

I.R. NO. 2001-8

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2001-210

TRENTON PBA LOCAL NO. 11,

Charging Party.

**SYNOPSIS**

The City of Trenton advised PBA Local No. 11 that unit employees would be required to purchase and wear a new style of uniform. The PBA sought to enjoin the City from requiring employees to obtain the new uniform on the grounds that requiring unit employees to pay for the uniform from money which the officers received from the contractual uniform allowance was a unilateral change in terms and conditions of employment. The PBA also claims that the City should be enjoined from requiring the new uniforms until it has concluded impact negotiations. The Commission Designee found that the dispute over whether the contractual uniform dispute covers the purchase of new style uniforms is a contract dispute which should be resolved through the parties' negotiated grievance procedure. He also found that the City had a managerial prerogative to require employees to wear the new uniforms but, upon proper demand, the City must negotiate with the PBA over impact issues. The Commission Designee denied the PBA's application for interim relief.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
CITY OF TRENTON,

Respondent,

-and-

Docket No. CO-2001-110

TRENTON PBA LOCAL NO. 11,

Charging Party.

Appearances:

For the Respondent,  
Courter, Kobert, Laufer & Cohen, attorneys  
(Stephen E. Trimboli, of counsel)

For the Charging Party,  
Loccke & Correia, attorneys  
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On February 2, 2001, Trenton PBA Local No. 11 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Trenton (City) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7).<sup>1/</sup> The

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<sup>1/</sup> 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

charging party contends that the City has unilaterally changed terms and conditions of employment by requiring police officers represented by the PBA to purchase new style uniforms using money paid to officers pursuant to Article XIV, Longevity Pay - Uniform Allowance, contained in the recently expired collective negotiations agreement. The PBA further contends that the City should be enjoined from implementing the change in uniforms since it has not engaged in negotiations regarding impact matters flowing from the City's decision.

The unfair practice charge was accompanied by an application for interim relief and an order seeking temporary restraints pursuant to N.J.A.C. 19:14-9.2(e). On February 6, 2001, I conducted a hearing concerning charging party's application for a temporary restraining order. At the hearing, the City announced its intention to delay the implementation of the new uniform requirements until March 15, 2001 due to a vendor's delay in delivering the new uniforms. Based upon this representation, the charging party withdrew its temporary restraining order request. On

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1/ Footnote Continued From Previous Page

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 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."

February 8, 2001, I issued an order to show cause scheduling the return date on the interim relief application for March 7, 2001. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The PBA is the majority representative of a collective negotiations unit consisting of all non-supervisory police officers employed by the City. The City and the PBA have been parties to numerous collective negotiations agreements; the most recent agreement concluded on June 30, 2000. The parties are currently in negotiations for a successor agreement and are proceeding in interest arbitration.

Article XIV, Section 14.03 of the recently expired collective agreement provides:

Each employee covered by this Agreement shall receive an annual clothing allowance of \$1,525.00 payable in semi-annual installments during the months of January and July of each year, except that the payment for clothing allowance will be made on a bi-weekly basis for all members who have reached their twenty-fourth anniversary.

The PBA contends that the annual clothing allowance has been used exclusively for uniform maintenance and the purchase of replacement articles as they wear out. The City argues that money provided to unit employees pursuant to the collective agreement's annual clothing allowance had previously been used to purchase new uniforms. The City asserts that in 1996, the one and only time the City changed officers' uniforms, officers used the contractually provided clothing allowance to pay for the new uniforms.

In April 2000, the City's police director raised the issue of changing the style of police uniforms at a staff meeting of management and labor representatives. Subsequently, a joint-labor management committee was established to consider the issue of new uniforms. The City contends that the decision to replace the current uniform was based upon consideration of operational needs, officers safety, and uniform quality and was not an economic decision motivated by a desire to reduce uniform costs. A complete new uniform set consisting of trousers, long and short sleeved shirts costs \$97.25. Officers will be required to possess four complete uniform sets. Apparently, the City has agreed to purchase two sets of uniforms, thus, officers will be required to buy the other two complete sets.

On or about September 3, 2000, the City issued General Order 00-06, which lists the specifications for the new uniform items. The General Order states, in part:

This order shall take effect immediately, however, there will be a transition period, during which time officers may wear the uniform prescribed in General Order 96-3 or the one set forth in this order. This transition period shall end February 14, 2001. [Bold in original.]

General Order 00-06 was amended and reissued on October 30, 2000. The amended order repeated that the transition period for the purchase of new uniforms would end on February 14, 2001. General Order 00-06 was again reissued on January 10, 2001. In significant part as to the particular newly required elements of the uniform, it appears that the revised general orders were the same as the original order issued on September 3, 2000.

On January 19, 2001, the PBA demanded negotiations "...on all issues concerning the impact and expense which PBA unit members have been or will experience concerning new, additional uniforms above and beyond ordinary uniform maintenance." [letter to Jacob Eapen, City Business Administrator from PBA counsel, January 19, 2001.] In addition to the above-quoted generalized demand to engage in impact negotiations, the letter also identified two specific issues upon which the PBA sought negotiations. The PBA requested negotiations "...on whether or not any new uniform purchases concerning newly-designated uniforms will be covered within the PBA unit members' clothing allowance, and furthermore, if any new uniforms are to be covered by said clothing allowance, the PBA hereby demands negotiations on the length of any phase-in period for the purchase of such uniforms." The PBA requested that the City immediately rescind its directive concerning the purchase of new uniforms beyond ordinary uniform replacement until such time as the impact flowing from such directive, as well as the cost of purchasing such new uniforms, could be negotiated.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126,

132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The determination of daily police uniforms is not mandatorily negotiable unless related to the health or safety of police officers. See 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 part, rev'd. in part, NJPER Supp 2d 84 (¶65 App. Div. 1980); Essex Cty Sheriff's Dept., P.E.R.C. No. 2000-79, 26 NJPER 202 (¶31082 2000); Borough of Butler, P.E.R.C. No. 87-121, 13 NJPER 292 (¶18123 1987); Hunterdon Cty, P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982). The Commission has held some uniform clauses to be permissibly negotiable. See Saddle Brook Tp., P.E.R.C. No. 91-95, 17 NJPER 250 (¶21114 1991) (provision stating that certain officers would not be required to buy leather jackets until their nylon jackets wore out); Town of Kearny, P.E.R.C. No. 82-112, 7 NJPER 456 (¶12202 1981) (30 month phase-out period for old uniforms is permissibly negotiable); Town of Kearny, P.E.R.C. No. 81-34, 6 NJPER 446 (¶11229 1980) (change from leather to nylon jackets is permissibly negotiable).

As noted above, on January 19, 2001, the PBA demanded impact negotiations concerning two issues: whether the cost of the uniforms would be covered by the contractual clothing allowance provision and the length of any phase-in period which would be

provided to unit members for the purchase of such uniforms. Also noted above, the Commission has held that negotiations over a phase-in period for uniforms is a permissive not a mandatory subject of negotiations. The issue concerning who will pay the cost of purchasing and maintaining the uniform is mandatorily negotiable. See Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Township of Union, P.E.R.C. No. 87-119, 13 NJPER 289 (¶18121 1987). While the Commission has granted interim relief in situations where the employer has unilaterally changed terms and conditions of employment during the course of negotiations or interest arbitration proceedings, see Township of Cranford, I.R. No. 2000-4, 26 NJPER 233 (¶31093 2000); Borough of Roseland, I.R. No. 2000-11, 26 NJPER 191 (¶31077 2000); Borough of Bogota, I.R. No. 97-18, 23 NJPER 322 (¶28146 1997), it has also refused such applications in circumstances where the underlying dispute is dependent upon the resolution of specific language contained in the collective negotiations agreement. See Township of Irvington, I.R. No. 2000-10, 26 NJPER 167 (¶31065 2000); Township of Woodbridge, I.R. No. 2000-8, 26 NJPER 163 (¶31063 2000). See also State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) (the Commission refused to issue a complaint in cases where the resolution of the unfair practice charge is dependent upon an underlying contractual dispute.) In this case, the parties dispute whether the clothing allowance provision in the collective agreement covers the cost of purchasing new uniforms.



The interpretation of the contract article can only be rendered by continuing to prosecute the currently filed grievance up through binding arbitration. If the City is correct in its assertion that the contract provision covers the cost of the new uniforms, then the parties may have already negotiated with respect to who bears the cost of such uniforms and the City could prevail in its argument that it bears no additional obligation to negotiate with respect to that issue. I make no finding concerning the viability of the City's argument. However, there exists a dispute of material fact which, in this context undermines the PBA's ability to establish the requisite likelihood of success with respect to the issue of whether the City has a current obligation to engage in negotiations with respect to who bears the cost of the new uniforms.

As noted above, the 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 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.

The PBA during the course of litigation of this interim relief proceeding has raised numerous specific and important impact issues which it seeks now to negotiate with the City. Impact issues which flow from management's exercise of its prerogative are mandatorily negotiable provided that the impact issue would not significantly or substantially encroach upon the exercise of such prerogative. Piscataway Tp. Education Assn. v. Piscataway Tp. Bd. of Ed., 307 N.J. Super 263 (App. Div. 1998). While in its January 19, 2001 letter, the PBA generally seeks impact negotiations on issues other than cost and phase-out period, the PBA made no subsequent specific demand for negotiations. The filing of an unfair practice charge does not constitute a demand to negotiate. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984). However, it does not appear that anything would prevent the parties from engaging in impact negotiations concerning mandatorily negotiable impact issues upon proper and timely demand. See State of New Jersey, P.E.R.C. No. 89-58, 15 NJPER 15 (¶20005 1988). Impact issues pertaining to officer health, safety and comfort are mandatorily negotiable. See County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in pt., rev'd in pt. 6 NJPER 338 (¶11169 App. Div. 1980); Township of Union, P.E.R.C. No. 87-119, 13 NJPER 289 (¶18121 1987).

Thus, under these circumstances, the PBA has not, at this early stage of the dispute, established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Consequently, I decline to grant the PBA's application. This case will proceed through the normal unfair practice processing mechanism.

**ORDER**

The PBA's application for interim relief is denied.

  
Stuart Reichman  
Commission Designee

DATED: March 16, 2001  
Trenton, New Jersey