

H.E. NO. 2001-1

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-H-99-149

FOP NEWARK LODGE NO. 12,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the City of Newark violated 5.4a(1) and (5) of the Act when it refused to provide information requested by the FOP, employee representative of police officers. The information concerned pending compensation grievances and health and safety matters. The City did not file an Answer.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent
Lenora E. Marshall, Asst. Corp. Counsel

For the Charging Party
Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

**HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION**

On November 9, 1998, Fraternal Order of Police, Newark Lodge No. 12, filed an unfair practice charge against the City of Newark. The charge alleges that on or about June 23, 1998, the City refused to provide information needed to administer the collective negotiations agreement signed by the parties. The requested materials include an annual report, an adopted municipal budget, copies of financial statements filed with the State, approved and disapproved requests for leaves of absence and other documents. The City's refusals allegedly violate 5.4a(1) and

(5)^{1/} of the New Jersey Employer-Employee Relations Act,
N.J.S.A. 34:13A-1 et seq.

On January 7, 2000, a Complaint and Notice of Hearing issued.

On May 25, 2000, I conducted a hearing. The FOP moved to have the allegations in the Complaint admitted as true, pursuant to N.J.A.C. 19:14-3.1 (Time for filing Answer).^{2/}

The City conceded that no Answer was filed.

I granted the motion. All verbatim facts set forth in the Complaint were deemed true:

Since on or about June 23, 1998, and at all times thereafter, the above-named employer, by its officers, agents and representatives, has failed and refused to bargaining collectively and in good faith with the Fraternal Order of Police, Newark Lodge No. 12, a labor organization,

^{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 representative."

^{2/} This code provision states: "...All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

designated or selected by a majority of the employees of said employer in an appropriate unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. More specifically, the above-named employer has failed and refused to provide information that is necessary and relevant for the administration of the collective negotiations agreement and negotiations as requested by the Fraternal Order of Police, Newark Lodge No. 12. The information requested includes the following:

- (1) Copy of annual report or director when presented to Mayor and City Council;
- (2) Adopted budget when prepared and distributed to City officials;
- (3) Annual Financial Statement, whenever submitted to State of New Jersey;
- (4) Copies of retirement forms when approved by Director;
- (5) Weekly written reports of hospitalized employees submitted to the Director;
- (6) All approved or disapproved requests for Leave of Absence submitted to the Director;
- (7) Number of police officers assaulted on duty; and
- (8) Calculation of monies due bargaining unit employees in settlement of tour change grievances.

The FOP then withdrew from its Complaint all allegations concerning requested materials in numbers 1, 2, 3, 4 and 6. The FOP next introduced two exhibits, CP-1 and CP-2, which more specifically defined the information sought in number 8. The City did not object to the exhibits. They were marked into evidence.

ANALYSIS

In Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981), the Commission held that a public employer must supply information "...if we find a probability that the information is potentially relevant and that it will be of use to the union in

carrying out its statutory duties." Id. at 236. Relevance in this context is determined under a discovery-type standard, not a trial-type standard and therefore "a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process." Proctor & Gamble Manufacturing Co. v. NLRB, 603 F.2d 1310, 1315, 102 LRRM 2128 (8th Cir. 1979). See also NLRB v. Acme Industrial Co., 385 U.S. 432, 437, 64 LRRM 2069 (1967). The Commission has recognized that a majority representative does not have an absolute right to obtain all requested information; the duty turns upon the circumstances of a particular case. Thus, an employer is not required to disclose information clearly irrelevant or confidential. State of New Jersey (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987).

N.J.S.A. 34:13A-5.3 requires the parties to "meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms of employment." A refusal to supply relevant information is an unfair practice and violates N.J.S.A. 34:13A-5.4a(5). State of New Jersey (OER); State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 87-149, 13 NJPER 504, 505 (¶18187 1987).

The requested information in this case included the weekly written reports of hospitalized employees submitted to the Director; the number of police officers assaulted on duty; and calculation of monies due unit employees in settlement of tour grievances.

The disposition of grievances is a component of a properly functioning arbitration process. In Acme Industrial, the United States Supreme Court wrote:

Arbitration can function properly only if the grievance procedures leading to it can sift out unmeritorious claims. For if all claims originally initiated as grievances had to be processed through to arbitration, the system would be woefully overburdened. [64 LRRM at 2071-2072]

Considering the listed alleged instances of monies owed as set forth in the exhibits placed on the record, I find that the City's calculations on "tour changes" concerning named unit employees is relevant to the PBA's ability and duty to sort out meritorious claims for compensation. I find that the calculations will assist the PBA in determining whether to proceed to arbitration.

Information sought in the remaining requests is also potentially relevant to the FOP's discharge of statutory duties. The numbers of police officers assaulted on duty and reports on hospitalized employees submitted to the Police Director pertain to health and safety concerns, including equipment provisions, and to matters of insurance and compensation. On this record, I do not find that the FOP is entitled to receive confidential medical information.

CONCLUSION OF LAW

The City of Newark has violated N.J.S.A. 34:13A-5.4a(1) and (5) of the Act by refusing to supply information requested by the

Fraternal Order of Police, Newark Lodge No. 12, to process grievances and to keep it apprised of certain health and safety matters.

RECOMMENDED ORDER

The City of Newark is ordered to:

A. Cease and desist from:

1. Refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to supply information requested by the FOP to process grievances and keep it apprised of certain health and safety matters.

2. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by refusing to supply information requested by the FOP to process grievances and keep it apprised of certain health and safety matters.

B. Take the following affirmative action:

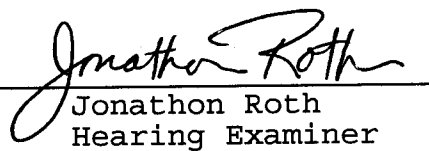
1. Supply the FOP with the information requested on "tour change" grievances; on numbers of police officers assaulted on duty; and supply reports on hospitalized employees submitted to the Police Director (minus any confidential medical information).

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the

Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.


Jonathon Roth
Hearing Examiner

DATED: July 19, 2000
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to supply information requested by the FOP to process grievances and keep it apprised of certain health and safety matters.

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to supply information requested by the FOP to process grievances and keep it apprised of certain health and safety matters.

WE WILL supply the FOP with the information requested on "tour change" grievances; on numbers of police officers assaulted on duty; and supply reports on hospitalized employees submitted to the Police Director (minus any confidential medical information).

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(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"