

D.U.P. NO. 2022-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

NEW JERSEY STATE JUDICIARY,

Respondent,

-and-

PROBATION ASSOCIATION OF NEW JERSEY
(PROFESSIONAL CASE RELATED UNIT)

Docket No. CO-2022-057

-and-

PROBATION ASSOCIATION OF NEW JERSEY
(PROFESSIONAL SUPERVISORS UNIT),

Docket No. CO-2022-058

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses unfair practice charges filed by the Probation Association of New Jersey-Case-Related Professional Unit (PANJ) and the Probation Association of New Jersey-Professional Supervisors Unit (PANJ-Supervisors) against the New Jersey Judiciary (Judiciary). The charges alleged the Judiciary violated section 5.4a(1), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act (Act) by unilaterally adopting a "Badge and Identification Card" policy in August 2021 that required probation officers who did not perform "field work" to relinquish their photo identification cards and badges. The Director found that the policy concerned a change in uniform/accessories that, under well-settled Commission precedent, was a managerial prerogative. The Director also held that the charge did not plead with specificity what the impact of the policy was on unit employees' terms and conditions of employment and did not plead that a specific demand to negotiate impact issues was made to the Judiciary (both of which are essential elements to a refusal to negotiate an impact claim).

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Charging Parties.

Appearances:

For the Respondent,
Administrative Office of the Courts
(Thomas Russo, of counsel)

For the Charging Parties,
Law Offices of Daniel J. Zirrith, attorneys
(Daniel J. Zirrith, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 10, 2021, the Probation Association of New Jersey, Case Related Professional Unit (PANJ) and the Probation Association of New Jersey, Professional Supervisors Association (PANJ-Supervisors)^{1/} filed unfair practice charges against the New Jersey State Judiciary (Judiciary or Respondent). The

^{1/} PANJ and PANJ-Supervisors are hereinafter collectively referred to as "Charging Parties."

charges allege that the Judiciary violated section 5.4a(1), (3), (5) and (7)^{2/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when, on August 16, 2021, the Judiciary adopted a "Badge and Identification Card Policy" (2021 Policy) that required Probation Officers who did not perform "field responsibilities" to relinquish their badges and corresponding photo identification cards. The Charging Parties allege that the 2021 policy unilaterally altered a term and condition of employment that existed since 1999; that the change repudiated four provisions in the parties' respective collective negotiations agreements; and that the Judiciary refused to negotiate over the impact of the 2021 Policy on terms and conditions of employment.

On November 15, 2021, the Judiciary filed and served on the Charging Parties a position statement and two certifications with exhibits from Brenda Beacham, the Assistant Director of Probation

^{2/} These provisions prohibit public employers, their representatives or agents from "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the 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, and (7) Violating any of the rules and regulations established by the Commission." The 5.4a(1) claim was plead as a derivative violation of section 5.4a(5).

Services ("Beacham cert.").^{3/} The Judiciary contends that its policy limiting the use of badges to unit employees who perform field work was a proper exercise of a managerial prerogative and is non-negotiable. The Judiciary asserts it is implementing this policy to address the "numerous instances of lost or stolen badges, which went unreported" to the Judiciary and avoid an unauthorized person from unlawfully using the badge "in innumerable ways", that can "pose a very real threat to public safety." (Page 3 of Judiciary's Position Statement).

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

^{3/} One certification (hereinafter referred to as the "Beacham PANJ-Supervisors cert.") was in response to the PANJ-Supervisors Charge. The other certification from Beacham (hereinafter referred to as the "Beacham PANJ Certification") replies to the PANJ charge. Both certifications are relied on solely to supplement the record with facts not alleged by the Charging Parties. To the extent the certification conflicts with factual allegations in the charges, the allegations in the charges are accepted as true. N.J.A.C. 19:14-2.1.

I find the following facts.

PANJ is the exclusive majority representative of all non-supervisory, case-related professional employees employed by the Judiciary in all trial court operations who have caseload responsibilities. PANJ's unit includes, but is not limited to: probation officers, senior probation officers, master probation officers, substance abuse evaluators, family court coordinators, the assistant child placement review coordinator, and the bilingual community outreach worker. PANJ and the Judiciary are parties to a collective negotiations agreement extending from July 1, 2020 through June 30, 2024 (PANJ Agreement).

PANJ-Supervisors is the exclusive majority representative of professional supervisory employees employed by the Judiciary. The unit includes, but is not limited to, court services supervisors, administrative supervisors, court reporter supervisors and other supervisory employees working for the Judiciary. PANJ-Supervisors and the Judiciary are parties to a collective negotiations agreement extending from July 1, 2016 through June 30, 2020. The parties reached an impasse in negotiating a successor agreement and are presently engaged in fact-finding before a Commission appointed fact-finder (docket no. FF-2021-013).

On or about May 26, 1999, the Judiciary promulgated a "Probation Employees Credentials Package Policy" (1999 Policy).

Under the 1999 Policy, every probation officer was issued a "credentials package" that included a photo identification card, a numbered badge, and a carrying case. As written in the 1999 Policy, probation staff "must protect identification [credentials] from loss or theft" and "credentials must never be used by staff to secure favors or rewards from any other party." (Exhibit A to Beacham PANJ-Supervisors cert.). Section 2.2 of the 1999 Policy also provides:

The local police department should be notified within 24 hours of any stolen/lost credentials, where appropriate. Steps should be taken to insure that notice of theft or loss of credentials is placed on the appropriate law enforcement communication network whenever possible.

[Exhibit A to Beacham PANJ-Supervisors cert.]

According to the Charging Parties, photo identification cards and badges ". . . have been an important element of a probation officer's uniform/work attire for at least the past 22 years." (para. 5 of both charges). These credentials ". . . have been utilized as official identification for entry into courthouses, other judiciary buildings, jails, treatment centers, schools and other various government buildings." (para. 5 of both Charges). The Charging Parties also allege that the "photo identification card and badge also act as a safety measure for Probation Officers, who may display the same to law enforcement, clients of the judiciary and the public generally as

a display of the Probation Officers title, position and authority while in their official capacity." (para. 6 of both Charges).

On December 18, 2020, the Judiciary informed PANJ and PANJ-Supervisors of the forthcoming 2021 Policy. (Beacham PANJ and PANJ-Supervisors certs. para. 11 and Exhibit C). The 2021 Policy went into effect on August 16, 2021. The Charging Parties do not allege they demanded or requested negotiations with the Judiciary over the 2021 Policy or the policy's impact on unit employees' terms and conditions of employment.

The 2021 Policy "superseded" the 1999 Policy. (Exhibit B to Beacham cert. and para. 7 of charges). The 2021 Policy ". . . specifies that only personnel engaged in field work are authorized to carry a badge and corresponding photo I.D. card." (Beacham PANJ-Supervisors cert., para. 10 and Exhibit B). "Field work" involves tasks performed by unit employees "outside of courthouses and other court facilities." Those tasks include ". . . inspecting the home of a client, periodically visiting the client at home, going to businesses to verify the client's employment, going to schools to verify the client's enrollment/attendance, going to substance abuse treatment centers to verify the client's attendance and receipt of treatment and going to various entities to verify the client's performance of community services." (Beacham certs., para. 8). Field work "also entails the use of safety-related equipment, such as protective

vests and pepper spray”, but “does not include visits to jails.” (para. 8 of Charges and Beacham certs.).

In describing the purpose of the 2021 Policy, the Judiciary asserts:

The 2021 Policy is grounded in public welfare. Through the policy, the Judiciary has limited the number of badges in circulation at any given time. In the past, there have been numerous instances of lost or stolen badges which went unreported. The Judiciary first learned of the loss or theft of the badges when they were turned in by members of the public or they were recovered by law enforcement authorities in the course of a criminal investigation. Some of the badges were found in other states and even other countries. On other occasions, the Judiciary learned of the loss of a badge only as a result of conducting an internal audit of employees. Needless to say, the possession of a badge by someone other than the authorized bearer poses a very real threat to public safety, as it could be used unlawfully in any number of ways. Reducing the number of badges in circulation reduces the risk of a badge falling into the wrong hands.

[Beacham certs., para. 12]

Beacham certifies that only a “very limited number of employees” engage in field work and that “many do not need to leave the office in order to perform their job.” (Beacham certs., para. 8). The 2021 Policy “specifies that only personnel who currently perform field work are authorized to carry a badge and corresponding photo I.D. card.” (Beacham certs., para. 10). Beacham certifies that the “fact that the employees no longer carry a badge has no impact on their ability to effectively perform their job duties, nor does it diminish safety in the

workplace" for employees who do not perform field work. (Beacham certs., para. 10).

The Charging Parties allege that the Respondent "failed to address or negotiate" with them "concerning impact issues" resulting from the 2021 Policy, "including safety and [the] requirement requiring replacement of Badges, for those permitted to retain a Badge, at the employee's own expense." (para. 13 of both charges). The Charging Parties also allege that the 2021 Policy repudiated several provisions of their collective negotiations agreements. In the PANJ Agreement, the Charging Parties allege the following provisions were repudiated by the 2021 Policy:

(1) Section 2.4, which provides: "New rules or modifications of existing rules governing legally negotiable terms and conditions of employment shall be negotiated with the majority representative(s) before implementation and within the parameters established by the Letter of Agreement between the Judiciary and the labor representatives of its employees dated December 28, 1994 and the Judicial Employees Unification Act."^{4/}

(2) Section 25.1, which provides: "The Judiciary shall continue to make provisions for the safety and health of its employees during the hours of their employment" and "The

^{4/} Section 2.4 of the PANJ-Supervisors' Agreement is virtually identical to this provision. See para. 15 of PANJ-Supervisors' Charge.

Judiciary will provide a reasonably safe and healthy place of employment for all employees."^{5/}

(3) Section 27, which provides: "Unless specifically altered by this Agreement, existing practices, as well as the Letter of Agreement entered into between the Judiciary and its employee representatives on December 28, 1994, shall remain unchanged."^{6/}

(4) Article 32, which provides: "Each employee who is a Probation Officer or in another title in the unit shall be issued an identification card clearly identifying that employee as working for the Judiciary as a Probation Officer or other title." This provision is not included in the PANJ-Supervisors' Agreement. See generally the PANJ-Supervisors' Charge and the Beacham PANJ-Supervisors', para. 15.

(5) Article 35, which provides for the creation of a "Statewide Labor Management Committee" on attire, which was created to address issues such as Probation Officers wearing Badges. (para. 19 of PANJ Charge).^{7/}

5/ Section 25.1 of the PANJ-Supervisors' Agreement is virtually identical to this provision. See para. 16 of PANJ-Supervisors Charge.

6/ Section 11 of the PANJ-Supervisors' Agreement is similarly worded to this provision.

7/ Article 31 of the PANJ-Supervisors Agreement also creates such a committee and is similarly worded.

On September 10, 2021, PANJ and PANJ-Supervisors filed grievances challenging the 2021 Policy. PANJ-Supervisors alleged in its grievance that the 2021 Policy violated the PANJ-Supervisors Agreement, specifically the "Preamble, Article 2(2.1, 2.4), Article 6, Article 11, Article 12 (12.1, 12.2), Article 25 (25.1), Article 31, and Past Practice." PANJ alleges the 2021 Policy violated the PANJ Agreement, specifically "Article 2(2.1), Article 12 (12.1, 12.2), Article 25 (25.1), Article 27, Article 32, and past practice." The grievances were heard jointly by a Judiciary Hearing Officer and the Charging Parties are awaiting a decision from the Hearing Officer, at which time the Charging Parties "may seek binding arbitration of the grievances."^{8/}

The Charging Parties and Respondent disagree about whether the 2021 Policy and its implementation complied with their collective negotiations agreements.^{9/} According to the Judiciary, no provision in the PANJ-Supervisors Agreement requires the issuance of an ID card. Nonetheless, the Judiciary maintains that all unit employees in the PANJ and PANJ-Supervisors units carry ID cards and the Judiciary ensured, in compliance with Article 32 of the PANJ agreement, that unit

^{8/} The status of these grievances was confirmed by counsel for the Charging Parties in an email dated January 13, 2022.

^{9/} The parties' positions were communicated by counsel in emails dated January 10, 11, 13 and 14, 2022, as well as February 3, 2022.

employees were issued ID cards that identified the employee's job title and employer (the Judiciary).

The Charging Parties counter that ". . . most PANJ members who had their ID's taken were deprived of the same for approximately a month or two."^{10/} Charging Parties also assert that identification cards have not been returned to some PANJ members who do not perform field work in the Judiciary's Family Division, Criminal Division, and Supervision Division.^{11/} In response to this assertion, the Judiciary contends the Charging Parties are "conflating two separate types of employee ID cards, namely, cards that were issued to employees along with metal badges, which together, formed a "credential package" [under the 1999 Policy], and cards issued independently of badges."^{12/} The Judiciary argues that PANJ is not entitled under Article 32 to retain the "old ID card" that came with the credentials package, but maintains that "all PANJ-represented employees possess at least one type of employee ID card listing their position."^{13/}

^{10/} This was confirmed by an email from the Charging Parties' counsel on January 11, 2022.

^{11/} This was confirmed in an email from Charging Parties' counsel sent on January 13, 2022.

^{12/} The Judiciary's counsel confirmed this by email on January 14, 2022.

^{13/} Judiciary's counsel's January 14, 2022 email.

The Charging Parties dispute this claim and maintain the Judiciary has failed to return ID cards to PANJ members.

ANALYSIS

The Charging Parties allege that the 2021 Policy repudiated provisions in their collective negotiations agreement and unilaterally altered terms and conditions of employment concerning "an important element of a [unit employee's] uniform/work attire" that existed for 22 years. (para. 5 of both charges). The Judiciary disagrees, contending that the 2021 Policy was a proper exercise of its managerial prerogative to determine the uniforms of probation officers. The Judiciary further argues that the 2021 Policy concerns predominantly the policy of ensuring officers' badges are not stolen or lost to members of the public and are not used for unlawful purposes that threaten public safety. For the following reasons, I agree with the Judiciary and dismiss the charges:

(1) The Judiciary, under well-settled Commission precedent, has a managerial prerogative to determine the appropriate uniform/work attire for probation officers and promote the safety of the general public by preventing the unlawful use of badges;

(2) The charges do not plead, with sufficient specificity, what impact the 2021 Policy has on unit employees' terms and conditions of employment;

(3) The charges do not allege that the Charging Parties requested or demanded to negotiate over the 2021 Policy or its impact on terms and conditions of employment with the Judiciary;

(4) The 2021 Policy does not amount to a repudiation of the respective agreements, but is at most a breach of contract claim that should be resolved in accordance with the parties' negotiated grievance procedures under State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Uniforms and Managerial Prerogative

A public employer has a managerial prerogative to determine the uniform a law enforcement officer wears. City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den. P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131 1979), aff'd in pt, rev'd in pt, NJPER Supp.2d 84 (¶65 App. Div. 1980); Town of Kearny, P.E.R.C. No. 81-34, 6 NJPER 446 (¶11229 1980); City of Jersey City, P.E.R.C. No. 2020-19, 46 NJPER 183 (¶45 2019). Decisions by employers to change uniforms, or accessories to uniforms, are not mandatorily negotiable. Id.^{14/} As the Commission explained

^{14/} See also Union Tp., P.E.R.C. No. 87-119, 13 NJPER 289 (¶18121 1987) (Commission finds that provision requiring officers carry uniform accessories, such as handguns, (continued...))

in City of Trenton when finding the subject of uniforms was not mandatorily negotiable:

By their very appearance, police officers may act as a deterrent to criminal activity. A police officer's uniform thus must be considered to relate to the 'manner or means' of rendering police services and, as such, it is not a mandatory subject of negotiations. Consistent with these decisions, we hold that the determination of the daily police uniform including garments, footwear and headwear is a permissive subject of negotiations.

[Trenton, 5 NJPER 112]

14/ (...continued)

holsters, belts, nightsticks, and mace, was not mandatorily negotiable, but who pays the costs for such accessories was negotiable); Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987) (Determination of police uniform not mandatorily negotiable); Nutley Tp., P.E.R.C. No. 88-90, 14 NJPER 254, 255 (¶19095 1988) (Commission holds that the "determination of the daily police uniform, inclusive of garments, shoes and headware" and the "determination of when such uniforms will be worn" are not mandatorily negotiable subjects, but that "aspects of police uniforms that relate to employee health and safety" and the "economic consequences of uniform changes" are mandatorily negotiable); Montclair Tp., P.E.R.C. No. 90-9, 15 NJPER 499, 500 (¶20206 1989) ("Adornments on firefighters' uniforms unrelated to safety or comfort are not mandatorily negotiable"); Town of Kearny, P.E.R.C. No. 2002-77, 28 NJPER 264 (¶33101 2002) (Contract provision providing for any change in uniforms for firefighters be phased out over a 30 month period and permitting firefighters to wear old uniforms during that period was not mandatorily negotiable); City of Elizabeth, P.E.R.C. No. 2007-16, 32 NJPER 321 (¶133 2006) (Commission restrains arbitration over grievance seeking return of detective shields to officers transferred from the detective to patrol unit); Hudson Cty., P.E.R.C. No. 2010-76, 36 NJPER 141, 143 (¶53 2010) ("A police officer's uniform relates to the manner and means of delivering police services and as such is not mandatorily negotiable.").

Although uniform policies, such as the type of uniform worn or the "transition" or "phase-in" period of time to implement uniform changes are permissively negotiable subjects, ". . . it is not an unfair practice to unilaterally set new permissively negotiable employment conditions."^{15/} City of East Orange, P.E.R.C. No. 2020-36, 46 NJPER 318 (¶78 2020).

While the determination of what uniforms officers wear is a managerial prerogative, the impact of that decision on the health and safety of officers is mandatorily negotiable, as is its economic impact. Trenton, 5 NJPER 112; Jersey City, 46 NJPER 183. Public employers and majority representatives are obligated to negotiate over who pays for uniforms and over ways of addressing health and safety concerns, provided that negotiations do not interfere with the exercise of the employer's prerogative to determine the uniform worn by officers. Trenton, 5 NJPER 112; Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001), recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001). As the Commission explained in Trenton:

[W]e recognize that the uniform worn has an effect upon the employees' terms and conditions of employment. Health and safety are areas that may be affected. To the extent that the proposals relate to these or

^{15/} This is because an employer is not obligated to negotiate permissively negotiable subjects. Paterson PBA Local 1 v. City of Paterson, 87 N.J. 78 (1981).

other mandatorily negotiable terms and conditions of employment, **and do not prohibit the employer from accomplishing its goals in having the particular uniform item worn**, it is mandatorily negotiable.

[Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), (emphasis added)]

This is consistent with the general labor relations principle that negotiations over the impact of a managerial prerogative cannot preclude the exercise of that prerogative. Woodstown-Pilesgrove Bd. of Ed. v. Woodstown-Pilesgrove Educ. Ass'n, 81 N.J. 582 (1980); Piscataway Tp. Educ. Ass'n v. Piscataway Tp. Bd. of Ed., 307 N.J.Super. 263 (App. Div. 1998); City of Trenton, 27 NJPER at 208, recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001).

That principle was reinforced in the context of a uniform change in City of Trenton, 27 NJPER at 208, recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001). There, the Commission denied reconsideration of a Commission Designee's decision that denied the PBA's request to enjoin the City from changing officers' uniforms. There, the Commission Designee explained:

[T]he Commission has held that the design of uniforms to be worn by police officers involves the exercise of a managerial prerogative. Consequently, the City's determination to require officers to wear a new uniform does not constitute a change in any term and condition of employment which is subject to collective negotiations. Since the change in uniform constitutes an exercise of a managerial prerogative rather than a change in terms and conditions of employment,

such action does not chill on-going negotiations or interest arbitration or violate N.J.S.A. 34:13A-21. Accordingly, the PBA has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. Consequently, there is no basis upon which to enjoin the City from proceeding with its determination to require the wearing of new uniforms.

[Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001), recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001)]

See also City of Englewood, I.R. No. 2020-25, 47 NJPER 17 (¶3 2020). The Commission Designee and Commission noted that while the health and safety effects of the uniform change are mandatorily negotiable, that did not justify enjoining the employer from exercising its prerogative to implement the uniform change. Trenton; see also Jersey City, 46 NJPER 183 (Commission finds employer had a managerial prerogative to require officers to wear Class A uniform instead of Class B uniform and negotiations over impact of that change cannot interfere with the exercise of that prerogative).

The Commission has also repeatedly held that public employers have a managerial prerogative to adopt and implement policies promoting public safety, even when those policies impact employee safety or other terms and conditions of employment. State of New Jersey (Division of State Police), P.E.R.C. No. 96-55, 22 NJPER 70 (¶27032 1996); City of Newark, P.E.R.C. No. 98-154, 24 NJPER 341 (¶29161 1998); State of New Jersey

(Judiciary), P.E.R.C. No. 2006-38, 31 NJPER 361 (¶145 2005); East Orange Bd. of Ed., P.E.R.C. No. 2012-20, 38 NJPER 193 (¶65 2011); New Jersey Transit, D.U.P. No. 2015-2, 41 NJPER 144 (¶48 2014).

In State of New Jersey (Judiciary), the Commission restrained arbitration of a grievance filed by PANJ that challenged a Judiciary policy requiring probation officers to be exposed to pepper spray as part of an officer's training. 31 NJPER at 363. There, PANJ argued that exposure to pepper spray could cause "severe and permanent injuries" to unit employees and that, given that impact on employee safety, the training requirement is mandatorily negotiable. Id. The Commission disagreed. While acknowledging the potential impact on the health and safety of officers, the Commission held that the training requirement was a managerial prerogative and not mandatorily negotiable. Id. Relying on City of Newark, P.E.R.C. No. 98-154, 24 NJPER 341 (¶29161 1998); the Commission explained that the employer's interest in ensuring probation officers were properly trained in the use of pepper spray outweighed the employees' health and safety concerns:

In Newark, we recognized the officers' significant health and safety interests in not being sprayed, but we concluded that these interests were outweighed by the employer's prerogative to determine what training was required to ensure that the officers could do their jobs effectively. In reaching this conclusion, we reviewed the

case law concerning health and safety issues and training programs and examined the facts presented. We also concluded that the requirement of OC [pepper spray] exposure was not permissively negotiable given the City's policy for controlling riots and dangerous altercations without resorting to deadly force.

Newark leads us to restrain arbitration. The Judiciary has relied upon the FBI report discussed at length in Newark and indicating that OC spraying does not generally cause long-term ill effects. Officers with health concerns may opt out of OC exposure and may ask for alternate protection measures if they elect not to carry OC. While probation officers are not expected to control riots, the reasons asserted by the Judiciary for requiring OC exposure are otherwise similar to the reasons given by the city in Newark and are reasonably related to the officers' duties. Given the similarities to Newark, the balance of interests favors not requiring negotiations over the requirement of OC exposure. [31 NJPER at 363]

Based on this precedent, I conclude that the 2021 Policy and its implementation was a managerial prerogative to (1) determine what uniform/accessories probation officers must carry or wear; and (2) implement a policy designed to prevent the theft or unlawful use of badges to protect the public. The Charging Parties acknowledge in their charges that the 2021 Policy concerns "an important element of a [unit employee's] uniform/work attire." That is precisely the subject that the Commission has repeatedly held to be a managerial prerogative. Trenton, 5 NJPER 112; Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981); City of Trenton, I.R. No. 2001-8, 27 NJPER

206 (¶32070 2001), recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001). Although the Judiciary has a duty, upon demand, to negotiate the impact of the 2021 Policy on unit employees' health, safety or other terms and conditions of employment, that negotiations obligation does not preclude the exercise of the prerogative to determine what uniform accessory an officer must carry. Id. As such, the Judiciary did not have an obligation to negotiate over the 2021 Policy.

The 2021 Policy was also designed to address a manifest public safety issue, which falls well within the Judiciary's prerogative. State of New Jersey (Division of State Police), P.E.R.C. No. 96-55, 22 NJPER 70 (¶27032 1996); City of Newark, P.E.R.C. No. 98-154, 24 NJPER 341 (¶29161 1998); State of New Jersey (Judiciary), P.E.R.C. No. 2006-38, 31 NJPER 361 (¶145 2005); East Orange Bd. of Ed., P.E.R.C. No. 2012-20, 38 NJPER 193 (¶65 2011); New Jersey Transit, D.U.P. No. 2015-2, 41 NJPER 144 (¶48 2014). Beacham certifies and the Charging Parties do not dispute that badges have been stolen or lost, that lost or stolen badges have not been reported to the Judiciary by unit employees, and that a badge can be used by members of the public for unlawful purposes that threaten public safety. The Judiciary, in limiting the circulation of badges to employees who only perform field work, reduces the risk of a badge being lost, stolen and misused by a member of the public. This measure is

tied to public safety concerns that represent the proper exercise of a managerial prerogative.

Commission Pleading Standards

A charging party, in order to justify our issuance of a complaint, must set forth in its charge a "clear and concise statement of the facts" in support of its claims. N.J.A.C. 19:14-1.3(a); Edison Tp., D.U.P. No. 2012-9, 38 NJPER 269 (¶92 2012), aff'd P.E.R.C. No. 2013-84, 40 NJPER 35 (¶14 2013); Warren Cty. College, P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017). This standard encompasses the "who, what, when and where" information about the commission of an unfair practice. Id. With respect to severable impact claims arising from the exercise of a managerial prerogative, a charging party must plead, with specificity, what terms and conditions of employment were impacted and allege that a specific demand to negotiate those impact issues was made to the employer. Warren Cty. College. The filing of an unfair practice charge or grievance is not a substitute for a demand to negotiate. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984) (filing of an unfair practice charge is not a demand to negotiate); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987) (Filing of a grievance is a not a demand to negotiate); Borough of Shrewsbury, D.U.P. No. 2020-17, 47 NJPER 29 (¶5 2020).

In State of New Jersey (Judiciary), P.E.R.C. No. 2008-12, 33 NJPER 225 (¶85 2007), the Commission vacated an interim relief order requiring the Judiciary to negotiate with PANJ over “mandatorily negotiable issues” arising from the implementation of a policy requiring home inspections of probationers. The Commission vacated the order to negotiate “. . . because the record does not show that PANJ demanded to negotiate over these issues (such as protocols for law enforcement assistance during inspections and the provision of pepper spray, Kevlar vests and other protective garments to probation officers), or that the Judiciary refused to negotiate in response to such a demand.” 33 NJPER at 225. The Commission also noted that a “broad request to negotiate over the exercise of a managerial prerogative does not constitute a specific demand to negotiate over severable negotiable issues.” 33 NJPER at 227, citing Union City, P.E.R.C. No. 2006-77, 32 NJPER 116 (¶55 2006).

Here, the Charging Parties’ have not alleged with sufficient specificity what impact the 2021 Policy had on unit employees’ terms and conditions of employment. Warren Cty. College. Although the Charging Parties allege “impact issues”, including “safety” and the cost of replacing badges, no allegations in the charges explain how an officer’s safety is impacted by not carrying a badge, nor do any allegations explain the economic impact of the 2021 Policy on officers who no longer carry a

badge. Beacham certifies and the Charging Parties do not dispute that, for officers who do not perform field work and report to work at an office or court facility, the lack of a badge "has no impact on their ability to effectively perform their job duties, nor does it diminish safety in the workplace." And while the Charging Parties allege, prior to the 2021 Policy, that their credentials package was used to gain access to courthouses, judiciary buildings, jails and other facilities, there is no allegation that unit employees have been denied access to these facilities. The lack of specificity as to the nature and extent of the 2021 Policy's impact on terms and conditions of employment justifies dismissal of the charges.

Even if the impact of the 2021 Policy on terms and conditions of employment was pled with sufficient specificity, the Charging Parties have failed to allege that they have demanded or requested negotiations with the Judiciary over impact issues. The Judiciary, as explained above, exercised a managerial prerogative in the adoption and implementation of the 2021 Policy. Absent an allegation that the Charging Parties (1) demanded negotiations over impact issues arising from the 2021 Policy, and (2) the Judiciary refused to negotiate such issues in response to that demand, there can be no refusal to negotiate on

the part of the Judiciary. I, therefore, dismiss the Charging Parties' (a)(5) allegations.^{16/}

Repudiation Claims

Section 5.3 of the Act requires a public employer and majority representative to utilize the grievance and disciplinary review procedures established by their collective negotiations agreement for any disputes covered by the terms of that agreement. N.J.S.A. 34:13A-5.3. The Commission does not have jurisdiction over breach of contract claims. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984); Bridgwater Tp., P.E.R.C. No. 95-28, 20 NJPER 399, 400 (¶25202 1994), aff'd 21 NJPER 401 (¶26245 App. Div. 1995) ("A mere breach of contract does not warrant the exercise of our unfair practice jurisdiction and will not be found to be a refusal to negotiate in good faith.").

The Commission, ". . . will, however, find an unfair practice in cases in which an employer has repudiated a contract clause that is so clear that an inference of bad faith arises from a refusal to honor it." Bridgewater, 20 NJPER at 400. Repudiation may also occur when an employer ". . . has changed the parties' past and consistent practice in administering a disputed clause." Human Services, 10 NJPER at 421. However, an

^{16/} The Charging Parties' do not allege any facts in support of its 5.4a(1), (3) or (7) claims. Those allegations are also dismissed.

employer does not repudiate a contract clause when it is exercising a managerial prerogative. Monroe Tp. Bd. of Ed., 10 NJPER at 570 (Employer's decision to subcontract unit employees' work was not a repudiation of parties' agreement). A good faith dispute over the interpretation or application of a contract clause does not rise to the level of repudiation. Human Services; Bridgewater.

In this case, the 2021 Policy does not amount to a repudiation under the Act. The PANJ Supervisors Agreement does not include any provision requiring the issuance of a badge and/or identification card. Although Article 32 of the PANJ Agreement requires the issuance of an identification card to PANJ unit employees, the parties have a good faith dispute over whether the ID cards issued by the Judiciary comply with that contract clause. And the subject of that clause, even if it were breached by the Judiciary, is the exercise of the Judiciary's managerial prerogative to determine what uniform accessories a unit employee must carry. As such, the 2021 Policy cannot be a repudiation of the Charging Parties' collective negotiations agreements. Monroe Tp. Bd. of Ed.

ORDER

The unfair practice charges are dismissed.

/s/Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: February 17, 2022
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.**

Any appeal is due by February 28, 2022.