under the negotiated salary schedule.

The unfair practice proceeding has been held in abeyance pending this decision. The parties have filed exhibits and briefs. These facts appear.

The Voorhees Township Police Sergeants Association represents sergeants in the employer's police department. The parties' most recent contract expired on December 31, 1994. The 1994 salary ordinance called for sergeants to be paid between \$51,610 and \$53,558.

Richard Nickerson was a sergeant. He retired in December 1994.

In October 1994, Nickerson announced his upcoming retirement and requested that he be paid for the last year of his employment at the top of the negotiated salary scale for sergeants. According to the Association, two other sergeants had received top end pay during the last year of their employment.

The Township denied Nickerson's request. According to the Association, Nickerson was informed that he could not receive top end pay for 1994 because he had not announced his retirement at the beginning of that year.

The Association filed an unfair practice charge alleging that the employer had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by denying top end pay to Nickerson. The charge specifically alleged that the employer had violated a contractual clause providing that the contract was not to be construed as in derogation of existing policies and benefits. This petition ensued.

Our jurisdiction is narrow. We consider only the abstract negotiability of this dispute, not the merits of the charge.

Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J.

144, 154 (1978) In particular, we consider only whether the employer could have legally agreed to pay sergeants at the top end of the salary scale during the last year of their employment and could have legally agreed to pay sergeants retroactively from the beginning of the last year.

Compensation issues are generally negotiable. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322 (1989); Englewood Bd. of Ed. v. Englewood Teachers Ass'n, 64 N.J. 1 (1973). This dispute over the proper salary for the last year of a sergeant's employment is mandatorily negotiable unless preempted by a statute or regulation. A statute or regulation will not preempt negotiations unless it specifically, expressly and comprehensively fixes an employment condition, therefore eliminating an employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80-82 (1978).

The Police and Firemen's Retirement System bases pension payments on an employee's "average final compensation." N.J.S.A. 43:16A-1(15) defines that term as meaning "the average annual salary upon which contributions are made for the three years of creditable service immediately preceding his [or her] retirement or death" or "the average annual salary for which contributions are made during any three fiscal years of his or her membership providing the largest possible benefit to the member or his [or her] beneficiary." N.J.S.A. 43:16A-1(26) defines "compensation" as meaning "the base salary ... which is in accordance with established

salary policies of the member's employer for all employees in the same position but shall not include individual salary judgments which are granted primarily in anticipation of the member's retirement...." N.J.A.C. 17:6-2.1 defines "salary" as excluding "retroactive salary adjustments if the increases are not of a normal, overall, published program of increases."

The employer does not dispute that the parties could have legally agreed to pay sergeants at the top end of the salary scale during the last year of their employment. But it asserts that N.J.A.C. 17:6-2.1 prohibits retroactive payment of a top end salary because Nickerson did not announce his retirement or ask for payment until October 1994, two months before his retirement. The Association responds that retroactive payments are permitted because the ordinance incorporating the negotiated salaries for sergeants (and other employees) constitutes a normal, overall, published program of increases.

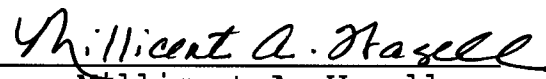
In Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502, 505 (¶16178 1985), we rejected an assertion that N.J.A.C. 17:6-2.1 preempted negotiations over a proposal to increase longevity payments due senior officers during their 23rd year of service. We concluded that the proposal related to compensation and that the employer should address any contentions of pension eligibility to the Consolidated Police and Firemen's Pension Fund for investigation and resolution. See also City of Newark, P.E.R.C. No. 93-57, 19 NJPER 65 (¶24030 1992) (N.J.A.C. 17:6-2.1 does not preempt negotiations over proposal to include holiday pay in base pay for pension purposes).

The Association alleges that the employer has contractually bound itself to pay sergeants at the top end of the negotiated salary scale during their last year of employment. This compensation claim is mandatorily negotiable. N.J.A.C. 17:6-2.1 does not preclude the Association from attempting to prove such a contractual claim and to recover on such claim retroactively to the beginning of 1994. We also are not convinced, as the employer suggests without citing any authority, that an employee's share of pension contributions cannot be deducted from any retroactive salary payments. Any issues of pension eligibility can be presented to the Division of Pensions.

ORDER

The dispute in the unfair practice proceeding over the proper salary to be paid sergeants during their last year of employment is mandatorily negotiable.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: May 23, 1996
Trenton, New Jersey
ISSUED: May 24, 1996