

D.U.P. NO. 87-8

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

In the Matter of
COUNTY OF MERCER,

Respondent,

-and-

Docket No. CO-87-134

PBA LOCAL 167,

Charging Party.

SYNOPSIS

The Director of Representation declines to issue a Complaint based on allegations that the County refused to bargain with the PBA over the issue of police officers' rights to carry firearms while off-duty. Under Brookdale Community College, P.E.R.C. No. 77-53, 6 NJPER 156 (1977), appeal dismissed, App. Div. Docket No. A-3041-76, the County's policy decision to arm or not to arm its police employees, whether on or off duty, is not a mandatory subject for negotiations.

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REFUSAL TO ISSUE COMPLAINT

On November 26, 1986, PBA Local 167 filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission"), against the County of Mercer ("County"), alleging violations of subsections (a)(1), (3) and (5) of the New Jersey Employee-Employer Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/}

^{1/} These subsections 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 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."

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the unfair practice charged.^{2/} The Commission has delegated its authority to issue complaints to the Director of Unfair Practices and has established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act. The Commission's rules also provide that the Director may decline to issue a complaint if the allegations in the charge do not, on their face, constitute an unfair practice.^{3/}

The PBA alleges that the County committed an unfair labor practice by refusing to negotiate regarding the right of police officers to carry firearms while off-duty. The charge further states that during the period in question, the County changed its position concerning this issue thereby leaving the PBA and its membership uninformed.

^{2/} N.J.S.A. 34:13A-5.4(c) provides: "The commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice ... Whenever it is charged that anyone has engaged or is engaging in any such practice, the commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the commission or any designated agent thereof..."

^{3/} N.J.A.C. 19:14-2.1. et seq.

In order for the County to have violated §(a)(5) of the Act, it must have refused to negotiate with the PBA concerning a mandatorily negotiable term and condition of employment. See, Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). See also, Paterson Police PBA Loc. No. 1 v. City of Paterson, 87 N.J. 78 (1981) which sets forth the test for determining the scope of negotiations for public safety employees.

The negotiability of a policeman's right to carry weapons was previously addressed by the Commission in Brookdale Community College, P.E.R.C. No. 77-53, 6 NJPER 156 (1977), appeal dismissed, App. Div. Docket No. A-3041-76:

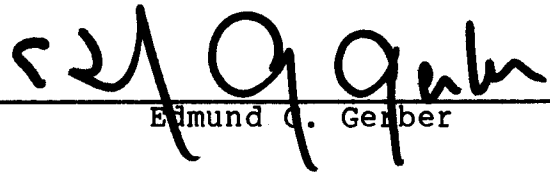
[T]he subject of whether and at what times members of the College's police force shall carry firearms is not a required subject for negotiations.

Applying the holding in Brookdale^{4/} to the instant case, we find that the County's policy decision to arm or not to arm its police employees, whether on or off duty, is not mandatorily negotiable. Thus, the County has no obligation to bargain over this issue with the PBA.

^{4/} See also, City of Newark, P.E.R.C. No. 83-158, 9 NJPER 374 (¶14169 1983); City of Camden, P.E.R.C. No. 82-71, 8 NJPER 110 (¶13046 1982); West New York, P.E.R.C. No. 82-34, 7 NJPER 594 (¶12265 1981).

Accordingly, for all of the reasons set forth above, we have determined that the Commission's complaint issuance standard has not been met and decline to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICE PROCEEDINGS



Edmund C. Gerber

DATED: December 24, 1986
Trenton, New Jersey