

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 in a scope of negotiations decision finds that the determination of the daily police uniform, including garments, headwear and footwear is only a permissive subject of negotiations. The Commission recognizes, however, that to the extent that proposals relating to uniforms relate to the health and safety of police officers, and do not prohibit the employer from accomplishing its goals in having a particular uniform item worn, these said proposals are mandatorily negotiable. The Commission further determines that the issue of locker maintenance is a mandatory subject of negotiations. The Commission, concerning the issue of locker maintenance, notes however that the inspection of a police officer's locker may give rise to issues of Constitutional dimension with regard to the privacy of such a facility.

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.

Appearances:

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

For the Respondent, Thomas P. Foy, Esq.

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed by the City of Trenton (the "City") with the Public Employment Relations Commission on December 19, 1978, alleging that certain matters in dispute between the City and PBA Local 11 (the "PBA") are not within the scope of collective negotiations. Both parties submitted letters in lieu of briefs, the last of which was filed by January 17, 1979.

The two matters in dispute relate to (1) the determination of the daily police uniform including garments, footwear and headwear and (2) the establishment and enforcement of reasonable rules and regulations regarding the use and contents of lockers, including the conduct of a reasonable inspection procedure.

The Commission has issued two decisions which are relevant to the uniform issue. In In re Borough of Montvale, P.E.R.C. No. 78-33, 4 NJPER 28 (¶4014 1977), the Commission held that an order to police officers to wear uniforms to Court was a permissive but not a required subject of negotiations. However, recognizing that this managerial decision had an effect upon employees' terms and conditions of employment, the Commission ordered negotiations regarding the impact on terms and conditions of employment stemming from the order to wear uniforms to municipal court. 4 NJPER at 28.

Second, in In re Brookdale Community College, P.E.R.C. No. 77-53, 3 NJPER 156 (1977), the Commission found that it is a management prerogative as to whether and at what times members of the campus police force shall carry firearms in the performance of their duties on campus. The Commission determined that such decisions related to the manner and means by which a public employer renders police services to its constituency, although the effect of the decision on employees' terms and conditions of employment were found to be mandatorily negotiable

By their very appearance, police officers may act as a deterrent to criminal activity. A police officer's uniform thus must be considered to relate to the "manner or means" of rendering police services and, as such, it is not a mandatory subject of negotiations. Consistent with these decisions, we hold that the determination of the daily police uniform including

garments, footwear and headwear is a permissive subject of negotiations. At the same time, we recognize that the uniform worn has an effect upon the employees' terms and conditions of employment. Health and safety are areas that may be affected. To the extent that the proposals relate to these or other mandatorily negotiable terms and conditions of employment, and do not prohibit the employer from accomplishing its goals in having the particular uniform item worn, it is mandatorily negotiable.<sup>1/</sup>

The second issue concerns the use, content, and inspection of lockers. In In re Byram Township Board of Education, P.E.R.C. No. 76-27, 2 NJPER 143 (1976), affmd 152 N.J. Super. 12 (1977), this Commission and the Appellate Division of the Superior Court of New Jersey found that certain types of facilities for the convenience of teachers related to terms and conditions of employment, and therefore, are required subjects of negotiations.<sup>2/</sup> The Commission finds no difference between those facilities in Byram and the issue of providing lockers here.

The City maintains that its concern with this issue of lockers is protection of City facilities against misuse or sloppiness.

In re Township of Hillside, P.E.R.C. No. 78-29, 4 NJPER 159 (¶4076 1978), the Commission found that locker room maintenance is concerned with the health, safety, and working conditions of employees and, as such, is a required subject of negotiations.

<sup>1/</sup> Because the City's submission to us was general rather than specific, we can do no more than set down these broad guidelines.  
<sup>2/</sup> Those facilities were a pay telephone, a full-length mirror, a shelf and well-lighted clean restrooms.

The issue of maintenance of lockers is similar to locker room maintenance and is a mandatory subject of negotiations. This issue, however, is separate from the City's interest in maintaining the integrity of its police department which we recognized in an earlier decision between these same parties. In re City of Trenton, P.E.R.C. No. 76-10, 1 NJPER 58 (1975). The City's concerns in this area can be maintained while at the same time permitting negotiations concerning locker maintenance, as the City is free to propose during negotiations its preferred method and procedure regarding the use, content and inspection of lockers, with an eye toward meeting its various concerns and objectives.<sup>3/</sup>

<sup>3/</sup> Although not raised by either party, the Commission notes that inspection of a police officer's locker may give rise to issues of Constitutional dimension with regard to the privacy of such a facility. More specifically, would it violate an officer's right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution and Art. I, Par. 7 of the New Jersey Constitution of 1947, for a public employer to conduct regular inspections of such a locker without a search warrant and without probable cause of any crime or misdeed? Such considerations are relevant to negotiations between a public employer and the representative of its employees since it has been held that public employees do not lose their Constitutional protections when they enter the workplace, Tinker v. Des Moines, 393 U.S. 503 (1969); and a question arises whether a public employee organization may collectively waive the individual Constitutional rights of those whose interests it represents. Cf. Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122 (1978). While it may be beyond the Commission's jurisdiction to determine to what extent a Constitutional "expectation of privacy" attaches to such a facility, once the employer has agreed to furnish it, the question has been considered, with varying results by courts of competent jurisdiction. In New Jersey compare State v. Robinson, 86 N.J. Super. 308 (Law Div. 1965) (search of private employee's locker by employer did not violate employee's rights) with State v. Ferrari, 136 N.J. Super. 61 (Law Div. 1975), affirmed 141 N.J. Super. 67 (App. Div. 1976) (search of Deputy Police Chief's locked desk by department held unlawful). See also the following U.S. v. Bunkers, 521 F.2d 1217 (9th Cir. 1975); U.S. v. Nassar, 476 F.2d. 1111 (7th Cir. 1973); U.S. v. Donato, 269 F. Supp. 921 (E.D. Pa.), aff'd o.b. 379 F.2d. 288 (3rd Cir. 1967); U.S. v. Kahan, 350 F.Supp. 973 (S.D.N.Y 1972).

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Public Employment Relations Commission hereby determines that the issue of the daily police uniform is a permissive subject of negotiations with the limitation expressed above and the issue of locker maintenance is a mandatory subject for negotiations.

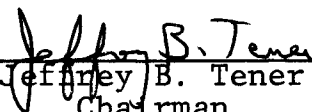
ORDER

The P.B.A. is ordered to refrain from insisting to the point of impasse that the daily police uniform be negotiated. Such proposal may not be submitted to compulsory interest arbitration without the agreement of the City of Trenton.

The City is ordered to negotiate upon demand of the P.B.A. with respect to the issue of locker use and maintenance. Proposals relating to this issue may be submitted to compulsory interest arbitration in accordance with the procedures set forth in N.J.S.A. 34:13A-14 et seq. and N.J.A.C. 19:16-1.1 et seq. Additionally, the City is ordered to negotiate upon demand of the P.B.A. with respect to the effect, if any, on employees' terms and conditions of employment regarding the daily police uniform; and with respect to those proposals which involve the employees' terms and conditions of employment and do not prohibit the employer from accomplishing its objective in requiring a

particular uniform item to be worn.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

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

DATED: Trenton, New Jersey  
March 8, 1979  
ISSUED: March 9, 1979