

P.E.R.C. NO. 81-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-80-129

I.A.F.F., LOCAL 1860,  
AFL-CIO,

Respondent.

SYNOPSIS

A clause involving the selection of employees to perform particular duties on a temporary basis is found by the Chairman of the Commission to be a permissive subject of negotiations requiring the mutual agreement of the parties to submit the issue to interest arbitration. The decision applies previously decided Commission case law.

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Appearances:

For the Petitioner, John J. Teare, Esq. (Rosalind L. Bressler, Esq., Assistant Corporation Counsel, of counsel)

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

DECISION AND ORDER

On April 29, 1980 the City of Newark (the "City") filed a Petition for Scope of Negotiations Determination seeking a determination as to whether a certain matter in dispute between the City and IAFF, Local 1860, AFL-CIO (the "IAFF") was within the scope of negotiations within the meaning of the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). On June 2, 1980 the City amended its petition to add a second matter which was in dispute between the parties. The City sought to have the Commission determine the negotiability of the clauses contained in a contract between the parties which the City refused to negotiate in a successor agreement.

The City filed a brief on this matter in September of 1980 but the case was not processed further by apparent consent of the parties. On January 14, 1981 the IAFF advised the Commission

that one item remained in dispute and requested that the Commission issue a decision in the matter.

The disputed clause concerns replacement of one-third of officers in firefighting services who are on vacation with officers of the same rank. The City argues that the clause is not mandatorily negotiable because it interferes with management prerogatives regarding staffing levels and the table of organization. The IAFF argues that it is not an infringement on management prerogatives.

The Commission, pursuant to N.J.S.A. 34:13A-6(f), has delegated to the undersigned, as Chairman of the Commission, the authority to issue scope of negotiations decisions on behalf of the entire Commission when the negotiability of the particular issue or issues in dispute has previously been determined by the Commission.

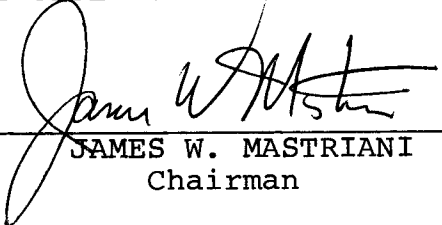
The Commission, in prior decisions, has concluded that the determination of the ultimate criteria for the selection of employees to perform particular duties on a temporary or permanent basis and the right to select individuals for promotions and specific assignments is within the scope of managerial authority and not subject to mandatory negotiations. In In re Town of Kearny, P.E.R.C. No. 80-81, 6 NJPER 15 (¶11009 1979), a clause concerning replacement of superior officers who are unable to report for duty with officers of a specific rank as set out in the contract not to be a mandatory subject of bargaining. See also, In re Cinnaminson Township (Police Association) P.E.R.C. No. 79-5, 4 NJPER 310 (¶4156 1978); In re Borough of Roselle, P.E.R.C. No.

76-29, 2 NJPER 142 (1976); Board of Education of the Twp. of North Bergen v. North Bergen Federation of Teachers, 141 N.J. Super. 97 (App. Div. 1976) and Byram Twp. Board of Education and Byram Twp. Education Assn, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (App. Div. 1977). The Commission, in these decisions, has however determined that provisions relating to the assignment of individuals to perform certain responsibilities are permissively negotiable and can only be negotiated upon mutual agreement.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the IAFF, Local 1860, AFL-CIO refrain from seeking to negotiate the contract clause herein at issue without the consent of the City of Newark.

BY ORDER OF THE COMMISSION

  
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JAMES W. MASTRIANI  
Chairman

DATED: Trenton, New Jersey  
February 24, 1981