

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF MONTVALE,

Respondent,

-and-

Docket No. CO-77-75-113

MONTVALE P.B.A.,

Charging Party.

SYNOPSIS

In the absence of exceptions filed by either party, the Commission adopts the findings of fact and conclusions of law contained within the Hearing Examiner's Recommended Report and Decision in an unfair practice proceeding. The Hearing Examiner found, and the Commission affirms, that the Borough violated Subsections 5.4(a)(5) and derivatively 5.4(a)(1) of the Act by failing to negotiate the impact upon terms and conditions of employment of affected police officers of the order mandating that police officers wear their uniforms when appearing in Municipal Court to testify during their off duty hours. These impact considerations were held to be mandatorily negotiable although the order itself to wear uniforms in court is found to be a managerial policy decision and is therefore only a permissive subject for collective negotiations.

The Commission orders the Borough to cease and desist from interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by the Act by refusing to negotiate collectively in good faith with the P.B.A. regarding the impact on terms and conditions of employment stemming from the order to wear uniforms to Municipal Court; and affirmatively orders that the Borough, upon demand, negotiate with the P.B.A. concerning the above impact considerations; to post appropriate notices supplied by the Commission; and to notify the Chairman in writing of the steps taken to comply with the order. It is further ordered by the Commission that those sections of the complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(2) and (a)(3) be dismissed.

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Docket No. CO-77-75-113

MONTVALE P.B.A.,

Charging Party.

Appearances:

For the Respondent, Randall, Randall & McGuire, Esqs.
(Mr. Robert E. McGuire, Of Counsel)

For the Charging Party, Osterweil, Wind & Loccke, Esqs.
(Mr. Alfred G. Osterweil, Of Counsel)

DECISION AND ORDER

On September 28, 1976, the Montvale P.B.A. (the "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") alleging that the Borough of Montvale (the "Borough") had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). Specifically, the PBA alleged that the Borough had violated N.J.S.A. 34:13A-5.4(a) (1), (2), (3) and (5)^{1/} by requiring that police

*
^{1/} These subsections provide that an employer, its representatives or agents are prohibited from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

officers wear their uniforms when appearing in municipal court to testify during their off-duty hours.

It appearing that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 3, 1977.

Pursuant to the Complaint and Notice of Hearing, a hearing was held before James F. Schwerin, Hearing Examiner of the Commission, on July 27, 1977 at which time the parties were given the opportunity to examine witnesses, present relevant evidence and argue orally. Post-hearing briefs were received by August 26, 1977. On October 26, 1977 the Hearing Examiner issued his Recommended Report and Decision, which Report included findings of fact and conclusions of law and a recommended order. The original of the Report was filed with the Commission and copies were served upon all parties. A copy is attached hereto and made a part hereof.^{2/}

Neither party has filed exceptions to the Hearing Examiner's Recommended Report and Decision. See N.J.A.C. 19:14-7.3.

Upon careful consideration of the entire record herein, the Commission adopts the findings of facts and conclusions of law rendered by the Hearing Examiner substantially for the reasons cited by him. Specifically, the Borough is found to be in violation of N.J.S.A. 34:13A-5.4(a)(5) based upon its failure to negotiate the impact upon terms and conditions of employment of the order to wear uniforms to court. These impact considerations are held to be mandatorily negotiable although the order itself to wear uniforms in court is found to be a managerial policy decision and is therefore

^{2/} H.E. No. 78-11, 3 NJPER ____ (1977).

only a permissive subject for collective negotiations. It follows that the finding of a failure to bargain necessarily restrained the free exercise of rights guaranteed to the PBA by the Act and therefore also constitutes a violation of N.J.S.A. 34:13A-5.4(a)(1). Furthermore, there being no evidence to support the allegations of violations of N.J.S.A. 34:13A-5.4(a)(2) and (3), that portion of the complaint is found to warrant dismissal.

ORDER

For the reasons hereinafter set forth, the Commission hereby adopts the aforementioned Hearing Examiner's Recommended Order ^{2/} and IT IS HEREBY ORDERED that Respondent, the Borough of Montvale, shall:

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by the Act.

(b) Refusing to negotiate collectively in good faith with the Montvale P.B.A. regarding the impact on terms and conditions of employment stemming from the order to wear uniforms to municipal court.

2. Take the following affirmative action:

(a) Upon demand, negotiate collectively with the Montvale P.B.A. concerning the impact on terms and conditions of employment

^{2/} The Association has not excepted to the Hearing Examiner's Recommended Order which did not restore the status quo concerning the wearing of uniforms for court appearances pending good faith negotiations with the PBA relating to impact considerations. While under certain circumstances a return to status quo might be warranted, we conclude, noting particularly the absence of exceptions thereto, that the Hearing Examiner's Recommended Order is appropriate under the circumstances herein.

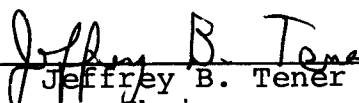
of the order to wear uniforms to municipal court.

(b) Post at its central office building in Montvale copies of the attached notice. Copies of said notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced or covered by any other material.

(c) Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that those sections of the complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(2) and (3) are dismissed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hipp and Parcels voted for this decision. Commissioner Hurwitz voted against this decision (concur in part and dissents in part).

DATED: Trenton, New Jersey
December 20, 1977
ISSUED: December 21, 1977

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, coerce or restrain employees in the exercise of rights guaranteed by the Act.

WE WILL NOT refuse to negotiate upon demand the impact upon terms and conditions of employment of the order to wear uniforms when testifying in Municipal Court.

WE WILL negotiate, upon demand, the impact on terms and conditions of employment of the order to wear uniforms when testifying in Municipal Court.

BOROUGH OF MONTVALE

(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION

In the Matter of

BOROUGH OF MONTVALE,

Respondent,

-and-

Docket No. CO-77-75-113

MONTVALE P.B.A.,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find that the Borough of Montvale committed an unfair practice by refusing to negotiate with the Montvale P.B.A. over the impact on terms and conditions of employment of an order to wear uniforms to Municipal Court when testifying during off-duty hours. However, the Hearing Examiner recommends that the order itself be held to be a managerial policy decision which is not directly a mandatory subject of negotiations.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and conclusions of law.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION

In the Matter of

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Docket No. CO-77-75-113

MONTVALE P.B.A.,

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Appearances:

For the Borough of Montvale
Randall, Randall & McGuire
(Robert E. McGuire, of Counsel)

For the Montvale P.B.A.
Osterweil, Wind & Loccke
(Alfred G. Osterweil, of Counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On September 28, 1976, the Montvale P.B.A. (the "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission (the "Commission") alleging that the Borough of Montvale (the "Borough") had committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"). Specifically, the PBA alleged that the Borough had violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5)^{1/} by requiring that police wear their uniforms when appearing in municipal court to testify during their off-duty hours.

1/ These subsections provide that an employer, its representatives or agents are prohibited from:

"(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act.

"(2) Dominating or interfering with the formation, existence or administration of any employee organization.

"(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.

It appearing that the allegations, if true, might constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on May 3, 1977, and a hearing was held before the undersigned on July 27, 1977. All parties had the opportunity to examine witnesses, present evidence, and to argue orally. Briefs were received by August 26, 1977.

Based on the record herein, I find that the Borough is a public employer within the meaning of the Act and is subject to its provisions, and the PBA is an employee representative within the meaning of the Act and is subject to its provisions. Unfair practice charges having been filed alleging that the Borough has engaged or is engaging in unfair practices within the meaning of the Act, a question concerning alleged violations of the Act is properly before the Hearing Examiner for a recommended report and decision.

Several police officers testified that during their years on the force -- which in two cases amounted to 13 years apiece -- there was an option for off-duty police to testify in municipal court either in uniform or in civilian clothes wearing a badge. Nothing was offered to rebut this testimony and the undersigned finds that in fact members of the Montvale police did testify in civilian clothes if they so desired at least during the 13 years prior to September 1976 when an order was issued for the wearing of uniforms to municipal court by all officers other than detectives.

The first contract between the parties was entered in October, 1974 for the years 1973-74, and subsequently a 1975-76 contract was agreed upon. There is no contention by either party that this subject was ever specifically raised during either negotiations.

A stipulation was entered that had the Mayor -- who was unable to appear because of a personal problem -- testified he would maintain that in his 13 years as a member of the Borough's governing body, he believed that police officers were required to testify in uniform, that he so believed during the original contract negotiations, and that the Chief of Police was never authorized to allow a contrary practice. Rebuttal testimony was offered to show that the Mayor and Council did know of the "practice" from personal observation.

The PBA argues that the Borough has violated its duty to negotiate a change in conditions of employment, citing a contract clause requiring negotia-

tion for "modifications of existing rules concerning working conditions." It must be noted that this clause does no more than restate the language of N.J.S.A. 34:13A-5.3 which imposes that duty even in the absence of such a contractual provision. In response, the Borough contends that wearing of a uniform in the performance of duties relates to the quality of performance, hence an order to do so is a management prerogative not mandatorily negotiable. In this regard, the PBA at no time disputed that testimony in court is a required duty for police officers, and in fact that is confirmed by Article 12 of the contract between the parties. ^{2/}

The Commission has previously noted the difference between an employer's activities directly affecting terms and conditions of employment, and those which have an impact on terms and conditions without being directly concerned with them. ^{3/} That sort of analysis has been applied to police ^{4/} and is therefore the proper one to be applied herein.

The testimony presented by the PBA all tends to show an impact on its members arising out of the decision to order the wearing of uniforms. Primarily, it manifests itself in the form of alleged burdens on police in their chosen ways of utilizing their off-duty hours for socializing, education or other personal activities. Several police related the need to appear in court in uniform disrupted these activities in that it required additional time away from them to allow for changing into uniform. None of these alleged inconveniences can be said to arise directly from the order to wear uniforms, but rather can be read only to represent an impact on the police arising out of the order. ^{5/} Therefore, the undersigned concludes the decision to order the wearing of uniforms

^{2/} Section 12.01 reads as follows:

"Court time, as referred to in this article, shall consist of all time, excluding regular tours of duty, during which any employee covered under this Agreement shall be required to attend a Municipal Court ..."

^{3/} In re Rutgers, P.E.R.C. No. 76-13, 2 NJPER 13 (1976).

^{4/} In re City of Jersey City, P.E.R.C. No. 77-33, 3 NJPER 66 (1977).

^{5/} Even the brief submitted on behalf of the PBA refers to "those police officers who have been impacted by the order..." and claims that the alleged unilateral change "has had a serious impact on the bargaining unit."

is a managerial policy decision relating primarily to the manner in which a public service is being provided, and is not mandatorily negotiable. ^{6/}

Inasmuch as the decision is not directly one on terms and conditions of employment, the PBA's argument about a past practice is not germane. While a past practice may be binding as to a term and condition of employment, it does not bind management to negotiate a policy decision which only impacts on terms and conditions of employment.

Under the Rutgers doctrine, the impact on terms and conditions of employment of a managerial decision is mandatorily negotiable. As noted above, the impact alleged by the PBA is that added time is required for unit members to prepare for performance of the duty of testifying in municipal court during their off-duty hours. The Borough's defense to this assertion of a mandatorily negotiable impact is that any such impact is de minimus. Cited are the facts that court appearances may not interfere with planned activities, that municipal court meets only twice a month, that any individual officer might not have to appear for months at a time, and that the police have lockers down the hall from the courtroom.

In response the PBA claimed the lockers were inadequate for maintaining uniforms in a neat condition and that in any event they were worn home so that officers could be picked up in the morning in uniform and thereby be available in uniform that much sooner.

While the undersigned recognizes that the points raised by the Borough may be valid insofar as indicating that the impact of the order will be relatively limited, the undersigned is not convinced that the impact has been demonstrated to be so slight as to be de minimus. In this regard, the Hearing Examiner takes note that police officers' non-working time apparently is concentrated into these off-duty evenings as opposed to weekends. Therefore, the Borough must negotiate on demand with the PBA as to the impact of the order to wear uniforms, and said

^{6/} See In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977) applying this type analysis to the issue of whether the carrying of firearms by a college police force is mandatorily negotiable.

negotiations would -- if the PBA so demands -- relate back to September 16, 1976, the date of the order. Having found the Borough to be in violation of N.J.S.A. 34:13A-5.4(a)(5) it follows that the failure to bargain necessarily restrained free exercise of rights guaranteed to the PBA by the Act and therefore constitutes a violation of § (a)(1).

No evidence having been presented to support the allegations of violation of N.J.S.A. 34:13A-5.4(a)(2) and (3), it is recommended that the complaint be dismissed as to those violations.

RECOMMENDED ORDER

For the reasons set forth above, the Borough of Montvale has violated N.J.S.A. 34:13A-5.4(a)(1) and (5) and IT IS HEREBY ORDERED that Respondent, the Borough of Montvale shall

1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of rights guaranteed to them by the Act.

(b) Refusing to negotiate collectively in good faith with the Montvale P.B.A. regarding the impact on terms and conditions of employment stemming from the order to wear uniforms to municipal court.

2. Take the following affirmative action:

(a) Upon demand, negotiate collectively with the Montvale P.B.A. concerning the impact on terms and conditions of employment of the order to wear uniforms to municipal court.

(b) Post at its central office building in Montvale copies of the attached notice. Copies of said notice on forms to be provided by the Commission shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of at least sixty (60) consecutive days thereafter, including all places where notices to its employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that such notices are not altered, defaced or covered by any other material.

(c) Notify the Chairman of the Commission, in writing, within twenty (20) days of receipt of this Order what steps the Respondent has taken to comply herewith.

IT IS HEREBY FURTHER ORDERED that those sections of the complaint alleging violations of N.J.S.A. 34:13A-5.4(a)(2) and (3) are dismissed.


James F. Schwerin
Hearing Examiner

DATED: October 26, 1977
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, coerce or restrain employees in the exercise of rights guaranteed by the Act.

WE WILL NOT refuse to negotiate upon demand the impact upon terms and conditions of employment of the order to wear uniforms when testifying in Municipal Court.

WE WILL negotiate, upon demand, the impact on terms and conditions of employment of the order to wear uniforms when testifying in Municipal Court.

BOROUGH OF MONTVALE

(Public Employer)

Dated _____

By _____

(Title)

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If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with Jeffrey B. Tener, Chairman, Public Employment Relations Commission, P.O. Box 2209, Trenton, New Jersey 08625 Telephone (609) 292-6780