P.E.R.C. NO. 2020-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and- Docket No. CO-2018-001

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the City of Jersey City and a cross-motion for summary judgment filed by the Jersey City POBA. The POBA filed an unfair practice charge alleging that the City violated N.J.S.A. 34:13A-5.3, 5.4a(1) and (5) when it issued a memorandum requiring that police officers wear only "Class A" uniforms and prohibiting the use of "Class B" uniforms and by refusing to negotiate with the POBA over the economic impact of the change to the uniform policy. In denying both motions, the Commission concludes that the City had the prerogative to make changes to the uniform policy, but the POBA had the right to negotiate over the financial impact of those changes. However, the Commission found that there are material facts in dispute that requires consideration of competing evidence.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Jersey City, Corporation Counsel (James LaBianca, of counsel)

For the Charging Party, Detzky Hunter & DeFillippo, attorneys (Stephen B. Hunter, of counsel)

DECISION

This case comes to us by way of cross-motions for summary judgment. On July 5, 2017, the Jersey City Police Officers Benevolent Association (POBA) filed an unfair practice charge against the City of Jersey City (City). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.3, 5.4a(1) and (5),[1/]

1/ These provisions 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
(continued...)

when it issued a memorandum on June 2, 2017 requiring that police officers wear only "Class A" uniforms and prohibiting the use of "Class B" uniforms, thereby establishing a new rule or modifying an existing rule without negotiations. Further, the charge alleges that the City violated the Act by refusing to negotiate with the POBA over the economic impact of this change to the uniform policy.

On November 27, 2018, the Director of Unfair Practices issued a Complaint and Notice of Pre-Hearing. On June 5, 2019, the City filed a motion for summary judgment and supporting brief. On June 28, the POBA filed its opposition brief and a cross-motion for summary judgment. On July 18, the City filed its reply to the POBA's opposition brief and cross-motion for summary judgment. On July 26, the Chair referred the motion and cross-motion to the full Commission.

In support of the cross-motions, the City filed briefs, exhibits, and the certification of James Shea, Director of the Department of Public Safety for the City. The POBA filed a brief

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1/ (...continued)
representative. The charge further alleges that the City violated the following provision of 5.3, "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established."

and the certification of Carmine Disbrow, President of the POBA since May 2012.[2/] These facts appear.

At the time of the filing of the pending charge, the City and POBA were parties to a collective negotiations agreement (CNA) with a term of January 1, 2013 through December 31, 2016. Shea certifies that following the POBA's filing of the instant charge, the POBA and City underwent interest arbitration. Following the issuance of the interest arbitration award, the parties appealed. In 2019, during the pendency of the interest arbitration award appeal, the parties negotiated a successor CNA to the one imposed by the interest arbitration process. Shea's certification included a copy of the Memorandum of Agreement for the most recent CNA as an exhibit. The POBA is the majority representative for collective negotiations for all non-supervisory police officers employed by the City.

Article 19 of the parties' 2013-2016 CNA, entitled "Clothing Allowance," provides in pertinent part a clothing allowance of $1,350 per year effective on January 1, 2012. The City's Uniform Policy is set forth in General Order 12-15, entitled "Uniform and Appearance," issued on September 1, 2015, which, among other things, requires all City officers to maintain regulation uniforms and provides specifications for various types of

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2/ The POBA also filed a sur-reply on July 26, 2019, which was not accepted as part of the record pursuant to N.J.A.C. 19:14-4.8(d).

uniforms, specifically "Class A" and "Class B" uniforms. Disbrow certifies that "Class B" (or tactical) uniforms were used almost exclusively by City Patrol officers on a daily basis and "Class A" uniforms (which appear to be more formal attire) were used when officers were assigned to "high profile events" and ceremonial functions, such as officers' graduation. Disbrow further certified that, as a result of the above, officers would purchase a majority of "Class B" uniforms to perform their daily duties and seldom purchase "Class A" uniforms.

On June 2, 2017, the City issued a memorandum stating, in pertinent part, that effective June 5, 2017 the "Class B uniform will no longer be permitted" and that "members of the department will wear Class A uniforms."[3/] On June 5, the City issued another memorandum clarifying the previous one, stating in pertinent part that "Class B" uniforms will no longer be permitted for routine patrol subject to certain exceptions and proper approval and that "Class A" uniforms must be worn by members of the Department.

Disbrow certifies that the City's alleged change to the uniform policy, via the memoranda, was made during negotiations for a successor CNA (following the expiration of the previous CNA on December 31, 2016) and that the City had initiated interest

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3/ Shea certifies to various operational reasons for the issuance of this memorandum.

arbitration prior to the issuance of the 2017 memoranda. Shea certifies that the POBA filed the instant charge during an impasse in negotiations after the expiration of the 2013-2016 CNA.

Disbrow certifies that as a result of the City's memoranda, City officers suffered an economic impact as they were required to purchase additional more expensive "Class A" uniforms and many officers would not have purchased additional "Class B" uniforms had they known the City would discontinue their use for daily patrol duties. Disbrow further certified that the POBA made numerous demands for the City to negotiate "the impact of the significant changes regarding uniform policies," particularly an increase to the clothing allowance provided in the CNA's Article 19, and that "the City refused to negotiate with the POBA."

Conversely, Shea certifies that "[b]etween the effective date of the 2013 [CNA] and the filing of the POBA's [charge], the POBA never sought to modify Article 19; either through negotiations for a successor agreement or otherwise." Shea further certifies that "the POBA and the City underwent interest arbitration, in which the POBA's final offer did not include any modification to Article 19 [Clothing Allowance]" and that the POBA sought no modifications to Article 19 in the current CNA. Moreover, Shea certifies that POBA members suffered no economic impact as a result of the City's memoranda "as such expenses were

already anticipated, budgeted and negotiated as evidenced by Article 19 of the 2013 [CNA]."

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). The Commission has consistently held that negotiations over an employer's determination over what uniforms officers will wear or changes to the uniform are generally not mandatorily negotiable, but that the cost for the uniforms and the economic impact of changes to a uniform policy is mandatorily negotiable. Town of Kearny, P.E.R.C. No. 2001-58, 27 NJPER 189 (¶32063 2001); Essex Cty. Sheriff's Dept., P.E.R.C. No. 2000-79, 26 NJPER 202 (¶31082 2000); Town of Kearny, P.E.R.C. No. 82-12, 7 NJPER 456 (¶12202 1981).

The City first argues that its motion for summary judgment should be granted because the POBA's charge is untimely and must be dismissed pursuant to N.J.S.A. 34:13A-5.4(c). The City argues that the charge is untimely because the parties negotiated and agreed to the Article 19 clothing allowance in the 2013 CNA, which covered potential changes to the uniform. Moreover, the City argues that the POBA made no attempt modify or negotiate over the Article 19 clothing allowance or General Order 12-15

when it was issued in 2015; rather, the POBA filed its charge in 2017. In response, the POBA argues that its charge was timely filed because the triggering event for the charge was the City's June 2017 memoranda which eliminated the use of "Class B" uniforms without negotiating the economic impact of this policy change. The charge was filed approximately a month after the memoranda were issued.

We find that the POBA's charge was timely filed because it was triggered by the City's 2017 memoranda. The undisputed facts show that prior to the 2017 memoranda, officers had the option of wearing the "Class B" uniforms. After the 2017 memoranda, they did not have that option.[4/] This change in the uniform policy in 2017 constituted an alleged change in working conditions without negotiations.

The City then argues that its motion for summary judgment should be granted because the City's decision to change uniforms is not mandatorily negotiable unless related to officer health and safety and the POBA failed to raise any health or safety concerns regarding the uniforms. The record is clear that the POBA was not challenging the City's managerial prerogative to change uniforms, but rather the City's failure to negotiate the

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4/ To what extent the "Class B" uniforms were used by officers as compared to the "Class A" uniforms is unclear from the record. Disbrow certifies that the "Class B" uniforms were the daily uniforms and "Class A" uniforms were seldom used.

economic impact of such a change. See ¶10 of POBA's charge. As noted above, the economic impact of uniform policy changes are mandatorily negotiable.

The City further argues that its motion for summary judgment should be granted because the 2017 memoranda did not create a new uniform policy or modify the existing one because they merely reaffirmed the policy set forth in General Order 12-15. Shea certifies that Section 202.3 of General Order 12-15 provides that "all members of the Jersey City Police Department must wear Class A Uniforms" and that "Class B Uniforms would no longer be permitted for routine patrol." However, that language does not appear in that section nor in any other section of the General Order. It appears that is language from the 2017 memoranda, which the POBA alleges unilaterally changed the uniform policy.

The City argues that the POBA could have sought to negotiate an increase in the Article 19 clothing allowance when the General Order 12-15 was issued in 2015, but it did not. However, again, General Order 12-15 did not prohibit the use of "Class B" uniforms, on the contrary, it specifies what constitutes an appropriate "Class B" uniform, implying it could be used.[5/] Thus, before the 2017 memoranda, there was no change to the uniform

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5/ Similarly, General Order 09-06 from 2016, the predecessor uniform policy to General Order 12-15, which was included as an exhibit to Shea's certification, does not prohibit "Class B" uniforms.

policy that would prompt the POBA to seek negotiations over the Article 19 clothing allowance.

Lastly, the City argues that its motion for summary judgment should be granted because the economic impact of any change to the uniform policy was addressed by the Article 19 clothing allowance in the 2013 CNA, which the POBA did not seek to change in the present CNA, even after interest arbitration. The City asserts that the negotiated amount of the clothing allowance contemplated any potential changes to the uniform policy.[6/] The POBA counters that the clothing allowance was negotiated based on being able to use the less expensive "Class B" uniforms. POBA points to how many more "Class B" uniforms were purchased by officers as opposed to "Class A" uniforms. The POBA asserts that following the issuance of the 2017 memoranda it made numerous demands to negotiate the economic impact of the uniform policy change, which the City rejected.[7/] The City disputes this. Shea certifies that the POBA never sought to negotiate the Article 19 clothing allowance at any time following the issuance of the 2017

6/ In its reply brief, the City asserts that, according to the POBA's certification, the existing Article 19 clothing allowance of $1,350 annually "would adequately cover the anticipated uniform costs, even leaving additional funds for dry cleaning." This argument ignores the cost incurred by the officers who purchased "Class B" uniforms in reliance that they would be able to be used as their daily uniforms.

7/ We note that the filing of an unfair practice charge does not constitute a demand to negotiate. Monroe Tp. Bd. of Ed., P.E.R.C. No. 85-35, 10 NJPER 569 (¶15265 1984).

memoranda, through interest arbitration, and ultimately to the implementation of the parties' present CNA. See ¶14, ¶16, and Exhibit 16 of Shea Cert.

We find that the above establishes disputed issues of material fact sufficient to deny both parties' motions for summary judgment and to warrant a factual hearing. First, whether the Article 19 clothing allowance was negotiated to address the cost of potential uniform policy changes cannot be established by this record. If the City is correct in its assertion that the Article 19 clothing allowance in the 2013 CNA addressed the cost of any uniform policy change, then the parties may have already negotiated with respect to who bears the cost of such uniforms and the City could prevail in its argument that it bears no additional obligation to negotiate with respect to that issue. See City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001), recon. den., P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001).

Second, whether the POBA demanded impact negotiations following the issuance of the 2017 memoranda is also in dispute. While the POBA generally certifies that it made numerous demands to negotiate the economic impact of the uniform policy change, it provides no details of any such demands. The City asserts that the POBA never formally, in writing, sought to negotiate the Article 19 clothing allowance after issuance of the 2017

memoranda, when it had many opportunities through interest arbitration to do so. Thus, whether and to what extent impact negotiations were demanded is unclear from this record.

Lastly, we address the POBA's argument that the City violated N.J.S.A. 34:13A-21 when it changed the uniform policy after the initiation of interest arbitration. The City, relying on Trenton, supra, argues that since the change in uniform constitutes an exercise of managerial prerogative rather than a change in terms and conditions of employment, such action does not violate N.J.S.A. 34:13A-21. However, for the aforementioned reasons, whether the City's uniform policy change actually constituted a change in working conditions requires a factual hearing.

In sum, the law in this case is well settled. The City had the prerogative to make changes to the uniform policy, but the POBA had the right to negotiate over the financial impact of those changes. Cty. of Hudson, H.E. No. 2012-2, 38 NJPER 226 (¶76 2012).[8/] Here, the record does not sufficiently establish whether the Article 19 clothing allowance was negotiated to address the cost of uniform policy changes, or whether the POBA

8/ In Hudson, the Hearing Examiner held that the County did not commit an unfair practice partly because the County did negotiate with the Union following the issuance of its uniform policy change. Here, the record does not establish that negotiations were demanded or that any negotiations occurred.

made demands for impact negotiations. Final resolution of this dispute requires the consideration of competing evidence, a task we cannot accomplish in reviewing the cross-motions for summary judgment.

ORDER

The motion and cross-motion for summary judgment are denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Papero and Voos voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: October 31, 2019

Trenton, New Jersey