

P.E.R.C. NO. 79-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF TRENTON,

Petitioner,

- and -

Docket No. SN-79-43

P.B.A. LOCAL NO. 11,

Respondent.

SYNOPSIS

The Commission grants a Motion for Reconsideration in a Scope of Negotiations proceeding in order to afford the City of Trenton an opportunity to respond to arguments made by the PBA in a submission which was not served upon the City. After considering the City's contentions, the Commission reaffirms its decision (P.E.R.C. No. 79-56, 5 NJPER 112 (¶10065 1979)).

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Appearances:

For the Petitioner, George T. Dougherty, Esq.
City Attorney

For the Respondent, Thomas P. Foy, Esq.

DECISION ON MOTION FOR RECONSIDERATION

Petitioner has requested that we reconsider our decision of March 9, 1979 (P.E.R.C. No. 79-56, 5 NJPER ___ (¶ 1979)) in which we held that (1) the determination of the daily police uniform was a permissive subject for negotiations and (2) rules governing the use and contents of lockers and providing for periodic locker inspections was a mandatory subject for negotiations. For the reasons set forth below, that request is granted.

Following the issuance of the decision, the Petitioner, by letter dated March 20, 1979, stated inter alia, that it had not been provided with a copy of the PBA's submission to the Commission and desired to respond thereto.^{1/}

1/ The Commission's Rules require parties to serve copies of their briefs on the other party. See N.J.A.C. 19:13-3.5(c). Here the Respondent failed to do so.

An opportunity was extended to the Petitioner to address the contentions set forth in the PBA's submission, as well as any other appropriate ground upon which to seek reconsideration. An opportunity was also afforded the PBA to reply to any arguments the City wished to raise in its submissions.

The City, in letters dated April 16, and April 23, 1979, has set forth arguments in support of its positions on the above-noted issues. The PBA has not filed any response to these additional submissions by the City. After reviewing the statements contained in these letters, as well as those set forth in the City's letter of March 20, 1979, we grant the City's motion for reconsideration and we affirm our previous determination essentially for the reasons stated therein with the following comments.

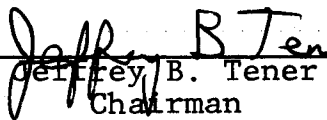
The City's arguments, which are directed mainly to the issue of locker inspection, stress its managerial responsibilities in maintaining the integrity of its police department. The City does concede that the issue also involves the personal welfare of the police officers and is to such extent mandatorily negotiable. We considered the City's managerial responsibilities in our prior decision with respect to this issue. See P.E.R.C. No. 79-56 at 3, citing *In re City of Trenton*, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). However, we still believe that this proposal involves a "rule governing working conditions" within the meaning of N.J.S.A. 34:13A-5.3 and can be negotiated without significant interference

with the managerial responsibilities set forth by the City.^{2/}

The only comment which we need to make regarding the uniform issue is that in this case, as in all cases involving petitions for scope of negotiations determinations, we are simply passing upon the negotiability of the disputed item; we are not indicating that a change has been made. The petition filed by the City indicates that the issue has been raised in negotiations and our decision holds that this issue is negotiable and arbitrable only to the extent set forth therein.

P.E.R.C. No. 79-56 is hereby reaffirmed.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Hipp voted for this decision. Commissioner Newbaker voted in favor of reconsideration but opposed reaffirmation. Commissioner Parcels was not present.

DATED: Trenton, New Jersey
May 22, 1979
ISSUED: May 23, 1979

^{2/} The City has also responded to the Constitutional issues raised in footnote 3 of our prior decision. As noted therein, while we do not possess any particular expertise with respect to such matters, it appears that the City's discussion of this issue, in its April 23, 1979 letter, is correct. The negotiability of the locker inspection procedure would not seem to be affected by the "expectation of privacy" standard. If lockers, through a negotiated procedure, are to be subject to periodic inspections, then the employee would not seem to have a "reasonable expectation of privacy" in connection therewith. If there is no regular locker inspection, then such expectation may indeed be present. In short, "expectation of privacy" is not immutable, as it appears to be dependent on other circumstances in existence at the time the search is conducted.