

P.E.R.C. NO. 90-93

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIR LAWN BOROUGH,

Petitioner,

-and-

Docket No. SN-90-36

FAIR LAWN SUPERIOR  
OFFICERS ASSOCIATION

Respondent.

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In the Matter of

FAIR LAWN BOROUGH,

Petitioner,

-and-

Docket No. SN-90-37

PBA LOCAL 67,

Respondent.

SYNOPSIS

The Public Employment Relations Commission finds not mandatorily negotiable portions of proposals concerning promotions made by the Fair Lawn Superior Officers Association and P.B.A. Local 67 during successor contract negotiations with Fair Lawn Borough. The Commission finds mandatorily negotiable portions of the proposals dealing with checking the accuracy of promotional examination scores.

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Appearances:

For the Petitioner, DeMaria, Ellis & Hunt, attorneys  
(Richard H. Bauch, of counsel)

For the Respondents, Loccke & Correia, attorneys  
(Michael J. Rappa, of counsel)

DECISION AND ORDER

On January 19, 1990, Fair Lawn Borough filed two petitions for scope of negotiations determination. The Borough seeks a determination that portions of identical negotiations proposals made by PBA Local 67 ("PBA") and by the Fair Lawn Superior Officers Association ("SOA") are not mandatorily negotiable.

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

The PBA and SOA respectively represent the Borough's police patrol officers and superior officers in separate units. Collective negotiations agreements between the Borough and each representative expired on December 31, 1989. The PBA and SOA each filed petitions to initiate interest arbitration; each petition listed a "Promotional Procedure" proposal as an unresolved issue. The Borough filed these petitions, contending that the following portions of the proposals are not mandatorily negotiable:

PROMOTIONAL PROCEDURE

Where there is a decision made to affect promotions, the Employer shall as a condition precedent to said promotions provide the following information to the employee organization:

\* \* \*

- (I) Before any promotion procedure is instituted which will include written or oral examination, the following but not limited to, shall be mutually agreed upon between the PBA and the Borough and made part of this Agreement:
- (1) Who will prepare the written examination? Will the test be prepared internally or conducted by an outside agency?
  - (2) Who will sit on the panel for an oral examination?
  - (3) What weight will scores have in the written or oral examination portion of the testing towards standings?

(4) Will seniority carry any weight in standings?

(5) Will any other Police related work be used to affect the scoring in the standing procedure?

\* \* \*

(7) Will the PBA be permitted to check all scores for their accuracy?

\* \* \*

(9) Who will be eligible to take tests for certain positions?

Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78, 88

(1981), outlines the steps of a scope of negotiations analysis for police and firefighters.<sup>1/</sup> 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 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

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<sup>1/</sup> The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

substantial limitations on government's policy making 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 consider only whether the challenged portions are mandatorily negotiable. It is our policy not to decide whether negotiations proposals, as opposed to grievances, concerning police and fire employees are permissively negotiable since an employer has no obligation to negotiate on such proposals or to consent to their submission to interest arbitration. West New York Tp., P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

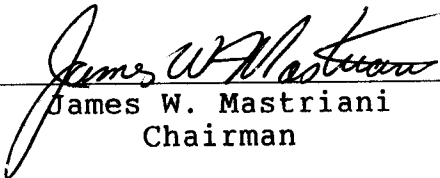
Promotional procedures are mandatorily negotiable and promotional criteria are not. See Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981). Sections 1 and 2 address who will prepare, administer and score a promotional exam and interview. Those issues are not mandatorily negotiable. See Dept. of Law & Public Safety; Piscataway Tp., P.E.R.C. No. 89-32, 14 NJPER 644 (¶19270 1988); Egg Harbor Tp., P.E.R.C. No. 86-20, 11 NJPER 518 (¶16181 1985); Jersey City Bd. of Ed., P.E.R.C. No. 82-52, 7 NJPER 682 (¶12308 1981); State of New Jersey, P.E.R.C. No. 81-81, 7 NJPER 70 (¶12026 1981). Sections 3, 4 and 5 address the selection and importance of promotional criteria and are not mandatorily negotiable. Piscataway; Egg Harbor; Jersey City. Section 7 permits the PBA to check the accuracy of the employer's scoring and does not

impinge on any managerial prerogative to administer or score a promotional examination. Contrast Piscataway. It is mandatorily negotiable. Section 9 addresses eligibility for promotions and is not mandatorily negotiable. See State of New Jersey, P.E.R.C. No. 86-16, 11 NJPER 497 (¶16177 1985); Jersey City.

ORDER

A. Sections 1 through 5, and 9 of paragraph I are not mandatorily negotiable. Section 7 is mandatorily negotiable.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
April 25, 1990  
ISSUED: April 26, 1990