

H.E. NO. 2013-15

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

In the Matter of

CITY OF GARFIELD,

Respondent,

-and-

Docket No. CO-2011-397

GARFIELD PBA LOCAL NO. 46,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the City of Garfield, particularly Police Chief Kevin Amos, violated the New Jersey Employer-Employee Relations Act by pressuring then PBA Vice-President Pedro Gongora to leave a labor-management meeting and then threatening Gongora if he did not leave the meeting.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that 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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In the Matter of

CITY OF GARFIELD,

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Docket No. CO-2011-397

GARFIELD PBA LOCAL NO. 46,

Charging Party.

Appearances:

For the Respondent
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Arthur R. Thibault, Jr., of counsel)

For the Charging Party
Loccke, Correia, Limsky & Bukosky, attorneys
Michael A. Bukosky, of counsel; Marcia J. Tapia, on the
brief)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On April 7, 2011, Garfield PBA Local No. 46 (PBA) filed an unfair practice charge with the New Jersey Public Employment Relations Commission (Commission) alleging that the City of Garfield (City) violated subsections 5.4a(1), (2), (3), (4), (5), (6) and (7)^{1/} of the New Jersey Employer-Employee Relations Act,

^{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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard
(continued...)

N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleged that at a meeting on March 24, 2011 Kevin Amos, the Chief of Police, made remarks to then PBA Vice-President, Pedro Gongora, threatening Gongora and retaliating against him by removing him from a meeting for raising safety issues protected by the Act. In its charge the PBA sought an order: declaring the City engaged in anti-union activities; prohibiting the City from engaging in any further anti-union activities; directing the City to comply with minimum response standards created for safety purposes; directing the City to withdraw a policy and procedure that changed the emergency response protocol for officers in trouble; requiring the City to post a notice of its unfair practices; and, granting all expenses incurred by the PBA.

A Complaint and Notice of Hearing was issued regarding the 5.4a(1) allegation on April 9, 2012. The 5.4a(2), (3), (4), (5),

1/ (...continued)
to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

(6) and (7) allegations were dismissed (Exhibit C-1).^{2/} The City filed an Answer to the Complaint on April 23, 2012 (Exhibit C-2). It admitted that Officer Gongora was ejected from the meeting room but it denied violating the Act.

A hearing was held in this matter on August 7, 2012.^{3/} Both parties filed post-hearing briefs on November 14, 2012.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The City is a public employer and the PBA is an employee representative within the meaning of the Act (T9).

2. The City and PBA are parties to a collective negotiations agreement effective from January 1, 2008 through December 31, 2011 (Exhibit J-1).

3. Prior to March 14, 2011, the policy the City followed when an officer called for assistance (a 5-5 call) was for all available units to respond (T36, T73-T74). The theory behind sending all units was because an officer's life might be in jeopardy (T74).

^{2/} Exhibits entered into evidence are marked as follows: documents presented by the Commission are designated by a "C"; documents introduced by the Charging Party are marked by "CP"; "R" designates exhibits proffered by the Respondent and documents jointly submitted by the parties are labeled "J."

^{3/} The transcript will be referred to as "T".

On March 14, 2011, Officer Frank Sanchez was responding to a domestic violence call. Sanchez became embroiled in a struggle with a suspect (Exhibit R-1). During the altercation Sanchez either intentionally activated his mic or it became activated due to the struggle (T73). Although Sanchez did not request backup (T130), the Police Department's dispatcher heard the scuffle over the radio and rather than attempt to reach Sanchez, the dispatcher put out a call for all available units to respond to Sanchez's location (T35-T36, T72-7T73, T129-T130). Seven officers responded (T131).

After the Sanchez call had been resolved, the Chief evaluated the incident. He concluded that the incident did not represent an appropriate way to dispatch officers to the scene. He believed there should have been a more directed response. The Chief determined that the dispatcher should first have asked the officer(s) on the scene if assistance was needed. The second step according to the Chief should have been to see which officers (units) were closest to the scene. He further concluded that the dispatcher could have dispatched fewer officers by utilizing computer and GPS technology (T132).

As a result of the "all available units call" on March 14, the Chief spoke to the dispatcher(s) later that day. He told him/them that the appropriate way to dispatch was to check the

computer information on the location of units and to do a directed response to the scene (T133).

4. The police officers became very upset once they learned of the Chief's new policy on responding to officer needs assistance calls. They contacted then PBA President Everett Garnto and then Vice President Gongora (Gongora became President in December 2011) (T32). The officers were generally concerned about their safety and wanted the prior response policy reinstated (T38-T39, T77). After discussing the matter, Garnto and Gongora agreed to call the Chief and request a meeting to discuss the policy (T78, T134). It was not uncommon for the PBA leaders to hold meetings with the Chief (T38).

5. The meeting was held on March 24, 2011 in the Chief's office. Garnto and Gongora attended for the PBA, Chief Amos and Captain Kovach attended for the City. Amos sat behind his desk, Kovach sat across from the Chief, Garnto sat to the Chief's right and Gongora chose to stand near the door (T42, T59, T63, T80, T134, T165-T166). At all times during the meeting, the Chief's office door was closed (T43, T60, T154).

Garnto began the conversation. He expressed his disagreement with the Chief's policy change regarding how to respond to officer needs assistance calls. He emphasized that an officer's safety was the primary reason for wanting to reinstate the prior policy of having all available officers respond to such

calls. The Chief replied, advising of his reasons for the policy change (T114, T135, T166-T167). Garnto noted that he and the Chief have a history of talking over each other and Garnto admitted that occurred in this meeting (T81-T82). Both Garnto and the Chief testified that they were talking loudly and excitedly at each other (T113, T135-T136). But no grievance was filed regarding the Chief's change in the dispatch policy (T135).

After 5 to 10 minutes of Garnto and the Chief exchanging dialogue, there was a lull in the conversation (T45, T81-T82). Gongora then said to the Chief in a calm voice (T45; T64, T83, T136-T137):

Chief, with all due respect, I don't think it's the right thing to do. We don't know what we have. (T45, T194).

Although the parties agree and the Chief acknowledges that he made certain remarks to Gongora and asked him to leave the meeting (T138-T139), they disagree on the scenario and the dialogue that occurred between the time Gongora made the above remark and the time he exited the Chief's office. Gongora and Garnto testified that the above-quoted comment from Gongora was the only remark Gongora made until the Chief asked him to leave his office (T45, T116, T188, T193, T194-T195).

According to Gongora and Garnto, immediately after Gongora made the quoted remark, the Chief became upset and told Gongora to get out of his office (T46, T83). Gongora testified that he

answered the Chief, "I'm here representing the local," to which the Chief responded, "I have the PBA president sitting here" and the Chief became more upset, angry and flushed in the face (T45). Gongora testified that at that point the Chief stood up from behind his desk, walked toward him in an aggressive manner and stood face-to-face with him and said, "If you want to continue working here [in Garfield], if you like working here, leave my office" (T46, T48, T65, T83). Gongora testified he looked at Garnto who said "don't leave," but he responded, ". . . let me just leave and we'll deal with this another day" (T46-T47). Gongora left the room because he did not want to be fired (T47).

Chief Amos and Captain Kovach had a different recollection of the event. Amos testified that after Gongora made the "with all due respect" remark, Gongora became excited and spoke continuously for a few minutes in an increasingly loud tone. Amos said that after a few minutes he asked Gongora if he could give his views on the matter but that Gongora just kept talking. Amos testified that he asked Gongora again if he could give his views but Gongora again continued speaking. Amos testified that at that point he asked Gongora to leave his office. When Gongora did not leave, Amos asked him again to leave but Gongora did not depart. Amos admits he then got up from his desk, opened his office door, and told Gongora that if he enjoyed working here [presumably in Garfield] or wanted to continue working here he'd

leave (T137-T139). Amos said that at that point Gongora left the office.

Kovach testified that Gongora said more than the "with all due respect" remark. He testified that Gongora wouldn't allow the Chief to rebut anything he (Gongora) said and that the Chief tried to respond but Gongora just kept talking. Kovach said at that point the Chief twice asked Gongora to leave but he did not exit. The Chief, according to Kovach, then got up, opened the door and made the "do you like working here" remark to Gongora and asked him to leave. Gongora left. Kovach said the Chief did not get into Gongora's face (T168-T171).

6. Although Garnto was not asked to leave the meeting, he arose to follow Gongora out of the Chief's office (T49, T69). Kovach stopped Garnto, asked him to wait and not to leave. They had a brief exchange of words and Garnto agreed to stay in the office. But before the meeting continued Garnto told the Chief that Gongora had done nothing wrong, and he (the Chief) was wrong for telling Gongora to leave (T84). The meeting continued for another 30 to 45 minutes but the parties did not resolve the dispatching issue (T49, T83-T85, T116). Nevertheless, subsequent to the March 24th meeting, the Chief apparently clarified his directions to the dispatchers (T117-T118).

7. Gongora felt threatened by the Chief's remarks and believed they were in retaliation for his exercise of protected

activity (T51). He did not believe that he had been insubordinate to the Chief and acknowledged he was not disciplined over the incident (T50, T70, T141). In fact, Gongora stated he and the Chief have met without incident several times since March 24, 2011 (T70).

On cross-examination, Gongora could not recall whether the Chief had said "let me speak," nor could he recall if the Chief had asked if he wanted his (the Chief's) side of the issue (T67). But Gongora denied the Chief had asked him to leave three times before he finally left (T67-T68). Gongora also denied saying anything more than the "with all due respect" remark, denied that he was speaking continuously, and denied he did not let the Chief respond to his (Gongora's) remark (T194-T195).

Garnto requested the March 24th meeting to address employee safety (T81). He characterized the Chief's manner towards Gongora as angry, and he considered the Chief's remark to Gongora to be threatening (T87-T88). Garnto, in agreement with Gongora, denied the Chief asked Gongora to let him (the Chief) talk, and Garnto said Gongora did not keep speaking after making the "with all due respect" remark (T114).

8. Amos said he asked Gongora to leave his office because Gongora would not let him respond to what he considered to be Gongora's disrespectful and unproductive dialogue (T138, T143-T146, T148). Amos believed Gongora went on too long but did not

consider him to be insubordinate (T147). Amos testified he had no intent to fire Gongora, and that his motivation for asking him to leave his office was to continue the meeting with Garnto (T149-T153). Amos denied "confronting" Gongora, but admitted that had Gongora not left he might have disciplined him (T149, T154).

Kovach testified that Gongora had not allowed the Chief to respond to his (Gongora's) remarks, that his (Gongora's) remarks were not productive and that the Chief did not "get into Gongora's face" (T168, T170, T177).

ANALYSIS

Despite the PBA's efforts to raise a number of peripheral allegations at hearing, including 5.4a(3) allegations, as I explained during the hearing and as reflected by the Complaint, this case is limited to what happened in the Chief's office on March 24, 2011 between Amos, Kovach, Garnto and Gongora and whether the Chief's actions had the 5.4a(1) tendency to interfere with the PBA's rights (T184-T185).

The 5.4a(1) standard was established by the Commission in New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); and repeated in New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 250, 551 note 1 (¶10285 1979) and provides:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification. [5 NJPER at 551, note 1]

In Commercial Tp. Bd. Ed. and Commercial Tp. Support Staff Ass'n and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983), the Commission held that where an employer's conduct deliberately attempts to restrain employee participation in protected activity, it independently violates subsection 5.4(a)(1) of the Act. It further reiterated that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent a(1) violation. The tendency to interfere is sufficient. UMDNJ-Rutgers Medical School; Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

The credibility of witnesses is often a factor in Commission hearings. When witnesses testify differently regarding a material event, the hearing examiner most often must resolve the credibility issue by deciding which factual scenario to adopt. Sometimes, however, particular elements of the factual scenario are not critical to the ultimate determination in the case.

Here there is an obvious credibility issue. Despite the fact that Chief Amos admitted making the "do you want to continue

working here" remark to Gongora, the parties differ over when that remark was made. Gongora and Garnto testified that Amos made that remark to Gongora immediately after he (Gongora) made his "with all due respect" remark, and that Amos made his remark in a threatening manner when asking Gongora to leave his office. Amos and Kovach testified that Amos made his remark only after Gongora failed to let Amos respond to his (Gongora's) alleged continued dialogue, and only after Amos had three times allegedly asked Gongora to leave his office.

The reason there is some importance connected to which scenario is accurate is because the City, in its post-hearing brief, argues that Gongora's alleged conduct was disruptive and hostile and, therefore, lost its cloak of being protected conduct under the Act. For the reasons explained below, I find it unnecessary to resolve the above credibility issue.

First, having had the opportunity to thoroughly observe the witnesses testify, and having considered their testimony vis-a-vis each other, I cannot discern a measurable difference in the truthfulness of their testimony. Consequently, I consider their testimony regarding whether Gongora continued talking after making his "with all due respect" remark and whether Amos asked Gongora to allow him (Amos) to speak and whether Amos asked Gongora three times to leave his office before he (Amos) made his "do you want to continue working here" remark to be in equipoise.

Second, and notwithstanding my first reason, assuming, without finding, that Gongora did keep speaking, did not allow Amos a chance to speak and that Gongora did not respond to the Chief's first three requests to leave his office, his conduct would not, contrary to the City's argument, have stripped him of protection afforded by the Act.

The Commission has examined the line between a union representative's protected activity and an employee's unprotected workplace conduct. A comprehensive review of established principles can be found in State of New Jersey (Treasury Dept.), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001), which are worth repeating here:

In negotiations and grievance discussions, management officials and union representatives meet as equals and exchange views freely and frankly. See, e.g., Crown Central Petroleum Corp. v. NLRB, 430 F.2d 724, 74 LRRM 2855 (5th Cir. 1970); NLRB v. Southwestern Bell Telephone Co., 694 F.2d 974, 112 LRRM 2526 (5th Cir. 1982); Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979); City of Asbury Park, P.E.R.C. No. 80-24, 5 NJPER 389 (¶10199 1979). Passions may run high and epithets and accusations may ensue so courts have refused to impose a 'rigid standard of proper civilized behavior' on participants and have allowed leeway for adversarial and impulsive behavior. Crown Central, 74 LRRM at 2860. See also United States Postal Service, 251 NLRB No. 33, 105 LRRM 1033 (1980), aff'd 652 F.2d 409, 107 LRRM 3249 (5th Cir. 1981); American Telephone & Telegraph Co. v. NLRB, 521 F.2d 1159, 89 LRRM 3140 (2d Cir. 1975); Hawaiian Hauling Services, Ltd. v. NLRB, 545 F.2d 674, 93 LRRM 2952 (9th

Cir. 1976); Union Fork & Hoe Co., 241 NLRB No. 140, 101 LRRM 1014 (1979). An employer may criticize a representative's conduct at such meetings, but it may not discipline the representative as an employee when that conduct is unrelated to job performance. Black Horse Pike.

Despite the equality of participants in negotiations and grievance settings and despite the leeway allowed for impulsive and adversarial behavior, representational conduct may lose its statutory protection if it indefensibly threatens workplace discipline, order, and respect. See, e.g., NLRB v. Thor Power Tool Co., 351 F.2d 584, 60 LRRM 2237 (7th Cir. 1965); AT&T, 571 F.2d at 1161; Felix Industries Inc. v. NLRB, 331 NLRB No. 12, 164 LRRM 1137 (2000); Paper Board Cores, Inc., 292 NLRB No. 107, 131 LRRM 1644 (1989); Atlantic Steel Co., 245 NLRB No. 107, 102 LRRM 1247, 1249 (1979). See generally Hardin, The Developing Labor Law, 150-151 (3d ed. 1992). To determine whether conduct is indefensible in the context of the dispute involved, it is necessary to balance the employees' heavily protected right to representation in negotiations and grievance discussions against the employer's right to maintain workplace discipline. Southwestern Bell; AT&T. The NLRB considers several factors: (1) the place of the discussion; (2) the subject of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was provoked by an unfair labor practice. Atlantic Steel Co.; Felix Industries.

Two of our cases illustrate the wide latitude granted employees when negotiating contracts or pressing grievances. In Hamilton Tp. Bd. of Ed., an employee was threatened with discipline as a result of his angry conduct at a grievance meeting. The employee struck the table and moved around the small room, shouting in what some believed was an intimidating fashion. We nevertheless found that his conduct was protected. Relying on Crown Central, we accepted the principle that "wide latitude in

terms of offensive speech and conduct, must be allowed in the context of grievance proceedings to insure the efficacy of this process." 5 NJPER at 116.

Similarly, in Asbury Park, we held that a union president's angry confrontation with the city manager was protected. The president ran into the manager one evening and tried to arrange a meeting to discuss complaints. The encounter became a shouting match. In holding that the City unlawfully suspended the employee for insubordination, we emphasized that the employee's behavior, while loud, was not violent or threatening. While the manager could direct the president to contact him during work hours, he could not punish the employee for what was initially protected activity and for the same conduct as the manager himself engaged in. [footnote omitted]

To summarize, when acting as agents of the majority representative in negotiating contracts or pressing grievances, union representatives meet as equals with their management counterparts. They enjoy a wide latitude of speech and conduct as advocates and adversaries before their activity will be considered so indefensible as to lose the Act's protection. [Id. at pgs. 173-174]

Applying those principles here, Gongora would not have lost his representational protective cloak under the City's version of what had occurred during the March 24th meeting. The meeting was held behind closed doors to discuss a serious workplace concern for the health and safety of officers. While the discussion got heated and was loud at times, Gongora never made a threat or acted in a threatening manner. The only employees to witness the heated exchanges were the four representatives. Gongora's behavior, even

under the City's version, did not indefensibly threaten workplace discipline, order or respect.

I must now address the Chief's behavior and remarks during the meeting. Although the parties differ over the circumstances surrounding the Chief's remarks, the substance of his comments is undisputed. The comments violate 5.4a(1) because they have the tendency to interfere with Gongora's right to advocate working condition concerns on behalf of the PBA. The City does not deny the Chief's remarks, but seeks to excuse them by arguing that Gongora's alleged refusal to allow the Chief to speak and his (Gongora's alleged) failure to leave the room after the Chief three times asked him to leave was such egregious behavior that it stripped Gongora of his protected right. But, even if Gongora acted as Amos and Kovach described, his conduct would not have amounted to something other than a passionate exercise of his right to express his concerns about officer safety. Gongora did not act in a threatening manner toward the Chief, at most he is accused of being rude and disrespectful, but not insubordinate.

Based upon the facts presented here, the Chief violated 5.4a(1) in two ways. First, by asking only Gongora to leave the room, and second, by threatening Gongora's employment, which he did by making the "do you want to continue working here" remark.

The Chief's unlawful actions were partially related to and caused by the fact that the meeting was held in his office. He

understandably felt captive in his own space. Under Black Horse Pike, however, the room in which a labor-management meeting is being conducted becomes a neutral location and neither side can tell the other side who should be attending or participating in such a meeting. Either -- or both -- parties can end or walk out of such a meeting if they feel it is unproductive or has disintegrated into meaningless shouting or dialogue, but neither side has the right to pick or choose who shall remain in the meeting for the other side.

In this case, the Chief apparently felt offended by Gongora's alleged conduct, and/or considered Gongora's alleged conduct unproductive. He wanted him out of the room. But, the Chief did not have the right to force Gongora to leave. The Chief and/or Kovach could have walked out, but since it was the Chief's office, he could simply have declared that the meeting was over and then ordered both union representatives out of his office. If the parties had held the meeting in a conference room, the Chief could simply have walked out if he thought Gongora's conduct was offensive.

By threatening Gongora's employment in order to get him to leave his office, the Chief violated 5.4a(1) a second time. This was a classic Black Horse Pike violation. The Chief used his position as the employer to threaten and intimidate Gongora as an employee for his protected actions as a union representative. The

Chief's remarks had the desired effect. Gongora felt that his job was threatened and he left the room. The subsequent - and apparently better-working relationship between the Chief and Gongora in his capacity as a union representative does not excuse the Chief's actions at the March 24th meeting.

In its post-hearing brief, the City essentially admits to a 5.4a(1) violation by arguing that the Chief's remark to Gongora was not intended to threaten him, but was made merely to get Gongora to comply with the Chief's request to leave his office. That argument is not an adequate defense. First, the 5.4a(1) standard does not require intent. Thus, even if the Chief did not intend a threat, a violation occurs if the remark had the tendency to interfere with protected conduct. Since Gongora felt threatened by the Chief's remark while he was involved in protected conduct - expressing his views regarding dispatching and employee safety - then the remark violated the a(1) standard. Second, the City's argument that the Chief's remark was not intended to be a threat is disingenuous. The City admits in its brief that the Chief made the remark to get Gongora to leave his office. Thus, the Chief intended to put pressure on Gongora to leave. That pressure -- his remark -- was a threat. The City's admission in its brief that the Chief made the remark just to get Gongora to leave simply proved the other a(1) violation because while the Chief had the right to end the meeting, he did not have the right to pressure Gongora into leaving the

room, and in effect, control who would be representing the union at the meeting.

REMEDY

In its charge and post-hearing brief, the PBA seeks a more expansive remedy than this case requires. This case was limited to a 5.4a(1) allegation. The PBA's attempts to include 5.4a(3) issues for consideration were rejected. Since Gongora was not disciplined for any of his conduct at the March 24th meeting, the typical remedy for a 5.4a(1) violation is the posting of a notice. In this case, the order and notice should reflect that the Chief must cease and desist from pressuring union representatives to leave labor-management meetings, and he must cease and desist from threatening union representatives for engaging in protected conduct.

Accordingly, based upon the above findings and analysis, I make the following:

CONCLUSIONS OF LAW

1. The City violated 5.4a(1) of the Act when Chief Amos asked and then pressured then PBA Vice President Gongora to leave a labor-management meeting.

2. The City violated 5.4a(1) of the Act when Chief Amos threatened then PBA Vice President Gongora to pressure him to leave a labor-management meeting.

RECOMMENDATIONS

I recommend that the Commission ORDER:

A. That the City cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly when Chief Amos requested PBA Vice President Gongora to leave a labor-management meeting.

2. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly when Chief Amos threatened PBA Vice President Gongora to pressure him to leave a labor-management meeting.

B. That Respondent take the following affirmative action:

1. Notify Chief Amos that when he meets with the PBA leadership regarding labor-management issues that affect the terms and conditions of employment of employees represented by the PBA, they must meet as equals, the room within which they meet must be considered a neutral location during the meeting, and the Chief cannot determine which union representative(s) may remain at the meeting to represent the PBA.

2. Notify Chief Amos that he shall not threaten Pedro Gongora or any other PBA representative for exercising his/their protected rights.

3. 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.

4. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Perry O. Lehrer
Hearing Examiner

DATED: February 7, 2013
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman 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. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by February 20, 2013.



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 interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly when Chief Amos requested PBA Vice President Gongora to leave a labor-management meeting.

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 when Chief Amos threatened PBA Vice President Gongora to pressure him to leave a labor-management meeting.

WE WILL notify Chief Amos that when he meets with the PBA leadership regarding labor-management issues that affect the terms and conditions of employment of employees represented by the PBA, they must meet as equals, the room within which they meet must be considered a neutral location during the meeting, and the Chief cannot determine which union representative(s) may remain at the meeting to represent the PBA.

WE WILL notify Chief Amos that he shall not threaten Pedro Gongora or any other PBA representative for exercising his/their protected rights.

Docket No. CO-2011-297

City of Garfield
(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, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372