

P.E.R.C. NO. 91-45

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF CAMDEN,

Petitioner,

-and-

Docket No. SN-90-76

FRATERNAL ORDER OF POLICE,  
CAMDEN LODGE NO. 1,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Fraternal Order of Police, Camden Lodge No. 1 against the City of Camden. The grievance contests the City's decision to require all sworn personnel to report for duty in full uniform on January 15 and July 15. The Commission finds that the City has a right to examine the appearance of its police in uniform.

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Appearances:

For the Petitioner, Murray, Murray & Corrigan, attorneys  
(David F. Corrigan, of counsel; Regina Waynes Joseph, on  
the brief)

For the Respondent, Markowitz & Richman, attorneys  
(Regina C. Hertzig, of counsel)

DECISION AND ORDER

On June 1, 1990, the City of Camden petitioned for a scope of negotiations determination. The City seeks a restraint of binding arbitration of a grievance filed by the Fraternal Order of Police, Camden Lodge No. 1. The grievance contests the City's decision to require all sworn personnel to report for duty in full uniform on January 15 and July 15.

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

The FOP is the majority representative of the City's non-supervisory police officers. The parties entered into a collective negotiations agreement providing for final and binding

arbitration of unresolved grievances. Article 25, Section 2 provides:

The City agrees not to require any employee to produce uniforms or equipment for the purpose of inspectors [sic], other than that necessary to perform the duties on that particular shift.

On December 1, 1989, the police chief issued a general order establishing bi-annual uniform days for all sworn personnel. The order provides, in part:

All sworn personnel shall report for duty in the full uniform of the day as follows:

1. January 15th - all sworn personnel shall report for duty in the winter uniform of the day.
2. July 15th - all sworn personnel shall report for duty in the summer uniform of the day
3. All sworn personnel shall be evaluated by their immediate supervisor.
4. Sworn personnel who are not on duty due to scheduling, holiday, vacation or sick shall report in full uniform on the next scheduled tour of duty.

On December 4, 1989, the FOP grieved this order, contending that it violated the contractual provision on uniforms. The police chief and the business administrator denied this grievance, asserting that the order did not conflict with the contract. The FOP demanded binding arbitration and this petition ensued.

The scope of negotiations for police officers and firefighters 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. Compare Paterson Police PBA No. 1 v.

Paterson, 87 N.J. 78 (1981) and Local 195, IFPTE v. State, 88 N.J. 393 (1982). The steps of a scope of negotiations analysis for police officers and firefighters are outlined in Paterson:

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 dispute is either mandatorily or permissively negotiable. Middletown Tp., P.E.R.C. No. 82-90, 8 NJPER 227 (¶13095 1982), aff'd App. Div. A-3664-81T3 (4/28/83). We do not consider the grievance's merits or any other contractual issues. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978).

The City contends that this dispute centers on the daily uniform. The FOP contends that the dispute centers on evaluation procedures.

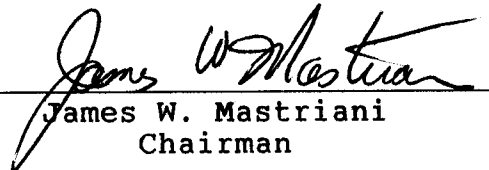
We believe this directive is neither mandatorily nor permissively negotiable. It is limited to twice per year. The City has a right to examine the appearance of its police in uniform. The City also has a right to insure that its employees have complete and well-maintained uniforms for both the winter and summer.<sup>1/</sup>

Compare City of Hackensack, P.E.R.C. No. 88-127, 14 NJPER 409 (¶19163 1988) (restraining arbitration over directive to keep dress uniforms at fire headquarters). Rescinding the directive would substantially limit these rights. We will therefore restrain arbitration.<sup>2/</sup>

ORDER

The City of Camden's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: October 26, 1990  
Trenton, New Jersey  
ISSUED: October 26, 1990

<sup>1/</sup> We assume the employer will properly notify the employees of what uniform of the day is expected.  
<sup>2/</sup> Evaluation procedures are not at issue. The grievance contests the content of an evaluative criterion, not the adequacy of any notice of a change in that criterion.