

H.E. No. 2012-2

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2009-188

PBA LOCAL 334,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the County of Hudson did not violate the New Jersey Employer-Employee Relations Act when it implemented changes to its uniform policy on July 6, 2009. The Charging Party alleged the County violated the Act on November 1, 2008 claiming it failed to negotiate over uniform policy changes and their impact that were implemented on that date. The Hearing Examiner concluded that no changes were implemented on that date, and that the County modified its proposals and withheld implementation pending negotiations with the Charging Party. The Hearing Examiner further concluded that the charge did not allege the County violated the Act by implementing uniform changes on July 6, 2009, but that even if it did, there was insufficient evidence to find that the County failed to negotiate over policy changes that were implemented in July.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,
Scarinci Hollenbeck, attorneys
(Sean D. Dias, of counsel; Christine M. Michelson, on
the brief)

For the Charging Party,
Lindabury, McCormick, Estabrook & Cooper, P.C.,
attorneys
(Eric B. Levine, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On November 28, 2008, the Hudson County Sheriff Officers
Policemen's Benevolent Association, Local 334 (PBA or Charging
Party), filed an unfair practice charge with the New Jersey
Public Employment Relations Commission (Commission) alleging that
the County of Hudson (County) violated subsections 5.4a(1), (5)
and (7)^{1/} of the New Jersey Employer-Employee Relations Act,

^{1/} These provisions prohibit public employers, their
representatives or agents from: "(1) Interfering with,
restraining or coercing employees in the exercise of the
(continued...)"

N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleged that the County failed to negotiate over modifications to existing rules governing uniforms before establishing such modifications and that it unilaterally implemented a new uniform policy on November 1, 2008 without negotiating over changes to the policy or over the economic impact of the change. The PBA, presumably, seeks to negotiate over the economic impact of the changes resulting from the implementation of the new uniform policy.

PROCEDURAL HISTORY

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the County from implementing the new policy which was scheduled for implementation on January 1, 2009. An Order to Show Cause was signed on December 4, 2008 scheduling a telephone conference call return date for December 19, 2008. After the Order issued, the County agreed to postpone implementation of any uniform changes causing the PBA, on December 17, 2008, to adjourn the show cause matter.

1/ (...continued)
rights guaranteed to them by this act. (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative. (7) Violating any of the rules and regulations established by the commission."

By letter of February 24, 2009, the conference call return date was rescheduled for March 9, 2009. No restraint was issued. By letter of March 10, 2009, the PBA advised that the County had rescinded any uniform policy changes and would be negotiating with the PBA over the implementation date and financial impact of any future uniform policy, thus the PBA withdrew its interim relief application and requested the matter proceed to an exploratory conference. On June 16, 2009, the Sheriff apparently reissued his order for uniform policy changes to be implemented by July 6, 2009. As a result, the PBA, by letter of June 23, 2009 requested to revive its application for interim relief.

An exploratory conference was conducted in this matter on June 25, 2009. No settlement was reached. On July 1, 2009, a Show Cause conference call return date was rescheduled for July 30, 2009, but was then rescheduled for August 10, 2009. No resolution was reached at that time, but the Commission Designee suggested the parties consider deferring this matter to binding arbitration. A second conference call was held on the interim relief application on August 26, 2009. The County refused to defer this matter to arbitration and the PBA withdrew its interim relief application but requested this matter proceed to an unfair practice hearing.

A Complaint issued on October 6, 2009. The County filed an Answer on October 20, 2009 denying the allegations and raising several affirmative defenses.

A hearing was held on February 23, 2010.^{2/} Both parties filed post-hearing briefs by May 10, 2010, and the County filed a reply brief by May 25, 2010.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The County and PBA were parties to a collective negotiations agreement covering sheriff officers employed by the County and the Hudson County Sheriff (Sheriff) effective from January 1 2003 through December 31, 2007 (Exhibit J-1). That agreement contained a Clothing Allowance clause (Article III) providing an allowance of \$600 per year. The parties subsequently reached a new collective agreement effective January 1, 2008 through December 31, 2012 (Exhibit J-2). In reaching J-2, the parties renamed the clothing allowance a uniform allowance, which provided a \$100 increase in the allowance per year for the life of the agreement. The Uniform Allowance provision resulted in the following benefit:

^{2/} The transcript in this matter shall be referred to as T, followed by the page number cited. C refers to the Commission exhibits received into evidence at the hearing. CP, R, and J refer to Charging Party, Respondent, and Joint exhibits, respectively.

2008 - \$700
2009 - \$800
2010 - \$900
2011 - \$1,000 (T-14).

2. The County issued a uniform policy on August 31, 2001 (General Order No. 2-2001) which was implemented on November 1, 2001 (Exhibit J-3). The "Class A" uniform was the regular duty uniform in J-3 (T52). Article IV, Section G, Paragraph 7 of J-3 required a gold-tone, bar-type tieclasp that could be plain or include a State of New Jersey seal or the Sheriff's Office insignia (T51). Article IV, Section G, Paragraph 10 of J-3 authorized three different shoes, a low cut black shoe, a Trooper-style 3/4 cut black shoe or a magnum-type black boot (T50-T51).

3. On June 24, 2005, then-Sheriff Joseph Cassidy issued General Order No. 01-2005 amending the uniform policy to include an optional "Class B" uniform (Exhibit J-4). The Class B uniform was authorized based upon the request of sheriff officers who wanted a more functional uniform for detectives and the receiving unit (T41). Since that uniform was optional and requested by the officers, the employees bore the economic impact of those uniforms (T42).

4. In June 2008, a Uniform Committee was formed to review the uniform policy contained in J-3 (T86, T103). The Committee included Sheriff's Officer Dominick Bellerio, the PBA Vice-President; Lt. Thomas Cerwinski, a member of the Fraternal Order

of Police (FOP) that represented superior officers; Captain Patrick Schifano and Captain Thomas Willis (T76, T99, T104). Chief of Operations John Bartucci recommended Bellerero for the Committee and Bellerero volunteered to serve on the Committee (T36, T76). Bellerero sought PBA President Mike Hester's approval to be on the Committee and Hester had no objection (T36, T76).

The purpose of the Committee was to offer ideas, suggestions and recommendations to the Sheriff regarding the uniform policy (T103). Bellerero believed his role on the Committee was to gather information to bring back to the PBA for consideration. He did not have the authority to negotiate over a policy or agree upon any policy or changes on behalf of the PBA (T36, T76, T77, T82-T83). Bellerero met with Cerwinski and Schifano at least once (T77). Bellerero never gave any input on behalf of the PBA regarding the substance of the policy or the financial impact of any changes, nor was he asked for any such input (T82).

When he met with Cerwinski and Schifano, Bellerero was shown a draft of changes he believed the Sheriff wanted. Bellerero had no input in the draft, but reviewed it and was required to return it to either Cerwinski or Schifano (T77-T79). Another Committee meeting was scheduled to review the draft but Bellerero was not available to attend. He thought Hester would attend (T80).

Having reviewed the draft of a new policy, Bellerero was able to report back to the PBA that rumors of employees being required

to wear a State Police type uniform did not materialize. Those rumors were dismissed (T81). But the PBA was not presented with any drafts of changes to the uniform policy, nor was it asked to or otherwise provide any proposals for changes to the policy (T35).

The Committee apparently presented a proposal for changes to the uniform policy to Sheriff Juan Perez, but without input from Bellerio or the PBA (T35, T114-T115).

5. Sometime in September or October 2008, Chief Bartucci had told PBA President Hester there would be some changes to the uniform policy particularly a new hat and different stripe for the pants. Hester testified Bartucci told him that any changes would be presented to the PBA prior to implementation to enable the PBA to discuss changes and financial impact (T18, T19). Chief Bartucci did not testify at this hearing thus, I credit Hester's testimony.

On or about November 1, 2008, Sheriff Perez issued General Order No. 07-08, which was a new Uniform Policy (Exhibit J-5), intended to be implemented by January 1, 2009. There were no discussions or negotiations with Hester over the impact of policy changes before J-5 issued (T21). The PBA estimated the changes might cost employees from \$1,041.00 to \$2,200.00 per uniform (T22, T60-T61). Hester explained that the uniform allowance (\$900 for 2009) was intended to be used for upkeep such as repair

and cleaning. The PBA was unaware during negotiations leading up to its new contract, J-2, that the uniform policy would change (T29-T31).

Article IV, Section N(5) of J-5 provides:

5. Clothing Maintenance and Cleaning

All members of this agency that are issued a clothing allowance, are expected to use that allowance to keep their uniforms neat and clean, and their equipment workable, and up to department standards.

6. Hester and the PBA were upset with the issuance of J-5 without any PBA involvement. In a meeting with the Sheriff and others in early November 2008, Hester explained that J-5 was issued without his knowledge or the ability to negotiate over cost items and it was creating problems with his membership (T32, T33). In an apparent reaction to that meeting, the Sheriff issued General Order No. 08-08 on November 14, 2008 (Exhibit J-6) requiring only certain uniform changes by January 1, 2009, and deferring other changes until March 1, 2009.

J-6 provides:

1. Effective January 1, 2009, all members of the department will comply with the wearing of the new hat, striped pants, shoes, tie and clasp, pursuant to General Order 7-08.

2. Effective March 1, 2009 all members of the department will be in full compliance with the newly established uniform policy - General Order 7-08.

3. All members of the department will take cognizance of the forgoing and be guided accordingly. Each supervisor shall be

responsible for directing the effective implementation of this order.

On November 19, 2008, Hester sent Chief Lamboy an email (Exhibit CP-1) expressing his concerns that the PBA wanted to work with the Sheriff but had not been allowed to have any input or be able to make any suggestions regarding the uniform policy.

In an apparent response to CP-1, the Sheriff, on November 26, 2008, issued General Order No. 09-08 (Exhibit J-7) again revising the uniform policy, rescinding certain requirements that had been set in J-5, and making other elements of the policy optional.

J-7 provides:

1. Effective January 1, 2009, all members of the department will comply with the wearing of the new hat, striped pants, shoes, tie and clasp, pursuant to General Order 07-08 and remains in effect.
2. Revised: Effective March 1, 2009 all parts of the uniform policy will take effect with the exception of the Class "C" Uniform (BDU).
3. Effective June 29, 2009, Section 2, page 2 Class "C" Uniform will be in effect (**Exception in Paragraph 4**).
4. Section III D. Class "C" Uniform Jacket 5.11 brand 5 in 1, #48017 is rescinded and the official jacket for the Class "B" and "C" Uniforms will be the Blauer, cruiser model as stipulated on page 5 of the Uniform Policy. The 5.11 brand 5 in 1 jacket, #48017 will be an optional part of the Class "C" Uniform (BDU).

5. All members of the department will take cognizance of the forgoing (sic) and be guided accordingly. Each supervisor shall be responsible for directing the effective implementation of this order.

7. Since the PBA believed the cost of the uniform changes would be too much, a meeting was held in early December 2008 with Hester, Chief Bartucci, County Personnel Director Patrick Shiel and others. Shiel had suggested that in lieu of their uniform allowance, employees be given a voucher they would take to certain uniform stores. The PBA rejected that proposal (T106, T107). As a result of that meeting, Sheriff Perez issued General Order No. 10-08 on December 15, 2008 (Exhibit J-8) rescinding the implementation dates in J-6 and J-7 pending negotiations with the PBA.

J-8 provides:

1. Be advised that the implementation date contained in General Orders 08-08 & 09-08 is hereby **rescinded** pending negotiations with the bargaining unit.

2. All members of the department will take cognizance of the forgoing (sic) and be guided accordingly. Each supervisor shall be responsible for directing the effective implementation of this order.

On June 16, 2009, Sheriff Perez issued General Order No. 05-09 (Exhibit J-9) noting that effective July 6, 2009, the Uniform Policy in J-5 would become mandatory except in two instances.

J-9 provides:

1. Effective July 6, 2009, General Order #07-08, Uniform Policy, will become mandatory with the following amendments:

2. Article III. Section D. Class "C" Uniform B.D.U. style will be optional with the exception of Receiving Unit Officers. B.D.U.'s may be worn for off duty details and the pistol range. The Sheriff or his designee may authorize the use of the B.D.U. Uniform for special events.

3. Article IV. Section G. Accessories Paragraph 8. Duty Belt is optional. In the event that any part of the duty belt is worn, it must be replaced with the equipment as specified in the Uniform Policy.

4. All members of the department will take cognizance of the forgoing (sic) and be guided accordingly. Each supervisor shall be responsible for directing the effective implementation of this order.

While I believe the parties met between December 2008 and June 2009 regarding this matter, no evidence was presented showing whether the parties negotiated over the economic impact of the policy during that time. After J-9 issued, Hester believed that to be in compliance with the new uniform policy, he had to buy several uniforms (T55). Lt. Cerwinski however, testified that he complied with J-5 without purchasing new uniforms. He had his trousers altered by changing the stripe from black to gold for \$20 per pair (four pair), he bought a new tie clasp for \$10, and he purchased a new hat for \$29.00 (T96, T97). I credit both Hester and Cerwinski on this point.

8. At the very least, J-5, J-6, J-7 and J-9 required employees to obtain new hats, a light blue dress shirt, gold striped pants (or change the stripe on existing pants), tie clasps, and shoes if their existing shoes did not comply with the new policy. Although Class C uniforms (BDU style) were optional for most officers, the officers in the Receiving Unit were required to have Class C uniforms. Employees were not required to purchase new duty belts and attachments at this time, but when replacing equipment they had to comply with J-5 (Exhibit J-9).

While the cost for the required uniform changes may have been minimal as experienced by Lt. Cerwinski, the cost may have been much higher based upon an officer's individual needs as experienced by Officer Hester.

ANALYSIS

The charge in this case alleged the County (Sheriff) unilaterally implemented a new uniform policy on November 1, 2008 without negotiating over changes to the policy or over the economic impact of the changes. While the record supports a finding that the County did not negotiate with the PBA over proposed policy changes or their potential economic impact prior to November 1, 2008, the record also conclusively shows the County did not implement uniform policy changes or modifications to existing rules governing uniforms on November 1, 2008. The only action that occurred on November 1, 2008 was that the County

issued J-5 which announced its intent to implement uniform policy changes on January 1, 2009. But no changes were implemented at that time. In fact, the County minimized the proposed changes enumerated in J-5 and delayed implementation by issuing J-6, J-7 and J-9, and the changes actually implemented on July 6, 2009 were less than those previously proposed in J-5. This charge did not allege, nor was it amended to allege, that the changes implemented on July 6, 2009 violated the Act, but even if it did, I find there was insufficient evidence to prove the County failed to negotiate over the changes implemented in July 2009.

The Commission has consistently held that negotiations over an employer's determination over what uniforms officers will wear or changes to the uniform are generally not mandatorily negotiable, although certain uniform subject matters are permissively negotiable. But the Commission has also consistently held that the cost for the uniforms and the economic impact of changes employers require to uniforms is mandatorily negotiable. Town of Kearny, P.E.R.C. No. 2001-58, 27 NJPER 189 (¶32063 2001); City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001); Essex Cty. Sheriff's Dept., P.E.R.C. No. 2000-79, 26 NJPER 202 (¶31082 2000); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979).

Frequently, parties to a collective negotiations agreement that covers employees required to wear uniforms, include a clothing or uniform allowance clause in their agreement. Employers usually argue that such clauses cover any uniform changes the employer requires, while labor organizations normally argue that such clauses are only for the maintenance and upkeep of their uniforms and were not intended for major purchases or changes. The Commission has held that such issues are normally matters involving contract interpretation and are more appropriate for arbitration and not scope or unfair practice determination. City of Trenton, 27 NJPER 206.

The record in this case suggests that the PBA was at least initially more concerned about the policy changes and their implementation rather than any economic impact. The PBA engaged in several discussions with the Sheriff that resulted in changes to the policy and its implementation date. Nevertheless, the PBA in its post-hearing brief argued: 1) that the Sheriff only held some discussions with the PBA over the new uniform policy after it was issued; it did not engage in negotiations over the impact of the new policy prior to implementation; 2) that Bellerio's limited participation on the Uniform Committee was not negotiations and that Bellerio did not have an opportunity for input before being presented with the proposed policy; 3) that the issue here is not the significance or cost of the new changes

but that the County failed to negotiate prior to their implementation, and 4) that the negotiated uniform allowance was not intended to cover the impact of the new changes and did not satisfy the County's negotiations obligation.

The County argued: 1) that after discussions with the PBA it changed the implementation dates and modified certain requirements; 2) that the PBA had a presence on the Uniform Committee which presented recommendations for the new policy to the Sheriff; 3) that ultimately only minor modifications were made to the policy which resulted in minimal cost; 4) that the parties had already negotiated over a uniform allowance which was intended to cover the cost of such changes; 5) that issues regarding the uniform allowance were not raised during discussions with the PBA and no evidence of undue financial hardship was presented regarding the policy changes; and 6) that the County followed its established practice for the implementation of, or changes to, the uniform policy.

The law in this case is well settled; the County had the prerogative to make changes to the uniform policy, but the PBA had the right to negotiate over the financial impact of those changes. It is clear from the record that the PBA was interested in convincing the Sheriff to minimize the changes. The PBA accomplished some of that goal in discussions that lead to the issuance of J-6, J-7 and J-8.

Having established that the County's only obligation was to negotiate over the economic impact of its changes; however, did the County negotiate over the economic impact of J-5 before it issued? The County seems to argue two ways: it contends it had no further duty to negotiate because it implemented the new policy in accordance with established practice and that it had already negotiated a uniform allowance which was intended to cover such minor policy modifications. But, it also contends it met its negotiations obligation by holding discussions with the PBA which resulted in the modifications to J-5 as evidenced by J-6 and J-7, by including Bellerio on the Uniform Committee, and because the PBA did not raise the uniform allowance in their discussions.

The record supports a finding that the County did not negotiate with the PBA over any aspect of J-5 before it was issued in November 2008. Bellerio's presence on the Uniform Committee was only pro forma; he had no authority to negotiate on behalf of the PBA and was not given an opportunity for input into J-5. But, J-5 was not implemented in November 2008, nor was it implemented on January 1, 2009, its original implementation date. Thus, while the County had an obligation to negotiate over financial impact issues caused by J-5, since there were no changes implemented on November 1, 2008, no violation occurred at that point.

The various arguments offered by the County to defend its actions in this case are of minimal value in deciding this case. The discussions with Hester in late 2008 did not constitute negotiations and Bellerio's presence on the Uniform Policy Committee did not substitute for direct negotiations with the PBA. A dispute exists over whether the required changes have a minor or potentially substantial economic impact which was not resolved by the evidence. That dispute shifts the balance towards negotiating over that issue, and the language in Article IV, Section N(5) of J-5 suggests the clothing allowance was intended to maintain uniforms and equipment, not for purchasing new items. While I am not interpreting the parties' Uniform Allowance language, the language in J-8 amplifies the preference to negotiate over the economic impact of the changes. Finally, the facts presented here are insufficient to support the County's established practice defense.

The salient point in this analysis, therefore, is whether the County engaged in good faith negotiations to impasse with the PBA over economic impact issues prior to the implementation of the policy changes in July 2009. Both the language in J-8 and the procedural history of the interim relief application filed in this case tell us that the parties had both the time and inclination to negotiate over uniform related issues well before the July 6, 2009 policy implementation date. To whatever extent

a negotiations obligation existed for the County on this issue leading up to J-5, the Sheriff's order in J-8 turned the clock back by rescinding prior orders and effectively rescinding implementation of any uniform changes "pending negotiations with the bargaining unit." At that point in December 2008, no violation had occurred and the County was prepared to comply with its negotiations obligation. Did they? I don't know.

The procedural history shows that the parties were willing to negotiate. But the burden of proof was on the PBA to show whether the parties engaged in a good faith effort to reach agreement over economic impact issues of the uniform policy changes. This record does not contain such evidence. The facts presented by the parties seem to end in late December 2008 and resurface only for the issuance of J-9 on June 16, 2009. What happened in between those dates? Did the parties meet and negotiate over - i.e., exchange proposals regarding - the economic impact of the planned uniform changes? If they did, to what extent? The burden was on the PBA to show what happened during that time frame, but no such evidence was provided.

Consequently, while I find the County was obligated to negotiate over the economic impact of its uniform policy changes, there is insufficient evidence in this record to conclude they failed to meet that obligation. Since no uniform policy changes were implemented on November 1, 2008; the County both

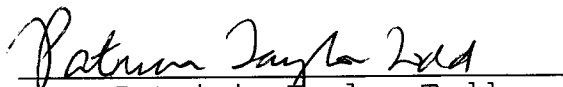
minimized/eliminated changes originally proposed in J-5 and withheld implementation of any changes pending negotiations with the PBA as indicated in writing in J-8; the charge did not allege the County violated the Act by its implementation in July; and because there was no evidence the County failed to negotiate in good faith with the PBA over this subject between December 15, 2008 and July 6, 2009, the charge must be dismissed.

CONCLUSIONS OF LAW

The County of Hudson (Sheriff) did not violate 5.4a(1), (5) and (7) of the Act by implementing changes to its uniform policy on July 6, 2009.

RECOMMENDATION

I recommend that the Commission ORDER that the Complaint be dismissed.


Patricia Taylor Todd
Hearing Examiner

DATED: October 17, 2011
 Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by October 27, 2011.