

I.R. NO. 85-11

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Respondent,

-and-

Docket No. CE-85-17

CITY OF JERSEY CITY,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Jersey City Police Superior Officers Association from seeking the enforcement in Superior Court of an interest arbitration decision for the Chief of Police. Although there is a substantial likelihood that the Chief will ultimately be removed from the Superior Officer's Unit, the City has failed to show that it will suffer irreparable harm if this matter is adjudicated before a Judge of the New Jersey Superior Court.

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Appearances:

For the Respondent  
Loccke & Correia  
(Manuel A. Correia of counsel)

For the Charging Party  
Martin R. Pachman, Esq.

DECISION ON MOTION  
FOR INTERIM RELIEF

On February 26, 1985, the City of Jersey City filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Jersey City Police Superior Officers Association ("PSOA") violated subsections (2)(3) and (5) <sup>1/</sup> of N.J.S.A. 34:13A-1 et seq. ("Act"). It was specifically alleged that the PSOA has insisted upon its right to represent the Chief of Police of the City of Jersey City despite the enactment of N.J.S.A. 40A:14-118, which by its terms established that all municipal chiefs of police are managerial executives. It was further alleged that PSOA has submitted

1/ These subsections prohibits public employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances. (3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit. (5) Violating any of the rules and regulations established by the Commission."

demands on behalf of the Chief of Police to binding arbitration and further an interest arbitration award including mandated terms and conditions of the Chief of Police has been rendered on December 20, 1984. Further, in January of 1985 PSOA sought confirmation of said award before the Superior Court of the State of New Jersey. It is further alleged that, by its continued insistence on the inclusion of the title of the Chief of Police within the negotiations unit, the union has sought to interfere with the ability of the City to designate the Chief of Police as its representative in the processing of the grievances and the handling of disciplinary matters within the department and force, which are both mandated obligations of the chief. By all of these acts it is alleged the PSOA has refused to bargain in good faith, and interfered with, coerced and restrained the City's ability to select its own representative and violates the rules of the Commission as to interest arbitration.

Accompanying the Charge, the City also filed a request for temporary restraints which seeks to enjoin the Respondent, PSOA from insisting that the position of Chief of Police be within its bargaining unit, and restrain and enjoin from enforcing or attempting to enforce any aspect of the interest arbitration award which relates to the Chief of Police and restrain or enjoin the PSOA from negotiating, arbitrating or seeking to enforce any existing award relating to any terms or condition of employment of the Office of the Chief of Police.

Good cause having been shown, I signed a show cause order to which was made returnable on the 28th of February.

At the show cause hearing, the City also argued that there was an outstanding Clarification of Unit (CU) Petition currently before

the Commission which seeks, among other things, to remove the Chief of Police from the negotiations unit. This Clarification of Unit Petition was originally filed August 5, 1983. The city argued that restraints should be granted in this matter on the basis of these existing and long standing CU petitions.

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The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are well settled. The test is twofold: the Charging Party must establish that it has a substantial likelihood of success in the final Commission decision on the legal and factual allegations, and, it must also establish that irreparable harm will occur if the requested relief is not granted.

I am satisfied that the Charging Party has a substantial likelihood of success in prevailing in the outstanding clarification of unit proceeding, Docket No. CU-84-8). See In re Egg Harbor Twp., P.E.R.C. 85-46.

However, it is not so clear to me that the PSOA has committed an unfair practice by its representation of the Chief of Police.

It is undisputed that the Chief of Police has been included in the PSOA unit and unless and until the Chief is removed from the unit, the PSOA has a statutory obligation to represent that title. <sup>2/</sup>

<sup>2/</sup> § 5.3 of the Act provides in pertinent part:

"A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated

The City filed a CU petition in this matter on August 5, 1983. See Clearview Regional H.S. Bd. of Ed., D.R. No. 78-2, 3 NJPER 248 (1977). A review of the history of processing of the CU case makes clear that the City's claim of irreparable harm is stale and lacks any compelling need.

The CU petition was filed on August 5, 1983. It has not been litigated, in large measure because of the City of Jersey City's failure to act. Specifically, after an initial investigatory conference was conducted by a Commission staff agent the parties voluntarily entered into settlement negotiations and no hearing was scheduled. Some six months later, the P.E.R.C. staff agent wrote to the parties asking if the matter had been resolved. No response was given. Subsequently, two additional letters were sent out to both the City and the PSOA asking if the parties wished to abandon this litigation. When no response was received, the file was closed. Subsequently, on April 4, 1984 the City expressed an interest in reactivating this proceeding and the case was re-opened. <sup>3/</sup>

The City has always been free, at its peril, to unilaterally remove the Chief of Police from the PSOA unit. See Passaic County Regional High School District No. 1, Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER34 (1976).

Further, the City could at any time file a motion for summary

<sup>2/</sup> (continued)

with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances and terms and conditions of employment."

<sup>3/</sup> A hearing is now scheduled for March 29, 1985.

judgment with the Director of Representation on the outstanding CU Petition. That motion could be subject to expedited handling.

It is difficult to see how the city believes it would now be irreparably harmed if it was not granted an extraordinary remedy. This entire controversy is appropriately before a Superior Court Judge in the enforcement proceedings on the interest arbitration award.

In Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, the Supreme Court dealt with the question of appropriate jurisdiction of the courts, arbitrators and the Commission. There, the Court approved the procedure wherein, after an arbitrator renders an award, "if the losing party is unwilling to abide by the award, the prevailing party may seek to have the award confirmed by the Superior Court." In such a proceeding the Court may review the award to see that it complies with public policy and statutory criteria. See, C.W.A. v. Monmouth County Bd. of Social Service, 96 N.J. 419 (1984) which held that an arbitration award which does not follow existing pertinent statutory criteria is reversible. See also, Old Bridge Bd. of Ed. v. Old Bridge Ed. Assn., 193 N.J. Super 182 (App. Div. 1984) appeal pending in Supreme Court. Although the instant case concerns an interest arbitration award as opposed to a grievance arbitration award, the scope of the enforcement proceedings are the same. The entire controversy is properly before a Superior Court Judge and the City may raise its defenses in the enforcement proceedings. <sup>4/</sup>

I cannot see how the City will be irreparably harmed if the

<sup>4/</sup> See § 16 f (5) of the Act and Town of Irvington v. Irvington PBA, 80 N.J. 271 (1979).

PSOA is not enjoined from proceeding before the Superior Court.

The City of Jersey City's application for restraints in this matter is hereby denied.

  
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Edmund G. Gerber  
Commission Designee

DATED: March 4, 1985  
Trenton, New Jersey