

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and-

Docket No. CO-79-289-37

KEARNY P.B.A. LOCAL 21,

Charging Party.

SYNOPSIS

The Kearny PBA, Local 21, filed an Unfair Practice Charge against the Town of Kearny alleging that, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5), the Town without prior negotiations unilaterally changed terms and conditions of employment by: (1) ordering a change in the jacket which must be worn by the members of the PBA unit and further ordering that the members must purchase the jackets at their own expense; (2) ordering the unit's members to wear name tags which the Town purchases and also ordering the members to pay for the tags; (3) unilaterally adopting a completely new set of Rules and Regulations, many of which intimately and directly pertained to terms and conditions of employment set forth in the contract.

The Commission, in adopting the Hearing Examiner's findings of fact and conclusions of law with regard to the first two counts of the charge, concludes that the Town fulfilled its obligation to negotiate over the economic effect of its decisions regarding jackets and name tags. However, as to the third count, the Commission rejects the Hearing Examiner's conclusion of law that under the facts of this case the Town's public notices, published as part of the adoption of a Rules and Regulations ordinance, constituted constructive notice to the PBA and began the running of the six-month limitation on the filing of charges. Nevertheless, the Commission dismisses this count of the charge on the basis that the PBA has failed to meet its burden of proving that any terms and conditions of employment were altered by the ordinance. Accordingly, the Commission dismisses the Complaint in its entirety.

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KEARNY P.B.A. LOCAL 21,

Charging Party.

Appearances:

For the Respondent, Cifelli & Davie, Esqs.  
(Kenneth P. Davie, of Counsel)

For the Charging Party, Schneider, Cohen & Solomon, Esqs.  
(David Solomon, of Counsel)

DECISION AND ORDER

On April 23, 1979, the Kearny P.B.A., Local 21 (the "PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission ("the Commission") which alleges that the Town of Kearny ("the Town") engaged in certain conduct in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("the Act"). Specifically, the charge alleges that, in violation of N.J.S.A. 34:13A-5.4(a)(1) and (5), the Town without prior negotiations unilaterally changed terms and conditions of employment by: (1) ordering a change in the jacket which must be worn by the members of the PBA unit and further ordering that the members must purchase the jackets at their own expense; (2) ordering the unit members to wear name tags which

the Town had purchased and ordering the members to pay for the tags; (3) adopting a new set of Rules and Regulations, many of which intimately and directly affected terms and conditions of employment set forth in the contract.

A Complaint and Notice of Hearing was issued on November 28, 1979, and hearings were held before Commission Hearing Examiner Alan R. Howe on February 26 and May 6, 1980, at which both parties had the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Both parties filed post-hearing briefs.

The Hearing Examiner issued his Recommended Report and Decision on June 4, 1980, a copy of which is attached hereto and made a part hereof.<sup>1/</sup> The Hearing Examiner concluded that: (1) the determination of police uniforms is a permissive subject of negotiations, but the question of who will bear the cost of such uniforms is a term and condition of employment; (2) although the decision to change the jacket worn by unit members and require the wearing of name tags had an economic impact that would ordinarily be subject to mandatory negotiations, the negotiations obligation was obviated by the clothing allowance provision in the parties' collective negotiations agreement, which was not significantly depleted in 1979 by the expenses involved; (3) the charge as it relates to the Town's unilateral adoption of a completely new set of Rules and Regulations is untimely under Section 5.4(c) of the Act which establishes a six-month statute of limitations. Accordingly the Hearing Examiner rec-

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1/ H.E. No. 80-49, 6 NJPER \_\_\_\_ (para. \_\_\_\_\_, 1980).

ommended that the Complaint be dismissed in its entirety. Timely exceptions and a brief in support thereof were filed by the PBA on June 31, 1980. In response the Town, on July 14, 1980, filed a letter memorandum in lieu of a brief in support of the Hearing Examiner's Recommended Report and Decision and also refiled a brief which had previously been submitted to the Hearing Examiner in support of the Town's Motion to Dismiss.

The Commission, after careful consideration of the record in this matter, rejects the exceptions filed by the PBA and adopts the Hearing Examiner's findings of fact and conclusions of law on the first two counts of the charge, concerning the Town's decision to change the uniform jacket and require the wearing of name tags. As to the third count, the Commission rejects the Hearing Examiner's conclusion of law that the Town's public notices issued as part of the adoption of a Rules and Regulations ordinance constituted constructive notice to the PBA and began the running of the six-month limitation on the filing of charges. Nevertheless, the Commission dismisses this count of the charge on the basis that the PBA has failed to meet its burden of proving that any terms and conditions of employment were altered by the ordinance.

In its initial exception the PBA contends that the Hearing Examiner erred in finding that the Town did not violate the Act when, without prior notice to or negotiations with the PBA, it unilaterally changed the uniform jacket, required the wearing of name tags, and ordered the unit members to pay for both items. The PBA appears to be arguing that the Town was obligated to negotiate over the actual decisions as well as the issue of who would bear the resultant finan-

cial burden. However, in its brief the PBA states that it is not complaining about the uniform change itself. Despite the apparent acquiescence by the PBA, the Commission notes that, under the decision in In re City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979), the determination of the daily police uniform is generally a managerial prerogative which is only a permissive subject of negotiations. However, the Commission recognized that certain decisions regarding the required uniform could be negotiable if they directly effect employees' terms and conditions of employment. Although City of Trenton specifically cites health and safety as areas that may be affected, it is implicit in the holding that the economic burden placed upon employees by such decisions is also a term and condition of employment. Moreover, under the Supreme Court decision in In re Bd of Ed, Woodstown-Pilesgrove Reg. School District v. Woodstown-Pilesgrove Education Association, 81 N.J. 582 (1980), the Commission reaffirms its holding in City of Trenton. Negotiations over the issue of whether the employees will bear the economic burden of purchasing new equipment items is purely an economic matter directly related to compensation and will not significantly affect the Town's exercise of its managerial prerogatives in regard to the daily uniform of patrolmen.

In its next series of exceptions the PBA contends that the Hearing Examiner initially found that the Town had violated the Act by unilaterally requiring employees to expend their own funds for the purchasing of the new jackets and name tags, but then excused the violation because he believed that the employees could afford to pay for the

change in the uniform due to the clothing allowance contained in the contract. The Commission, in rejecting this exception, finds that it is not a correct analysis of the Hearing Examiner's recommendations.

The issue before the Hearing Examiner was whether the Town had fulfilled its obligation to negotiate over the economic effect of its decisions regarding uniforms. Accordingly, the determining factor was whether the parties intended the clothing allowance provision of the contract to cover the purchasing of new model uniforms in addition to the cleaning, repairing and replacement of the standard uniform. Article XVIII, Clothing Allowance, does not state the specific purposes for which the stipend is provided and the reasons why the arbitrator increased the allowance for 1979 are not stated in the record. The PBA did not present any evidence that the parties intended this provision to have only limited coverage. Moreover, the very scanty record in this matter suggests an opposite conclusion. The Hearing Examiner's reference to the amount of money involved in the purchase of the jacket in relation to the amounts provided by the contract and interest arbitration award, provided additional support for his finding that the PBA had not proven its allegation that the issue of who would pay had not been negotiated. The increase in the clothing allowance tends to support the Town's position that the clothing allowance provision was intended to cover all the costs incident to the purchasing of uniforms.

The Hearing Examiner found that, on December 4, 1978, the Chief of Police, Chester S. Potter, issued a directive to "All Personnel," which advised that a moratorium had been declared on the purchase of leather jackets since the Police Department "... is pres-

ently considering a change to a nylon-type of winter coat..." <sup>2/</sup> The Hearing Examiner further found that, on February 6, 1979, Chief of Police Potter issued another directive to "All Personnel," which advised that the "leather winter uniform coat is being phased out...a short, nylon winter jacket has been selected to replace the winter coat," and all personnel are to "purchase the new type jacket as soon as possible." It was further stipulated that this directive was to be implemented by September 1, 1979. <sup>3/</sup> Finally, on February 21, 1979, counsel for the PBA sent a letter to the Town's attorney requesting that the Town negotiate over the economic effect of the Chief's unilateral change in uniform and order that the men were required to purchase the new jacket. [See Exhibit CP-1.]

The Commission takes administrative note that the parties' interest arbitration award for 1979, Docket No. IA-79-86, was issued on October 22, 1979. <sup>4/</sup> The first page of the Decision and Award states that: "Hearings were held May 25, 1979, August 8, 1979, and September 11, 1979, at Kearny, New Jersey, at which the parties were afforded full opportunity to present evidence and to argue in support of their respective contentions." Thus, the first day of the interest arbitration hearing was conducted nearly three months after: (1) the Town notified the members of the PBA that they would be required to purchase

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<sup>2/</sup> See Exhibit J-2 and Finding of Fact #7 at page 3 of the Hearing Examiner's Recommended Report and Decision.

<sup>3/</sup> See Exhibit J-3 and Finding of Fact #8 at pages 3 and 4 of the Hearing Examiner's Recommended Report and Decision.

<sup>4/</sup> N.J. Rules of Court, R. 9(2)(a).

new jackets; and (2) the PBA requested negotiations over this issue. Therefore, the submission of the subject of clothing allowance to interest arbitration was within the time frame of the PBA's demand for negotiations over the cost of the new jackets. These facts further support the conclusion that the parties intended the clothing allowance to be comprehensive. Accordingly, the PBA has failed to meet its burden of proving that the Town did not fulfill its obligation to negotiate over the economic effect of its decision to change the uniform jacket.<sup>5/</sup>

This same analysis is equally applicable to the issue of the name tag since the "General Order" requiring the wearing of name tags was issued on April 9, 1979, more than six weeks prior to the commencement of the interest arbitration hearing.<sup>6/</sup>

In its last series of exceptions the PBA contends that the Hearing Examiner erred in concluding that the Town did not violate the Act when, without prior notice or negotiations with the PBA, it unilaterally adopted new Rules and Regulations because the PBA had constructive notice of the adoption of the Rules and Regulations ordinance from the advertisements in the Kearny Observer and the postings in Town Hall. The PBA asserts that the Rules and Regulations deal with several areas which are mandatory subjects of negotiations, including such matters as sick leave, other leaves of absence, uniforms, safety, workload, discipline and various other such subjects. Citing several cases in both the private and public sectors, the PBA argues that an employer is prohibited from relying on a six-month

<sup>5/</sup> The Charging Party has the burden of proving the allegations contained in the charge by a preponderance of the evidence. N.J.A.C. 19:14-6.8.

<sup>6/</sup> See Exhibit J-4 and Finding of Fact #12 at page 4 of the Hearing Examiner's Recommended Report and Decision.



limitation on the filing of a charge when the employer either lulled the charging party into not filing a timely charge or indeed hid the unlawful act from the charging party until after the limitation had run. In regard to the Hearing Examiner's finding that the legal advertisements constituted constructive notice of the Town's adoption of the Rules and Regulations, the PBA contends that the Hearing Examiner showed a complete disregard for the intention of the Legislature in requiring good faith negotiations between the employer and the employee representative.

The Commission cannot mechanically apply the six-month limitation on the filing of charges, but must consider the facts and equitable consideration in each case.<sup>7/</sup>

N.J.S.A. 34:13A-5.3 states in pertinent part that:

"Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

The requirement of prior notice to the employee organization is implicit in, and an essential element of, the employer's obligation to negotiate prior to implementation of its proposed new work rules governing working conditions.<sup>8/</sup> Moreover, prior notice to the employee organization in such circumstances is consistent with the general concept of "good faith" negotiation.<sup>9/</sup>

<sup>7/</sup> Kaczmarek v. N.J. Turnpike Authority, 77 N.J. 329 (1978).

<sup>8/</sup> In re New Brunswick Board of Education, P.E.R.C. No. 78-47, 5 NJPER 84, 85 (¶4040 1978)

<sup>9/</sup> Good faith negotiations have been defined as the obligation to "meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder..." 29 U.S.C. §158. Failure to even notify the employee organization that changes in rules governing working conditions are under consideration constitutes a total disregard of the employer's obligation to meet and negotiate with the employee organization over such matters.

The Hearing Examiner found that on February 6, 1979, the Chief of Police issued a directive to all "commanding officers" which advised that the Police Department had purchased copies of the new Rules and Regulations and that each member of the Department was to be issued a copy.<sup>10/</sup> Although there is confused and conflicting testimony on this point, it appears from the attachments to Exhibit CP-2 that copies were issued to the patrolmen shortly thereafter. The PBA's attorney, by letter dated February 21, 1980, promptly requested that the Town's counsel forward to him copies of the newspaper advertisements notifying the public that the Town intended to adopt a Rules and Regulations ordinance.<sup>11/</sup> The record establishes that the Town's counsel initially responded in error that the ordinance had not been adopted. If the initial response from the Town's counsel had been accurate, the PBA would have had an opportunity to file a timely charge. But, by March 14, 1980, when the PBA first received confirmation from the Town's counsel that the ordinance had been adopted, the PBA was beyond the time limit.<sup>12/</sup> Considering all of these facts, the Commission concludes that the six-month limitation on the filing of unfair practice charges did not begin to run when the Town published notices as part of the adoption of the ordinance, rather it began when the PBA received actual notice of the Town's adoption of the Rules and Regulations ordinance. The charge, having been filed on April 23, 1980, was therefore timely.

<sup>10/</sup> See Exhibit CP-2 and Finding of Fact #9 at page 4 of the Hearing Examiner's Recommended Report and Decision.

<sup>11/</sup> See Exhibit CP-3A and Finding of Fact #11 at page 4 of the Hearing Examiner's Recommended Report and Decision.

<sup>12/</sup> See Exhibit CP-4 and Finding of Fact #11 at page 4 of the Hearing Examiner's Recommended Report and Decision.

With regard to the merits of this count of the charge, the PBA has the burden of proving the allegations contained therein by a preponderance of the evidence.<sup>13/</sup> The PBA never specified which provisions in the Rules and Regulations allegedly altered terms and conditions of employment. Other than the PBA's general allegation,<sup>14/</sup> the record is completely devoid of any evidence that terms and conditions of employment were, in fact, altered by the adoption of the Rules and Regulations ordinance.

The Commission, on its own, has reviewed the comparable provisions and, while many of the provisions of the Rules and Regulations do deal with the same subjects in the contract, the Commission does not find that any of the Rules and Regulations directly contravene any of those provisions. Several of the Rules and Regulations do add qualifying conditions on certain terms and conditions of employment. For example, Article XV, Death in Family, states that employees are entitled to bereavement leave with pay not to exceed four calendar days after the death of certain enumerated family members. Rule 34 affirms that contractual right and adds that prior to taking such leave a police officer must notify the Chief's office stating specifically the relationship between the deceased and himself and the dates he would be absent. Rule

<sup>13/</sup> See N.J.A.C. 19:14-6.8.

<sup>14/</sup> At page 7 of its Brief in Support of Exceptions, the Charging Party merely asserts that a review of the Rules will reveal several areas which are mandatory subjects of negotiations, including such matters as sick leave, other leaves of absence, uniforms, safety, workload, discipline and various other such subjects. The contract and the Rules were submitted into evidence.

33 places similar qualifications on the taking of other types of leaves provided by the contract, but neither is necessarily inconsistent with the contract provision. The PBA presented no evidence to the effect that these Rules constituted an alteration, as opposed to a mere codification of the Department's existing and established practices in regard to leaves of absence and other contractually agreed upon terms and conditions of employment. Accordingly, the Commission concludes that the PBA has failed to meet its burden of proving that the Town's adoption of the Rules and Regulations unilaterally altered terms and conditions of employment.

ORDER

Accordingly, for the reasons set forth above, IT IS HEREBY ORDERED that the Complaint be dismissed in its entirety.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Parcels and Newbaker voted for this decision. Commissioners Graves and Hipp voted against this decision.

DATED: Trenton, New Jersey  
August 20, 1980  
ISSUED: August 21, 1980

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
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TOWN OF KEARNY,

Respondent,

- and -

Docket No. CO-79-289-37

KEARNY PBA LOCAL 21,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission dismiss charges of unfair practices filed by the PBA, which alleged that the Town violated Sections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally, without notice to or negotiations with the PBA, changed the uniform of PBA members and required them to bear the expense from their annual clothing allowance, and, additionally, when the Town likewise adopted new rules and regulations in September 1978.

The Hearing Examiner, noting that the PBA recognized the change in uniforms as "beneficial," concluded that it was not unreasonable to require the unit members to utilize monies received from their annual clothing allowance of either \$325.00 or \$425.00 for payment of the \$73.95 expense of the new uniform requirement. Further, in connection with the promulgation of new rules and regulations, the Hearing Examiner found that the charge of unfair practices in this regard was time-barred under the six-month limitation of Section 5.4(c) of the Act, in that the charge of unfair practices was filed on April 23, 1979 while the ordinance on the rules and regulations was adopted on September 13, 1978. The PBA had actual or constructive notice of the adoption of the ordinance.

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/or conclusions of law.

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

In the Matter of

TOWN OF KEARNY,

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- and -

Docket No. CO-79-289-37

KEARNY PBA LOCAL 21,

Charging Party.

Appearances:

For the Town of Kearny  
Cifelli & Davie, Esqs.  
(Kenneth P. Davie, Esq.)

For Kearny PBA Local 21  
Schneider, Cohen & Solomon, Esqs.  
(David Solomon, Esq.)

HEARING EXAMINER'S RECOMMENDED  
REPORT AND DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission (hereinafter the "Commission") on April 23, 1979 by Kearny PBA Local 21 (hereinafter the "Charging Party" or the "PBA") alleging that the Town of Kearny (hereinafter the "Respondent" or the "Town") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (hereinafter the "Act"), in that the Respondent: (1) on February 6, 1979 unilaterally changed the terms and conditions of employment of the members of the unit represented by the PBA by ordering a change in jackets that must be worn by the members and by ordering that the members must purchase the said jackets at considerable personal expense; (2) on February 15, 1979 informed the members of the unit represented by the PBA that the Respondent had unilaterally adopted a completely new set of rules and regulations, many of which intimately and directly affected

and changed the terms and conditions of employment of the unit members; and (3) on April 1, 1979 unilaterally changed the terms and conditions of employment of the members of the unit represented by the PBA by ordering the members to wear name tags, which were purchased by the Respondent, and then by ordering the members to pay for the said name tags; all of which is alleged to be a violation of N.J.S.A. 34:13A-5.4(a)(1) and (5) of the Act. <sup>1/</sup>

It appearing that the allegations of the Unfair Practice Charge, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on November 28, 1979. Pursuant to the Complaint and Notice of Hearing, hearings were held on February 26 and May 6, 1980 <sup>2/</sup> in Newark, New Jersey, at which time the parties were given an opportunity to examine witnesses, present relevant evidence and argue orally. Both parties filed post-hearing briefs by June 3, 1980.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act, as amended, exists, and, after hearing, and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The Town of Kearny is a public employer within the meaning of the Act, as amended, and is subject to its provisions.
2. The Kearny PBA Local 21 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

<sup>1/</sup> 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.

"(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.

<sup>2/</sup> The hearing was originally scheduled for December 26 and 27, 1979, but was rescheduled at the request of counsel for the Respondent and, due to a conflict in the schedules of all parties, including the Hearing Examiner, the first mutually agreeable date was February 26, 1980. The hearing was essentially concluded on this date but, due to a problem with certain post-hearing exhibits, counsel for the Charging Party requested by letter dated March 21, 1980 that the record be reopened and the first mutually date thereafter was May 6, 1980 when the hearing was concluded and the record closed.

3. The most recent written collective negotiations agreement between the parties was that which was effective during the term January 1, 1976 through December 31, 1978 (J-1). <sup>3/</sup>

4. An interest arbitration award was made for the calendar year 1979, but it is currently the subject of litigation between the parties (1 Tr. 7, 8). Also, the interest arbitration award covered Patrolmen only (1 Tr. 10, 11). <sup>4/</sup>

5. Article VII, "Management of Town Affairs," which was not modified or changed by the 1979 interest arbitration award (1 Tr. 8), provides as follows:

"The Union recognizes that areas of responsibility must be reserved to the Employer of the local government as to serve the public effectively. Therefore, the right to manage the affairs of the Town and to direct the working forces and operations of the Town, subject to the limitations of this agreement, is vested in and retained by the Employer exclusively." (J-1, p. 9).

6. Article XVIII, "Clothing Allowance," provides as follows:

"A clothing allowance in the amount of \$325.00 shall be paid annually for the years 1976, 1977 and 1978 by the Town of Kearny to all employees covered by this Agreement." (J-1, p. 19). <sup>5/</sup>

7. Under date of December 4, 1978 the Chief of Police, Chester S. Potter, issued a directive to "all personnel," which advised that a moratorium had been declared on the purchase of leather jackets since the Police Department "...is presently considering a change to a nylon type of winter coat..." (J-2).

8. Under date of February 6, 1979 Chief of Police Potter issued another directive to "all personnel," which advised that the "leather uniform winter coat is being phased out" and that "a short nylon winter jacket has been selected to replace the leather coat" and, finally, that all personnel are to "purchase the new

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<sup>3/</sup> It was stipulated that Article I, Section 2 of this agreement, which defines the scope of recognition, covers all Patrolmen, Sergeants and Lieutenants (1 Tr. 6).

<sup>4/</sup> The apparent reason for limiting the interest arbitration to Patrolmen only is the pendency before the Commission of a Unit Clarification Petition, which was filed by the Town with respect to the Superior Officers (1 Tr. 6, 7, 10, 11).

<sup>5/</sup> This provision was modified by the 1979 interest arbitration award for Patrolmen only in that the amount of the allowance was increased from \$325.00 to \$425.00 (1 Tr. 8-10).



type jacket as soon as possible" (J-3). It was stipulated that this directive was to be implemented by September 1, 1979 and that the price of the new nylon jacket was \$69.95 (1 Tr. 16). <sup>6/</sup>

9. Also, under date of February 6, 1979 Chief of Police Potter issued a directive to all "commanding officers," which advised that the Police Department had purchased copies of the Department's new rules and regulations and that each member of the Department was to be issued a copy (CP-2). Thereafter, each member of the Department who received a copy of the booklet signed a sheet so indicating (see attachments to CP-2).

10. The booklet containing the rules and regulations, supra, was received in evidence as Exhibit J-5. The booklet indicates that the said rules and regulations were issued pursuant to an Ordinance adopted on September 13, 1978 (J-5, p. 39). Pursuant to law, the said Ordinance was adopted after publication in the Kearny Observer, a weekly newspaper of general circulation (2 Tr. 7). <sup>7/</sup>

11. Under date of February 21, 1979 counsel for the Charging Party sent a letter to the attorney for the Town, Norman Doyle, Esq., requesting copies of the newspaper advertisements notifying the public in connection with the adoption of the aforesaid Ordinance on the new Police Department rules and regulations (CP-3A). On March 14, 1979 Doyle responded by sending a letter to counsel for the Charging Party, in which Doyle advised that he was evidently in error in having indicated to counsel for the Charging Party in February 1979 that the said Ordinance had not at that time been adopted (CP-4 and 2 Tr. 5).

12. Under date of April 9, 1979 Chief of Police Potter issued a "General Order," which advised that effective April 13, 1979 the wearing of a name tag would be mandatory. Further, Chief Potter stated that in order to insure uniformity, the name tags were being secured for all members of the Department at a cost of \$4.00 each, but the payment need not be made "...until May 4, 1979 when the clothing allowance checks are issued." (J-4).

13. The PBA was not formally given notice by the Town of any of the actions of the Town with respect to the nylon jackets, the name tags or the new rules and

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<sup>6/</sup> This directive was challenged as a violation of the Act in a letter dated February 21, 1979 from counsel for the Charging Party to counsel for the Respondent (CP-1).

<sup>7/</sup> Ordinances are also posted on a bulletin board in the Town Hall (2 Tr. 7).

regulations, nor did the Town offer to negotiate with the PBA on these matters. The PBA did, however, formally protest the change in jackets and threatened to file a charge of unfair practices with respect thereto (CP-1, supra).

#### THE ISSUE

Did the Respondent Town violate the Act when, without notice to or negotiations with the PBA, it unilaterally: (1) changed the jackets worn by members of the PBA and required the said members to make payment therefor; (2) required the wearing of name tags by members of the PBA and also required payment therefor; and (3) adopted new rules and regulations?

#### DISCUSSION AND ANALYSIS

The Town Did Not Violate The Act When, Without Notice To Or Negotiations With The PBA, It Unilaterally Changed The Jackets And Required The Wearing Of Name Tags By Members Of The PBA And Required Them To Make Payment Therefor

The Charging Party, citing City of Trenton, P.E.R.C. No. 79-56, 5 NJPER 112 (1979), contends that the determination of police uniforms is a permissive subject of negotiations, and that the effect or impact of proposed changes in police uniforms is a mandatorily negotiable term and condition of employment. The Charging Party makes clear that it is not complaining about the uniform change itself, in fact indicating that the change is "beneficial," but the Charging Party complains that the unilateral change in uniform diminishes "...the monies received by the members pursuant to the collective bargaining agreement." The Charging Party asks that the Town be required to negotiate regarding the purchase of new uniforms during the next round of collective negotiations and that the Town be prohibited from imposing this additional expense upon unit members during the existence of the current agreement. <sup>8/</sup>

The Town argues that the entire matter of the change of jackets and the requirement of name tags is the exercise by it of a managerial prerogative as to

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<sup>8/</sup> It is noted that the Charging Party makes the same argument with respect to name tags as it does with respect to the jackets, i.e., the Charging Party's concern about the expense of both items being charged to the clothing allowance under the agreement (see Charging Party's Brief, pp. 5, 6).

which negotiations are not required, it being an illegal subject.<sup>9/</sup> The Town points to the fact that the members of the PBA were not required to make payment for the jackets and name tags until the clothing allowance checks were issued in May 1979 and, additionally, it points out that the PBA members are not required to return any unused clothing allowance monies to the Town.

The Hearing Examiner finds and concludes that the Town did not violate the Act when it made the decision to change the jacket from leather to nylon without notice to or negotiations with the PBA, and further required that the cost of \$69.95 per jacket be financed from each members' clothing allowance. The same finding and conclusion applies to the name tags, which cost \$4.00 each.

In so finding and concluding, the Hearing Examiner has taken cognizance of the annual clothing allowance provided for in the agreement, which was \$425.00 for Patrolmen in 1979 and presumably was \$325.00 for Superior Officers in 1979 since the latter were not the subject of the interest arbitration award.<sup>10/</sup> It seems eminently reasonable to require that a total expenditure of \$73.95 be charged against the annual clothing allowance, especially under the circumstances of payment not having had to be made until the clothing allowance checks were received in May 1979. Further, the expenditure of \$73.95 did not significantly deplete the annual clothing allowance for that year. In other words, the Hearing Examiner is persuaded that although the decision on jackets and name tags had an economic impact, which would ordinarily be subject to mandatory negotiations, a negotiations obligation is obviated herein by the provision in the agreement for a clothing allowance, which was not significantly depleted for the year 1979 by the expenses involved herein.

Since the matter of police uniforms is a permissive subject of negotiations under City of Trenton, supra, the PBA is free to negotiate the matter of the clothing allowance in its next round of collective negotiations in order to offset the 1979 expense for jackets and name tags. This seems an adequate remedy as to any impact which may have resulted from the Town's decision on uniforms in 1979.

Thus, the Hearing Examiner will recommend dismissal as to the jacket and name tag aspects of the charge of unfair practices.

<sup>9/</sup> The Town cites Ridgefield Park Education Association v. Ridgefield Park Board of Education, 78 N.J. 144, 156, 163 (1978) and related court cases (see Town's Brief, pp. 4-8).

<sup>10/</sup> See Findings of Fact Nos. 4 and 6, supra.

The Town Did Not Violate The Act When, Without Notice To Or Negotiations With The PBA, It Unilaterally Adopted New Rules And Regulations

The Charging Party argues that since the rules and regulations that the Town adopted by ordinance on September 13, 1978 contained such provisions as bereavement leave, sick leave and police officer safety, the rules and regulations involved terms and conditions of employment, which are mandatorily negotiable. <sup>11/</sup>

The Town contends that both the decision to promulgate new rules and regulations and the content of any such rules and regulations constitute the exercise of a managerial prerogative, which is beyond the pale of collective negotiations since it is an illegal subject, citing Ridgefield Park, supra, and other related decisions of the courts. Additionally, the Town contends that the Charging Party is time-barred under Section 5.4(c) of the Act inasmuch as the Unfair Practice Charge was not filed until April 23, 1979 while the rules and regulations were adopted by ordinance on September 13, 1978, i.e., the charge was filed more than six months after the adoption of the ordinance. <sup>12/</sup>

The Hearing Examiner finds and concludes that the six-month limitation defense is valid and controlling in the disposition of this aspect of the Complaint. The Unfair Practice Charge was not filed until seven months and 10 days after the adoption of the ordinance on September 13, 1978. The PBA clearly had actual or constructive notice of the adoption of the ordinance by virtue of its having been advertised in the Kearny "Observer," a weekly newspaper of general circulation, and by the fact that the ordinance was physically posted in the Town Hall. Further, the printed booklets were distributed to the members of the PBA on February 6, 1979, which constituted actual notice to each member of the PBA. If a charge had been filed immediately after the distribution of the booklets it would have been well within the six-month limitation requirement of Section 5.4(c) of the Act. There is no evidence whatever that the Charging Party was "prevented" from filing a timely

<sup>11/</sup> The Charging Party cites Section 5.3 of the Act, which provides, in part, that: "...Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established..."

<sup>12/</sup> The Charging Party counters, with respect to the six-month limitation defense, that the printed booklets were not distributed to the members of the PBA until February 6, 1979 and that the attorney for the Town indicated in February 1979 that he was unaware that the ordinance in question had been adopted (see Finding of Fact Nos. 10 and 11, supra).

charge within the meaning of Section 5.4(c), and since no "equitable considerations" <sup>13/</sup> exist there is, thus, no reason to excuse the imposition of the six-month limitation.

Therefore, the Hearing Examiner must dismiss the rules and regulations aspect of the Complaint since it is time-barred under the six-month limitation provision of Section 5.4(c) of the Act.

\* \* \* \*

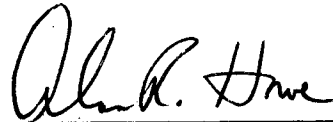
Based upon the foregoing, and the entire record in this case, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

The Respondent Town did not violate N.J.S.A. 34:13A-5.4(a)(1) and (5) when it unilaterally, without notice to or negotiations with the PBA, changed the jackets and required the wearing of name tags by members of the PBA and also required them to make payment therefor from the annual clothing allowance and, further, adopted new rules and regulations more than six months prior to the filing of the Unfair Practice Charge.

RECOMMENDED ORDER

It is hereby ORDERED that the Complaint be dismissed in its entirety.



Alan R. Howe  
Alan R. Howe  
Hearing Examiner

Dated: June 4, 1980  
Trenton, New Jersey

13/ For a discussion of "equitable considerations" see Kaczmarek v. New Jersey Turnpike Authority, 77 N.J. 329, 337, 338, 340 (1978).