

AMERICAN ARBITRATION ASSOCIATION

IN THE MATTER OF
GRIEVANCE ARBITRATION
BETWEEN

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 401

-AND-

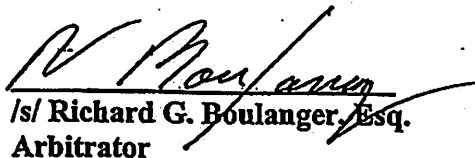
CITY OF CHICOPEE

AAA CASE #01-15-0003-0730

AWARD

The grievance is substantively arbitrable. The City violated the collective bargaining agreement, specifically Article 23 Section H by the Police Chief's September 8, 2014 order that "soft uniform" shirts would be mandatory by January 1, 2015, later extended to September 1, 2016. Therefore, per Article 23 Section H, soft uniform shirts "shall not be required of any police officer." The City shall cease and desist from implementing the "soft uniform." Any Police Officer who purchased the embroidery necessary to convert a uniform shirt to a soft uniform shirt, or purchased a new embroidered "soft uniform" shirt before the soft uniform mandate was extended to September 1, 2016 shall be reimbursed by the City.

Dated: 12/7/15


/s/ Richard G. Boulanger, Esq.
Arbitrator

AMERICAN ARBITRATION ASSOCIATION

**IN THE MATTER OF
GRIEVANCE ARBITRATION
BETWEEN**

**INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 401**

-AND-

CITY OF CHICOPEE

AAA CASE #01-15-0003-0730

The grievance was heard by Arbitrator Richard G. Boulanger, Esq. on September 8, 2015 at Chicopee City Hall, Chicopee, Massachusetts.

Mr. Michael Clancy, Esq. represented the International Brotherhood of Police Officers, Local 401 (Union). The Union called Mr. John O'Shea and Mr. Michael Thomas as witnesses.

The City of Chicopee (City) was represented by Mr. Marshall Moriarty, Esq., City Solicitor. City Police Chief William F. Ebb was called as a witness by the City.

The parties were given full opportunity to present evidence and make arguments.

Witnesses were sworn

The issue is as follows:

Is the grievance substantively arbitrable? If so, did the City violate the Collective Bargaining Agreement, specifically Article 23, Section H, by the Police Chief's September 8, 2014 order that "soft uniform" shirts would be mandatory by January 1, 2015 later extended to September 1, 2016? If so, what shall be the remedy?

I. COLLECTIVE BARGAINING AGREEMENT

A. ARTICLE 18: GRIEVANCE PROCEDURE

B. ARTICLE 23: UNIFORMAND EQUIPMENT

II. SUMMARY OF THE CASE

In September, 2014, Chief William Ebb issued an order requiring a uniform change to a "soft shirt," ultimately effective September 1, 2016.

The Union contends that the Chief's order violated the contract because it was a new uniform requirement, and it resulted in an expenditure in excess of fifty dollars (\$50.00).

The City contends that the uniform shirt modification was not a new requirement, and it has a cost of less than fifty dollars (\$50.00).

The arbitrator ruled that the conversion of existing uniform shirts to the new "soft shirt," or the purchase of the "soft shirt" was a new uniform requirement resulting in a cost greater than fifty dollars (\$50.00).

III. FACTUAL BACKGROUND

On September 8, 2014, Chief William Ebb issued an order modifying the Patrolman's uniform. (See Joint Exhibit #3.) His order changed the uniform from a traditional shirt to a so-called "soft shirt." (See Joint Exhibit #3.) A police badge, a name tag, and Chicopee Police Department (CPD) insignia was affixed to the traditional uniform shirt. The Chief's requirement of a "soft shirt" replaced the metal attachments with an embroidered badge, name tag, and the CPD insignia. The Chief's order was optional until January 1, 2015. When the Union grieved the Chief's order, as part of the City's grievance response denying the grievance, the "soft shirt" requirement was extended to September 1, 2016.

The collective bargaining agreement includes an annual seven hundred-fifty dollar (\$750.00) clothing allowance, payable on August 1st. (See Joint Exhibits #1 and #1a.) The Chief testified that the cost of the embroidery was thirty-two dollars (\$32.00). Patrolman Michael Thomas, Union President, testified that the cost of such embroidery was between thirty-two dollars (\$32.00) and thirty-eight dollars (\$38.00) per shirt. The Chief and Officer Thomas testified that their uniform wardrobes consist of four (4) short sleeve shirts and four (4) long sleeve shirts to be worn in warm and cold weather respectively, and corresponding to a 4/2 work schedule.

The grievance was not resolved during the course of the parties' grievance procedure, and it was appealed to arbitration. (See Joint Exhibits #4-#10.)

IV. SUMMARIES OF THE PARTIES' ARGUMENTS

A. UNION:

In response to the City's contention that the grievance is not justiciable, the Union argues that it is substantively ripe for arbitration. When the Union filed an unfair labor practice charge in reaction to the City's uniform change, it was the City that requested the Department of Labor Relations to defer the matter to arbitration. The City cannot now escape the final and binding nature of an arbitration award in this proceeding.

The Chief violated a verbal agreement that he had reached with then Union President John O'Shea when he changed the uniform while President O'Shea was away on vacation. Furthermore, the uniform alteration violated the terms of Article 23§H in that it cost individual Union members in excess of fifty dollars (\$50.00), as the typical complement of uniform shirts is four (4) summer shirts and four (4) winter shirts, for a total cost of three hundred four dollars (\$304.00). The additional three hundred four dollars (\$304.00) expenditure is in addition to the seven hundred-fifty dollar (\$750.00) contractual uniform allowance. The three hundred four dollars (\$304.00) expenditure was not negotiated. Consequently, the City's implementation of the uniform change is a violation of Article 23§H. The grievance should be upheld for the reasons specified above. The City's shirt change requirement should be rescinded retroactive to September 8, 2014, and members be reimbursed for the cost of the "soft shirt" purchase. The Union cites authority in support of its arguments.

B. CITY:

The City contends that the matter is not justiciable because the uniform change will not be effective until September 1, 2016. The City has not required a Patrolman to wear the uniform, nor has a Patrolman been disciplined for failing to convert to the "soft uniform." No Patrolman

has been obligated to incur an expense for purchasing the "soft uniform." Consequently, it is not ripe for arbitral decision.

Even if the arbitrator should determine that the matter is ripe for adjudication, the City did not run afoul of the terms of Article 23§H when it notified Patrolmen of the "soft shirt" uniform change. Per Article 23 terms, it is the Chief who has the authority to identify uniform components. He did so in the instant case by seeking the conversion to the "soft shirt." The City's uniform change is not a new requirement per Article 23§H. It is covered by the current uniform regulations. The "soft shirt" does not represent a change in the current uniform, but rather only the manner of display of certain information. Moreover, the cost of the embroidered shirt is thirty-eight dollars (\$38.00), less than the fifty dollar (fifty dollars (\$50.00) contractual threshold. The City's change to the "soft shirt" is easily covered by the seven hundred-fifty dollar (\$750.00) clothing allowance. "Soft shirts" have been worn by Patrolmen in the past without objection.

The grievance should be dismissed as non-justiciable, and/or denied on its merits based on the arguments specified above. The City cites authority in support of its arguments.

V. FINDINGS AND OPINION

A. ISSUE

The parties did not agree on an issue submission. The Union proposed the following issue:

Whether the Employer, City of Chicopee, violated the Collective Bargaining Agreement when it, through Police Chief William Jebb, decided to change to the "soft uniform" shirt at the expense of the unit members.

If so, what shall be the remedy?

The City advanced the following issue:

1. Is the matter before the arbitrator ripe for an arbitral decision?
2. If so, did the City of Chicopee violate Article 23, Section H of the parties Collective Bargaining Agreement as modified that was in effect on September 8, 2014 by the notice of Chief William Jebb issued on that date and subsequently modified?

If so, what should the remedy be?

Based on the evidence and the arguments of the parties, including those in support of their issue proposals, the following statement of the dispute captures their disagreement:

Is the grievance substantively arbitrable? If so, did the City violate the Collective Bargaining Agreement, specifically Article 23, Section H, by the Police Chief's September 8, 2014 order that "soft uniform" shirts would be mandatory by January 1, 2015, later extended to September 1, 2016? If so, what shall be the remedy?

B. ARBITRABILITY

The City argues that the grievance is not substantively arbitrable because the Chief's "soft uniform" change is not mandatory until September 1, 2016, and that events prior to September 1, 2016 may lead to the nullification or alteration of the "soft uniform" requirement. On September 8, 2014, the Chief issued the following email "soft uniform" order:

I have decided to implement the embroidered "Soft Uniform". The staff at Sentry Uniform and I developed a "pattern/color" for the Badge, Rank Insignia, CPD Insignia, and Name Tag. At this time I am authorizing the wear of this uniform, and plan on having a new uniform policy in place soon. My goal is to make this uniform mandatory on January 1, 2015, however anyone retiring during the 2015 calendar year will not be required to comply with this uniform change. If you have any questions or concerns, please feel free to contact me. (See Joint Exhibit #3.)

It is clear that the "soft uniform" was mandatory as of January 1, 2015, and later extended to September 1, 2016. (See City Exhibit #1.) That the "soft uniform" mandate was delayed to September 1, 2016 does not render the grievance non-arbitrable. Similarly, that no Patrolman has been required to incur a "soft shirt" expense, or been disciplined for failure to wear the "soft uniform" does not alter the arbitrability of the grievance.

Per Article 18 (Grievance Procedure), a grievance is defined as "a dispute arising from a complaint by an employee or employees or the Union covered by this Agreement, relating to the meaning, interpretation or application of any of the express terms and provisions of this Agreement." (See Joint Exhibit #1.) The Union filed the following grievance on September 10, 2014:

Nature of Complaint:

Change of uniform shirt

Violation of Article 23 Sec H – Cost may exceed fifty dollars (\$50.00).00. Chief Jebb has made shirt available to only one vendor, Sentry Uniform, causing a monopoly. Price thirty-eight dollars (\$38.00) per shirt. Violation of Art #3 Sec A and Sec E1 – Seniority/Shirt Assignments.

Requested Remedy:

(1) Make optional the new change

- (2) Five specs to "Guardian Uniform" or alternate it may reduce cost of shirt
- (3) Diminishes Officer's seniority with soft badge. Number badge, makes a difference on the street. (See Joint Exhibit #4.)

The Union's grievance satisfies the grievance definition as it identifies the parties' dispute concerning the application of Article 23 to the Chief's September 8, 2014 uniform change notice. There is no allegation by either party that the grievance procedure was not complied with. Specifically, per Article 18, Step 4, the Union notified the City's Mayor that it was submitting the grievance to arbitration by forwarding its arbitration demand to him. (See Joint Exhibits #9 and #10.)

The Chief's September 8, 2014 email notice was not a proposal inviting negotiations or even a discussion concerning a uniform alteration. Rather, it was an order that the "soft uniform" would be implemented. The mandatory nature of the Chief's order that "soft uniforms" would be mandatory by January 1, 2015, later extended to September 1, 2016 was not subject to any conditions precedent, the non-fulfillment of which would impact the September 1, 2016 implementation of the Chief's order. By its March 10, 2015 communiqué to the Union, the City indicated that by September 1, 2016 the "soft uniform" standard shall be mandatory." (See City Exhibit #1.) Consequently, for all of the reasons delineated above, the grievance was not prematurely filed, and it is substantively arbitrable.

C. MERITS

1. CONTRACTUAL STANDARD

Article 23 (Uniforms and Equipment) provisions memorialize the parties' agreement as to uniform requirements and allowances:

- A. The Chief of Police, or his/her designee, shall supply to members of the bargaining unit, exclusive of their uniform referred to below the following items:

1	-	Pair of Handcuffs
1	-	Revolver
1	-	Holster
1	-	Flashlight
1	-	Traffic Belt
2	-	Badges

- B. Each member of the bargaining unit will be given a uniform allowance in the amount of seven hundred fifty dollars (seven hundred-fifty dollar (\$750.00) per year, payable on or about August 1st of each year for the purchase, replacement and cleaning of uniforms (on active duty). Uniform allowance will be paid in a separate check from regular pay.
- C. Each newly appointed member of the bargaining unit will be given a uniform allowance in the amount specified in Paragraph B.
- D. It is acknowledged that the Department has the authority to prescribe articles of uniform necessary for each police officer. It is agreed that as a uniformed service, the unit should present a consistent appearance of neatness and similarity. Any police officer not observing this principle is subject to appropriate discipline.
- E. If members of the bargaining unit suffer damage to personal property in the performance of their duties, the Department shall reimburse such members for the reasonable cost of replacement of such items used in the ordinary course of duty and subject to the officers' full cooperation with the court process.
- F. Members of the bargaining unit shall be given one Hundred fifty dollars (\$150.00) prior to attending their initial police academy training to purchase uniforms and equipment required to complete such training. The amount payable pursuant to this paragraph shall be in addition to any other entitlement pursuant to this Article.
- G. It is agreed that as long as Chapter 180 of the Acts of 1998 (an act relative to Gun Control in the Commonwealth of Massachusetts) remains as written without amendments as per licensing fees collected, the City agrees to waive the City's portion of said fee for pistol permit applications for police officers who reside within the City. It is further agreed that any changes in the law regarding fees collected for pistol permits shall deem

this section null and void. This waiver shall only apply to pistol permits (not F.I.D. cards).

- H. It is agreed that any new uniform requirement that is not covered in the current uniform regulations shall not be required of any police officer if it is in excess of fifty dollars (\$50.00). (See Joint Exhibit #1, #1(a).)

Per Section D, the "Department" has the authority to prescribe the uniform. (See also City Exhibit #5.) However, per Section H, a "new uniform requirement that is not covered in the current uniform regulations" is not mandatory if its cost exceeds fifty dollars (fifty dollars (\$50.00)). Therefore, per Article 23 §H terms, the threshold inquiry is whether the "soft uniform" is prescribed by current uniform regulations. The current uniform regulations identify the Patrolman's uniform shirt in the following manner:

- L. Shirt - (patrolmen, sergeants, lieutenants, captains) navy blue with military creases, short sleeve Class "C" Elbeco Model# 3314, long sleeve class "B" Elbeco Model #314 shirt. (Deputy Chief and Chief) white Dacron/rayon with military creases. Short sleeve Class (C" Elbeco Model #3310-3 long sleeve Class "B" Elbeco Model#310-3. (All Ranks) to be worn with Dress Uniform Class "A" a long sleeve white Dacron/rayon with military creases Elbeco Model #310-3. While wearing a short sleeve shirt Class "C", if an officer wears an under shirt, it shall be white. (See City Exhibit #4.)

While current uniform regulations include long and short sleeve shirts to which metal insignia are attached, the "soft uniform" represents a change in the uniform shirt requirements because the insignia are embroidered on the shirts. Even though identifying material (name, badge, Department) is currently required on the uniform shirt, the mandated embroidered version represents a uniform change. The Chief identified the subject of his September 8, 2014 email as: "Uniform Change." (See Joint Exhibit #3.) In the body of the email, the Chief notes that he is implementing and authorizing the "soft uniform" and notified Police Officers that he intends "...on having a new uniform policy in place soon." (See Joint Exhibit #3.) He also exempts from the "uniform change" any Police Officer retiring in 2015. (See Joint Exhibit #3.) Consequently,

the evidence supports a finding that the "soft uniform" is a "new uniform requirement that is not covered in the current uniform regulations..." (See Joint Exhibit #1.) The arbitral inquiry now transitions to the cost of the "soft uniform" change.

The evidence supports a finding that the "new uniform requirement"... is in excess of fifty dollars (fifty dollars (\$50.00))." The evidence revealed that the cost of embroidering one (1) shirt, meeting the "soft uniform" requirement, is thirty-eight dollars (\$38.00).00. It is not as if a uniform shirt is an article of clothing that can be worn daily such as a belt. It is clear from the evidence and Departmental uniform regulations that more than one (1) seasonal shirt is necessary.

In pertinent part, the uniform regulations provide the following dictates as to uniform appearance:

400:01 Wearing the uniform - Uniforms shall be neat, clean and well pressed at all times. Care should be taken not to wear threadbare or faded items. The uniform cap shall be worn out of doors unless otherwise directed by competent authority. While in uniform officers shall display their Department issues badge in the outermost garment over their left breast. The Chief shall periodically issue special orders pertaining to daily or seasonal wearing of the uniforms. (See City Exhibit #4.)

400:09 Uniform condition - When the uniform is worn care shall be taken that it fits well, is neat, clean, properly pressed and that all leather and metal goods are polished. (See City Exhibit #4.)

Therefore, in order that a uniform be neat and clean in appearance, more than one (1) long sleeve shirt and more than one (1) short sleeve shirt is necessary. Both the Chief and Officer Thomas testified that they have four (4) short sleeve shirts and four (4) long sleeve shirts, pushing the "soft uniform" embroidery cost to three hundred four dollars (\$304.00), well beyond the fifty dollar (fifty dollars (\$50.00).00) contractual limit. Even if fewer conversions to "soft uniforms" result, the contractual fifty dollar (fifty dollars (\$50.00) maximum would be exceeded.

In its grievance appeal, the Union identified minimum sets of two (2) long and short sleeve shirts. (See Union Exhibit #2.) The cost of such a uniform inventory is one-hundred-fifty-two dollars (\$152.00), three (3) times the fifty dollar (\$50.00) limit. The cost of purchasing new "soft uniform" shirts, at a cost of eighty-eight dollars (\$88.00) per shirt, is considerably more than the conversion to soft shirts. The cost of converting or purchasing only one (1) short and long sleeve "soft shirt" would exceed fifty dollars (\$50.00). Therefore, the initial cost of converting current uniform shirts to the "soft uniform" requirement exceeds fifty dollars (\$50.00). That various specialized Departmental units have worn embroidered shirts in the past without Union protest does not permit the City's conduct in the instant case which impacts all Patrolmen. (See City Exhibits #2 and #3.) The Chief admitted that the "soft uniform," mandated in the instant case, had not been worn on regular duty in the past.

The grievance is substantively arbitrable. The City violated the collective bargaining agreement, specifically Article 23 Section H by the Police Chief's September 8, 2014 order that "soft uniform" shirts would be mandatory by January 1, 2015, later extended to September 1, 2016. Therefore, per Article 23 Section H, soft uniform shirts "shall not be required of any police officer." The City shall cease and desist from implementing the "soft uniform." Any Police Officer who purchased the embroidery necessary to convert a uniform shirt to a soft uniform shirt, or purchased a new embroidered "soft uniform" shirt before the soft uniform mandate was extended to September 1, 2016 shall be reimbursed by the City.