

P.E.R.C. NO. 91-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SADDLE BROOK,

Petitioner,

-and-

Docket No. SN-91-23

SADDLE BROOK PBA LOCAL 102,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by Saddle Brook PBA Local 102 against the Township of Saddle Brook. The grievance contests the police chief's April 1, 1990 order directing immediate compliance with a 1980 order requiring police to replace their nylon uniform jackets with leather jackets. The Commission finds, under the circumstances of this case, that governmental policy-making would not be substantially limited by an agreement that officers wearing nylon jackets since 1980 would not be required to buy leather jackets until the nylon jackets wear out.

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Appearances:

For the Petitioner, DeCotiis and Pinto, attorneys
(John J. Langan, attorney)

For the Respondent, Loccke & Correia, attorneys
(Michael J. Rappa, attorney)

DECISION AND ORDER

On November 29, 1990, the Township of Saddle Brook petitioned for a scope of negotiations determination. The Township seeks a restraint of binding arbitration of a grievance filed by Saddle Brook PBA Local 102. The grievance contests the police chief's April 1, 1990 order directing immediate compliance with a 1980 order requiring police to replace their nylon uniform jackets with leather jackets.

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

The PBA is the majority representative of a unit of the Township's law enforcement personnel. The parties entered into a collective negotiations agreement effective from January 1, 1989 through December 31, 1990. Article 23 of the agreement is entitled "Retention of Existing Benefits and Rights" and provides:

Except as expressly otherwise provided herein, all rights, privileges and benefits which employees of the Township Police Department have heretofore enjoyed and are presently enjoying as a result of Township practices, ordinance, resolution or policy...shall be continued by the Township during the term of this agreement.

Article 14, Section 1(a) provides that each uniformed officer shall receive \$600 annually to be used for the purpose of uniform and equipment replacement. The agreement's grievance procedure ends in binding arbitration.

On September 2, 1980, the then chief of police, Lars Olsen, issued an order which required all police personnel to replace their nylon jackets with regulation leather jackets by 1981.

On April 1, 1990, the current Township chief of police, John Rendzia, issued an order requiring immediate compliance with the 1980 order's directive regarding leather jackets.

On April 25, 1990, the PBA filed a grievance alleging that the 1990 order violated an oral agreement with former chief Olsen that police would not be required to purchase the leather jackets until their nylon jackets wore out. The Township denied the grievance and the PBA demanded arbitration. This petition ensued.^{1/}

The boundaries of our scope of negotiations jurisdiction are narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

^{1/} On October 19, 1990, Arbitrator Robert Weaver conducted a hearing. He reserved decision pending resolution of this petition.

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [78 N.J. at 154]

Thus, we do not consider the merits of the PBA's grievance or any contractual defenses the Township may have.

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 a mandatory category of negotiations. Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police and fire fighters:

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 substantial limitations on government's policymaking 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]

Because this dispute arises as a grievance, arbitration will be permitted if the subject of the dispute is either mandatorily or permissively negotiable. See Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). Paterson bars arbitration only if the agreement alleged would substantially limit government's policymaking powers.

The Township contends that its determination of the regulation uniform is neither mandatorily nor permissively negotiable. It also asserts that the economic consequences of the uniform change have been negotiated.

The PBA asserts that the 1990 order violates an oral agreement and a past practice of not requiring officers to purchase leather jackets until their nylon jackets have worn out. The PBA contends that pursuant to Article 23 the practice can only be changed by negotiations. Finally, it claims that a change in this past practice will result in significant expense to PBA members.

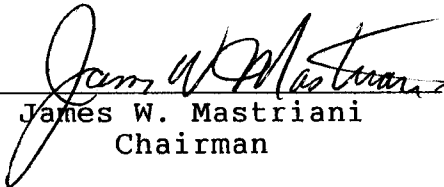
This dispute is at least permissively negotiable. While the determination of daily police uniforms is not mandatorily negotiable, see City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), recon. den. P.E.R.C. No. 79-95, 5 NJPER 235 (¶10131

1979), aff'd in part, rev'd in part, App. Div. Dkt. No. A-3966-78 (1980), we have held that the replacement of uniforms is permissively negotiable. Town of Kearny, P.E.R.C. No. 81-34, 6 NJPER 446 (¶11229 1980), holds that the decision to change from leather to nylon police jackets is permissively negotiable. Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981), holds that a 30-month phase-out period for old uniforms is permissively negotiable. Although the first Kearny was decided prior to Paterson, the second Kearny cited it with approval in applying Paterson. We believe that, under the circumstances of this case, governmental policy-making would not be substantially limited by an agreement that officers wearing nylon jackets since 1980 would not be required to buy leather jackets until the nylon jackets wear out.

ORDER

The Township's request for a restraint of arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Regan and Smith voted in favor of this decision. Commissioners Goetting and Wenzler voted against this decision.

DATED: April 19, 1991
Trenton, New Jersey
ISSUED: April 19, 1991