

P.E.R.C. NO. 88-127

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

IAFF, LOCAL 2081, AFL-CIO,

Petitioner,

-and-

Docket No. SN-88-2

CITY OF HACKENSACK,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains, in part, binding arbitration of a grievance filed by IAFF, Local 2081, AFL-CIO against the City of Hackensack. The grievance challenged a firefighter's three day suspension for violating a directive of the Fire Chief of the City of Hackensack that the "dress uniform" must be available when any firefighter is given an assignment that requires wearing the uniform. The Commission finds that the directive is a managerial prerogative and may not be submitted to arbitration, but that the discipline for the alleged violation of the directive and the alleged insubordination may be reviewed by an arbitrator.

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Appearances:

For the Petitioner, Loccke & Correia, Esqs.
(Manuel A. Correia, of counsel)

For the Respondent, Robert R. Guida, Esq.

DECISION AND ORDER

On July 8, 1987, IAFF, Local 2081, AFL-CIO ("IAFF") filed a Petition for Scope of Negotiations Determination. The petition seeks a determination that a grievance filed by the IAFF is either mandatorily or permissively negotiable. The grievance challenged a firefighter's three-day suspension for violating a directive of the fire chief of the City of Hackensack ("City") that the "dress uniform" must be available when any firefighter is given an assignment that requires wearing the uniform.

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

The IAFF is the majority representative of the City's firefighters. The dispute arises under a collective negotiations

agreement effective from January 1, 1985 through December 31, 1986, which has a grievance procedure ending in binding arbitration. Article VIII, "Clothing Allowance," provides, in part, that firefighters are not required to wear their uniform to and from work but shall be permitted, while off duty, to wear their uniform for attending funerals of other firefighters or police officers. A prior agreement provided that firefighters were to store their dress uniforms at fire headquarters and specified the occasions when the dress uniform would be worn.

On August 29, 1985, the fire chief issued a directive to all platoon commanders stating: "Uniforms MUST be available when any member is given an assignment that...requires the uniform to be worn."

On May 27, 1986, Firefighter Dennis R. Jennings allegedly failed to have his dress uniform available for a desk assignment. On May 28, Jennings received a Civil Service "Preliminary Notice of Disciplinary Action," signed by the Acting Battalion Chief and the Fire Chief, indicating that Jennings might receive three extra days of duty without pay.^{1/} The notice also stated that Jennings was argumentative and insubordinate. On July 15, Jennings was served with a Final Notice of Disciplinary Action stating he would be suspended for three working days (i.e. would

^{1/} This was the third time Jennings allegedly violated the rule. He received oral and written warnings before. His written warning was issued the day before the chief issued his department-wide directive.

work without pay). Two days were for the alleged uniform violation and the third was for the alleged insubordination.

On July 23, 1986, a grievance was filed seeking rescission of the Chief's directive and reimbursement to Jennings for his three-day suspension. On September 25, the City Manager denied the grievance. The IAFF demanded arbitration.

On February 20, 1987, at an arbitration hearing, the City questioned the grievance's negotiability. On March 13, the arbitrator stayed further proceedings until that issue was resolved. The IAFF then filed its petition.^{2/}

The boundaries of the Commission's scope of negotiations jurisdiction are narrow. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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

^{2/} The parties contemplated filing a joint petition but could not agree on the issue. The IAFF contends that the directive requires firefighters to maintain their dress uniforms in their lockers at headquarters. The City responds that the directive only requires that the uniforms be available without specifying where they should be kept. While the directive's language supports the City's phrasing, it is the grievance documents and the demand for arbitration which frame the negotiability issue, not the parties' labels. See Newark Bd. of Ed. and Newark Teach. Union, Loc. No. 481, AFT, App. Div. Dkt. No. A-2060-78 (2/26/80), aff'g P.E.R.C. No. 79-24, 4 NJPER 486 (¶4221 1978) and P.E.R.C. No. 79-38, 5 NJPER 41 (¶I0026 1979).

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. [Id. at 154; emphasis added].

Accordingly, we determine only whether the City could legally agree to arbitrate the grievance. We do not determine any procedural or substantive issues pertaining to the grievance's merits.

In Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), our Supreme Court outlined the steps of a scope of negotiations analysis for police and firefighters.^{3/} The Court stated:

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

^{3/} 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 mandatory category of negotiations. Compare, Local 195, IFPTE v. State, 88 N.J. 393 (1982).

policy-making 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. [Id. 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. and Middletown PBA, 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 policy-making powers.

In 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 pt. App. Div. Dkt. A-3966-78 (10/3/80), we held that the daily police uniform was not mandatorily negotiable.^{4/} While Trenton held that the uniform composition is permissively negotiable,^{5/} this dispute involves the uniform's availability. Trenton recognized that a police uniform relates to the manner and means of providing police services as the appearance of a uniformed officer

^{4/} See also Bor. of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Bor. of Butler, P.E.R.C. No. 87-121, 13 NJPER 292 (¶18123 1987); City of Newark, P.E.R.C. No. 86-74, 12 NJPER 26, 29 (¶17010 1985); Hunterdon Cty., P.E.R.C. No. 83-46, 8 NJPER 607 (¶13287 1982).

^{5/} Trenton preceded Paterson's narrowing of the test for permissive negotiability.

can in itself deter criminal activity. The uniform's aura of authority also applies to a firefighter assigned to cover desk duty. The non-disciplinary aspects of this grievance involve only the issue of uniform availability; there is no issue relating to health, safety and comfort, City of Newark, nor is there any issue as to the cost of purchasing and maintaining the uniforms, Maywood.

Since the uniform relates to the manner and means of providing fire protection, we hold that negotiation over a directive to have the dress uniform available at fire headquarters would substantially limit Hackensack's policy-making powers and is not permissively negotiable. Thus the grievance cannot seek rescission of the Chief's directive.

Because the grievance challenges both the directive and the disciplinary action, we must also determine whether arbitration of the discipline is preempted by an "alternate statutory appeal procedure," within the meaning of N.J.S.A. 34:13A-5.3. Since the discipline is a three-day suspension of a civil service employee, arbitration is not preempted. See CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984).^{6/} Therefore, although the City has a non-arbitrable right to require that firefighters have dress uniforms

^{6/} This grievance arose before the Civil Service Reform Act which changed the Department of Civil Service to the Department of Personnel and the Civil Service Commission to the Merit System Board.

available, discipline for an alleged violation of that directive and for alleged insubordination may be reviewed by an arbitrator.^{7/}

ORDER

The City's request for a restraint of arbitration is denied except as to the portion of the grievance which seeks rescission of the August 29, 1985 directive of the fire chief regarding uniform availability.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
May 25, 1988
ISSUED: May 26, 1988

^{7/} We do not pass on any of the procedural issues pending before the arbitrator.