

I.R. NO. 2020-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2020-065

NEWARK POLICE SUPERIOR
OFFICERS' ASSOCIATION, INC.,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based on an unfair practice charge alleging that the City of Newark unilaterally changed terms and conditions of employment regarding disciplinary review procedures during collective negotiations for a successor agreement, in violation of sections 5.4a(a)(1), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1, et seq.

The Designee determined that the Charging Party established the necessary standards for granting interim relief, including a substantial likelihood of success on the merits, namely, that the City unilaterally modified the parties' negotiated disciplinary review procedures, and that irreparable harm would result because the parties are in negotiations for a successor agreement. Balancing the public interest and the relative hardship to the parties, the Designee found that the public interest was furthered by adhering to the tenets of the Act, requiring good faith negotiations prior to changing a term and condition of employment and respect for the negotiations process.

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Appearances:

For the Respondent,
Carmagnola & Ritardi, attorneys
(Sean P. Joyce, of counsel)

For the Charging Party,
John J. Chrystal, III,
(President, Newark Police SOA)

INTERLOCUTORY DECISION

On September 13 and 20, 2019, Newark Superior Officers' Association, Inc. (SOA) filed an unfair practice charge and amended charge against the City of Newark (City). On the latter date, the SOA also filed an application for interim relief seeking a temporary restraint, together with certifications, exhibits, a proposed Order to Show Cause and a brief. The charge, as amended, alleges that on September 11, 2019, during the parties' negotiations for a successor collective negotiations agreement (CNA) to their 2013-2015 CNA and 2016-2017 memorandum of agreement, the City unilaterally implemented General Order 18-

26, "Disciplinary Process and Matrix," which modifies General Order 93-2 "The Disciplinary Process" and implements a progressive discipline matrix. The charge alleges that the City's action changed ". . . terms and conditions of employment regarding employee disciplinary review procedures and added a discipline matrix, all during negotiations for a successor collective negotiations agreement" violating section 5.4a(1), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act).

The SOA seeks an order reinstating General Order 93-2 and rescinding General Order 18-26.

On October 2, 2019, I issued an Order to Show Cause without a temporary restraint, setting forth dates for service upon the City, receipt of the City's response, SOA's reply and argument in a telephone conference call. On October 17, 2019 the City submitted a brief in opposition to the SOA's application for

^{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. (3) Discriminating in regard 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 the 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. (7) Violating any of the rules and regulations established by the commission."

interim relief. On October 25, 2019, the parties argued their respective cases.

The City asserts that the SOA's application does not meet the requirements for granting interim relief. The City does not refute SOA's contention that the implementation of General Order 18-26 unilaterally changed the disciplinary procedures set forth in General Order 93-2. Instead, the City contends that the changes made to the disciplinary process implemented by General Order 18-26 were necessitated by a Consent Decree entered into by the City and the federal government resulting from an investigation of the Newark Police Department by the United States Department of Justice. The City further asserts that it provided the SOA a draft copy of General Order 18-26 for its review and input over a year and a half prior to its implementation and the SOA "sat on its rights for over a year and a half" while "knowing the Consent Decree had been entered and it was obligated to assist the City in complying with the same." The City argues that because it implemented General Order 18-26 to comply with the Consent Decree, the SOA cannot establish a likelihood of success on the merits. The City also contends that the SOA has not established irreparable harm, and that the relative hardships weigh in favor of the City because granting the SOA's application for interim relief would prevent the City

from complying with the Consent Decree, subjecting it to further litigation.

The following facts appear. SOA is the majority representative of all superior officers in the ranks of sergeant, lieutenant, and captain, and the FOP is the majority representative of all police officers and detectives. The City and SOA signed a CNA extending from January 2013 through December 31, 2015, and a subsequent memorandum of agreement commencing January 1, 2016 through December 31, 2017. The parties are currently in negotiations for a successor agreement.

In 1993, the City, SOA, and the Policemen's Benevolent Association^{2/} (PBA) agreed upon disciplinary review procedures for members of the Newark Police Department (NPD), promulgated as "General Order 93-2 The Disciplinary Process." This General Order has been in effect since its inception.

In July, 2014, the United States Attorney's Office for the District of New Jersey and the Civil Rights Division of the Department of Justice (collectively the DOJ) issued a report finding a pattern and practice of unconstitutional policing by the NPD and reached an agreement in principle with the City to undertake reforms within the Police Department. On March 30, 2016, the DOJ, NPD and City entered into a Consent Decree, which

^{2/} The FOP's predecessor majority representative for City police officers.

requires the NPD to implement significant reforms, including the following:

XIII. DISCIPLINE

NPD will adopt policies that are consistent and fair in their application of officer discipline throughout the Division, including establishing a formal, written, presumptive range of discipline for each type of violation.

152. NPD will apply discipline for sustained allegations of misconduct based on the nature and severity of the policy violation and defined mitigating and aggravating factors, rather than the officer's identity, rank or assignment; relationship with other individuals; or reputation in the broader community.
153. Within 90 days of the Operational Date, NPD will implement disciplinary guidance that:
 - a. establishes a presumptive range of discipline for each type of violation;
 - b. increases the presumptive discipline based on an officer's prior violations of the same or other rules;
 - c. sets out defined mitigating or aggravating factors;
 - d. requires that any departure from the presumptive range of discipline must be justified in writing;
 - e. prohibits taking *only* non-disciplinary corrective actions when the disciplinary matrix calls for the imposition of formal discipline; and
 - f. provides that NPD will consider whether additional non-disciplinary corrective action may be appropriate in a case where discipline is also imposed.
154. NPD will establish a unified system for reviewing sustained findings and applying the appropriate level of discipline pursuant to NPD's disciplinary guidance.

This disciplinary system will be subject to review and approval of the Monitor and DOJ. NPD will document all disciplinary decisions, including the rationale or any decision to deviate from the level of discipline set out in the disciplinary matrix.

155. NPD will conduct annual reviews of its discipline process and actions, which will include an analysis of the implementation of a progressive discipline model, and whether the discipline system's mitigating exacerbating factors are appropriate and effectively applied.

[Consent Decree, pp.49-50].

The Consent Decree also provides at paragraph 13, "[d]uring the term of this Agreement, and to the extent permitted by law, including civil service rules and any collective bargaining agreements, the City will fund and maintain a civilian oversight entity for NPD, the structures and protocols of which adhere to the principles of this Agreement." (Consent Decree, p.10). It indicates at paragraph 185, ". . . the Monitor will conduct regular meetings, on a schedule agreed upon by the Parties that will include participation by the Police Director or designee when necessary, and other NPD representatives of the City's Office of Corporate Counsel, the Department of Justice, and the police unions." (Consent Decree, p.62). Additionally, the Consent Decree states at paragraph 219, "the City and NPD will promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining and consult with DOJ in a timely manner regarding the position the City and NPD will take in any

collective bargaining consultation connected with this Agreement." (Consent Decree, p.70).

On April 3, 2018, Anthony F. Ambrose (Ambrose), the City's Public Safety Director issued Internal Tickler Notification 18-290 addressed to Captain John Chrystal III (Chrystal), president of the SOA and Detective James Stewart, president of the FOP, enclosing a "draft copy of a General Order pertaining to the Disciplinary Matrix that will be utilized for imposing discipline in the Newark Police Division." Both parties were instructed to review the draft General Order and "provide any comments or recommendations . . . on or before April 13, 2018." In a letter dated April 12, 2018, Chrystal responded to Ambrose, stating "[t]he SOA is satisfied with the current negotiated Disciplinary Process, General Order 93-2. Hence the SOA does not wish to negotiate over changes to the agreement in place."

The SOA did not participate in the development of General Order 18-26. Regardless, on September 9, 2019, the City issued Director's Memorandum 19-309, which announced the implementation of the NPD's "Disciplinary Process and Matrix; General Order 18-26" to take effect immediately. According to the document, General Order 18-26 supersedes General Order 93-2.

General Order 18-26 significantly modifies the disciplinary process specified in General Order 93-2 and implements a disciplinary matrix (Matrix) to be utilized for imposing

discipline in the NPD. Prior to September 9, 2019, the NPD did not have a Matrix, nor did it have fixed penalties for specific violations of its rules; there was no requirement or guideline to match a certain penalty to a particular infraction. Instead, upon a finding of guilt, a recommended penalty was selected based upon a list of sanctions specified in II.T of General Order 93-2, namely:

1. Oral Reprimand
2. Warning Notice
3. Written Reprimand
4. Suspension
5. Fine
6. Reduction in Rank
7. Discharge/Termination

[G.O. 93-2, p.3, T. "Sanctions"]

General Order 18-26 implements a Matrix that provides the decision maker a guideline for sanctions imposed for both minor and major discipline. Pursuant to General Order 18-26, the Matrix is defined as:

[a] uniform guide to impose discipline in a progressive manner for all violations of Division policy as defined herein. The Disciplinary Matrix is a guide for fairness and consistency. It accounts for the seriousness of the infraction, prior disciplinary history of the personnel involved, and aggravating and mitigating circumstances.

[G.O. 18-26, p. 4, L. "Disciplinary Matrix"]^{3/}

^{3/} General Order 93-2 does not explicitly define "Disciplinary Matrix."

Pursuant to General Order 18-26, upon a finding of guilt, a Hearing Officer or Chair of the Police Trial Board shall rely on the Matrix to determine the appropriate recommended penalty. The Matrix is a table split into fifteen (15) broad categories of misconduct and lists seven (7) specific sanctions ("levels of discipline") that attach to each category. (G.O. 18-26, pp. 25-27). The levels of discipline are itemized by letter in the Matrix and defined as follows:

- A. Oral Reprimand or Warning notice
- B. Written Reprimand
- C. Suspension 1-3 days
- D. Suspension 3-5 days
- E. Suspension 6-30 days
- F. Suspension 30-90 days
- G. Suspension 90-180 days, may include demotion
- H. Demotion
- I. Termination

[G.O. 18-26, p. 25]

Seventeen (17) pages of guidelines accompany the Matrix to explain how it should be used. (G.O. 18-26, pp. 19-30). The Matrix groups types of misconduct, e.g., Section 1 - General Conduct, Section 2 - Misconduct Generally, Conduct Unbecoming, Section 3 - AWOL, Sick leave Violations . . . (G.O. 18-26, p. 25). Within each section, the categories of misconduct are further organized into lists of specific violations that fall under each category with references to all the NPD rules and regulations, by number, that fall within each violation. The Matrix then defines four (4) possible penalty ranges for each

category of rule violation: 1st degree, 2nd degree, 3rd degree, and 4th degree. According to the Matrix, to ensure proper progressive discipline, degrees shall constitute number of offenses "unless specific circumstances cause the violation to be issued a specific degree. In the event there are aggravating or mitigating circumstances then the violation shall be issued the appropriate degree and the level of discipline." (G.O. 18-26, p. 25). General Order 18-26 also provides that "[i]f the conduct charged renders the personnel unfit for duty, or demonstrates an egregious failure of performance, major discipline may be imposed." In these circumstances, the principles of progressive discipline need not be considered. However, "any action or deviation from the Matrix will only be taken under extraordinary circumstances, which shall be properly documented." (G.O. 18-26, p. 27, XVI.E. "Director's Discretion regarding Application of Progressive Discipline").

General Order 18-26 also modifies the definitions of many of the terms within General Order 93-2. For example, under General Order 18-26, a minor offense is defined as:

Lower-level violation/s of Division rules, regulations, policy, or procedures. Examples include demeanor/discourtesy (devoid of profanities or other egregious language), tardiness, uniform violations, motor vehicle collisions (minor damages, no unusual circumstances), low -level neglect of duty incidents and other low-level policy violations. This also includes non-serious incidents of city ordinances or motor vehicle

violations (parking/minor moving violations) and not subject to job forfeiture. Minor Offenses shall be the subject of a Disciplinary Conference by Precinct/Unit Commanders. A penalty for Minor Offense violation/s may include up to, but not exceeding, five (5) working days' suspension at any one time. (G.O. 18-26, p. 5, R. "Minor Offense").

Prior to the implementation of General Order 18-26, a minor offense was defined as:

Violation of Department Policy, Rules, Regulations or Directives wherein the maximum penalty may be five (5) days suspension or the equivalent. Minor offenses shall be the subject of a Disciplinary Conference by the Precinct/Division Commanders. This includes any violations of the State or City Laws that are of a disorderly, petty disorderly or Motor Vehicle Violation and not subject to forfeiture. (G.O. 93-2, p.2, M. "Minor Offense").

General Order 18-26 defines a major offense as:

[s]erious violation/s of Division rules, regulations, policy or procedures which includes any criminal violation of Federal or State Laws. This includes any serious breaches of city ordinances or motor vehicle violations. Major Offenses shall be the subject of a Trail Board. A pattern exhibiting Minor Offenses of similar nature or accumulation of multiple Minor Offenses can be used to upgrade a Minor Offense to a Major Offense. This process shall be properly documented. A penalty for violation/s of Major Offenses shall be more than five (5) working days at any one time. (G.O. 18-26, p. 4-5, Q. "Major Offense").

Prior to the implementation of General Order 18-26, a major offense was defined as:

[v]iolation of Department Policy, Rules, Regulations and Directives wherein the penalty may exceed five (5) days. This includes any criminal violation of Federal, State or City Laws. Major offense shall be the subject of a Trial Board. (G.O. 93-2, p.2, L. "Major Offense").

General Order 18-26 defines "45-Day Rule":

Disciplinary charges alleging a violation of Division rules, regulations, policies or procedures must be filed within 45 days of the day the person filing the charge/s, the Public Safety Director, obtained sufficient information to do so. (G.O. 18-26, p.7, HH. "45-Day Rule").

In contrast, General Order 93-2 defines "45-Day Rule":

The period of time in which a complaint against personnel must be filed. This time frame begins from the date in which the investigator filing the complaint obtains sufficient information to file the matter on which the complaint is based. This time frame is used for the sworn personnel of the Newark Police Department (Police Officers). (G.O. 93-2, p.4, AA. "45 Day Rule").

General Order 18-26 also adds the definition of the "New Jersey Administrative Code":

The New Jersey Administrative Code (N.J.A.C.) is the codification of all rules and regulations made by the executive branch agencies of New Jersey. Newly proposed rules are published for comment in the New Jersey Register, which is published twice a month. Once the new rules are officially adopted, they are published in the Code. Responsibility for the compilation, publication, and updating of the N.J.A.C. applies with the New Jersey Office of Administrative Law (OAL). All rules and

regulations must be made in accordance with the New Jersey Administrative Procedure Act and the OAL's Rules for Agency Rulemaking. Title 4(A) of the N.J.A.C. applies to Civil Service employees. (G.O. 18-26, p.5, S. "New Jersey Administrative Code")

General Order 18-26 adds a section entitled "Negligent Loss or Damage to City Issued Equipment (15:1.5)/Restitution." This provision states:

Each police officer may be required to pay, as restitution, the cost of repair for negligent damage to or cost of replacement for the negligent loss of the official police service weapon, badge, cap wreath, motor patrol vehicle, or any other item of City issued equipment.(G.O. 18-26, p. 27, XVI.F.).

ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

N.J.S.A. 34:13A-33 prohibits the unilateral alteration of terms and conditions of employment set forth in an expired

collective negotiations agreement as well as the unilateral imposition of other negotiable terms and conditions of employment without agreement of the majority representative.^{4/} A public employer's unilateral alteration of such terms and conditions during negotiations for a successor agreement constitutes a refusal to negotiate in good faith in violation of subsection 5.4(a)(5) of the Act. Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 78 N.J. 25, 48 (1978). Similarly, N.J.S.A. 34:13A-5.3 provides, in part:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

* * *

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of

^{4/}

The statute provides:

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization.

In general, a public employer has a prerogative to determine the basis for discipline, *i.e.*, what transgressions by employees warrant the imposition of discipline. City of Newark, P.E.R.C. No. 2019-21, 45 NJPER 211 (¶55 2018); City of Newark, P.E.R.C. No. 2010-19, 35 NJPER 358 (¶120 2009). However, a public employer's prerogative to determine the basis for discipline is not impeded by negotiated agreements over sanctions or penalties to be imposed for specific transgressions. Negotiating about such issues conforms with N.J.S.A. 34:13A-5.3, mandating against unilateral action over "proposed new rules or modifications of existing rules affecting working conditions" and that law's further mandate that public employers and majority representatives shall "negotiate in good faith with respect to . . . disciplinary disputes."

The Commission has consistently held that both the general concept of progressive discipline and the specific steps of a progressive discipline system are negotiable. Borough of Roselle Park, P.E.R.C. No. 2006-85, 32 NJPER 162 (¶72 2006); Morris Cty. College Staff Ass'n v. Morris Cty. College, 100 N.J. 383 (1985); City of Elizabeth and Elizabeth Fire Officers Ass'n, Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985); Montclair Tp.,

P.E.R.C. No. 2000-107, 26 NJPER 310 (¶31126 2000); UMDNJ, P.E.R.C. No. 95-68, 21 NJPER 130 (¶26081 1995). Here, Section XVI within General Order 18-26 entitled "Categories and Issuing Discipline" changes the disciplinary consequences for employees' misconduct by designating new levels and degrees of discipline for each category of misconduct. By design, the Matrix included in Section XVI does not reflect the levels of penalty that the NPD applied prior to the implementation of General Order 18-26. The City admits that it created the Matrix in accordance with the terms of the consent decree entered into with the DOJ whereby the City agreed to establish "a formal, written, presumptive range of discipline for each type of violation" within the NPD. It also affirms that the new process was intended to create a "guideline for fairness and consistency when discipline is administered, consistent with a progressive discipline model." See, Ambrose memorandum dated September 9, 2019. This new progressive discipline system implicates mandatorily negotiable pre-disciplinary procedures. The City's unilateral creation and implementation of this system appears to demonstrate a unilateral ". . . modification of existing rules governing working conditions" without negotiations, violative of section 5.4a(5) and a(1) of the Act.

General Order 18-26 also significantly modifies the definitions of "major offense", "minor offense" and includes for

the first time the definition of "New Jersey Administrative Code." It appears that the City is required to negotiate over these changes prior to implementation as these provisions are procedural and/or informational (i.e. informing employees of actions that may result in discipline). City of Newark, I.R. No. 2020-3, 46 NJPER 167 (¶41 2019); Dept. of Law & Public Safety, Div. of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981). See also, Edison Tp. and Edison Firefighters' Ass'n, Local 1197, IAFF, P.E.R.C. No. 98-14, 23 NJPER 487 (¶28235 1997) (contract provisions advising employees of statutory rights or listing criteria to be used in making personnel decisions are informational and do not interfere with managerial prerogatives).

Also, the definition of the "45-Day Rule" and the application within section VIII of General Order 18-26 appears to unilaterally modify the negotiated pre-disciplinary process specified within section IV of General Order 93-2.

General Order 18-26 adds section XVI.F. entitled "Negligent Loss or Damage to City Issued Equipment (15:1.5)/Restitution." This section unilaterally creates a reimbursement obligation for officers as a penalty for specified motor vehicle incidents. The Commission has previously found that the City has an obligation to negotiate with the SOA before imposing a reimbursement obligation as a penalty for replacement costs or repairs for

damages to motor vehicles as a result of willful misuse or unjustifiable neglect. City of Newark, P.E.R.C. No. 2019-21, 45 NJPER 211 (¶55 2018). In that matter, the Commission held that the City breached its statutory obligation under N.J.S.A. 34:13A-5.3 to negotiate with the SOA over proposed new rules or modification of existing rules, thereby violating N.J.S.A. 34:13A-5.4a(5) and derivatively N.J.S.A. 34:13A-5.4a(1). Using the same logic, I find that the City remains obligated to collectively negotiate with the SOA prior to implementing this new rule.

The City asserts that it need not negotiate over the mandatorily negotiable aspects of the changes of General Order 18-26 because those changes were made in accordance with its Consent Decree with the DOJ. The Commission recently decided a motion for reconsideration of the granting of an interim relief application between the same parties that addressed overlapping issues. City of Newark, P.E.R.C. NO. 2020-29, 35 NJPER 358 (¶120 2009), denying recon. I.R. No. 2020-3, 46 NJPER 167 (¶41 2019). In that matter, the SOA also alleged that the City failed to negotiate in good faith before unilaterally changing mandatorily negotiable pre-disciplinary procedures. A Commission Designee granted in large part the request of the SOA for interim relief pending a final decision on its unfair practice charge against the City. The City moved for reconsideration based upon

the argument that the interim relief order restraining the City from implementing the new pre-disciplinary procedures would violate the City's Consent Decree with the DOJ. The City asserted, among other things, that the SOA did not establish a likelihood of success on the merits as the new pre-disciplinary procedures were implemented to comply with the Consent Decree. The Commission held that Commission and judicial precedent support a finding that "the City's Consent decree with the DOJ does not permit the City to alter its CNA with the SOA or otherwise avoid its collective negotiations obligations under the Act." City of Newark, P.E.R.C. NO. 2020-29, 35 NJPER 358 (¶ 120 2009), citing, City of Hackensack, P.E.R.C. No. 2018-54, 45 NJPER 18 (¶5 2018); United States v. City of Hialeah, 140 F.3d 968 (11th Cir. 1998); and United States v. City of Los Angeles, 288 F.3d 391 (9th Cir. 2002). That holding also applies here. The City cannot use the Consent Decree it entered into with the DOJ to avoid its obligations to collectively negotiate with the SOA over changes in terms and conditions of employment.

The City also asserts that the SOA was given the opportunity to comment on General Order 18-26 over a year before its implementation, but "sat on its rights" and chose not to assist the City in complying with its Consent Decree. The City argues that because the SOA did not "work with the City in preparing a disciplinary system that it could work with . . . the SOA does

not have 'clean hands' sufficient to obtain interim relief." The Act requires negotiations (not agreement) on mandatorily negotiable subjects. Piscataway Tp., P.E.R.C. No. 2005-55, 31 NJPER 102 (¶71 2005), aff'd 32 NJPER 417 (¶172 App. Div. 2006). Negotiations "require dialogue between two parties with an intent to achieve common agreement . . ." Piscataway Tp., 31 NJPER at 103. Meetings, discussions or information sessions where an employer explains a proposed change in working conditions without soliciting a majority representative's consent to the change does not satisfy the negotiations obligation under the Act. Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987). No facts suggest that the City and SOA collectively negotiated over mandatorily negotiable subjects in General Order 18-26. The City's assertion that the SOA was "obligated" to work with it to revise General Order 93-2 appears to contradict the statutory authority and Commission precedent set forth above. Accordingly, I find that the SOA has met its burden of demonstrating a substantial likelihood of success in a final Commission decision based upon its legal and factual allegations.

The SOA has demonstrated irreparable harm. A unilateral change in terms and conditions of employment during any stage of collective negotiations has a chilling effect on employee rights guaranteed by the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). By

unilaterally imposing changes to the disciplinary procedures in General Order 18-26, the City has chilled the negotiations process.

In weighing the relative hardship to the parties, I find that the scale tips in favor of the SOA, which suffers irreparable harm resulting from the unilateral changes made during the course of negotiations for a successor agreement. The City still maintains the ability to discipline employees, therefore the public interest is not harmed by granting interim relief.

ORDER

The City is restrained from continuing to implement those portions of General Order 18-26, including those identified in this decision, that abrogate or change the disciplinary procedures and protections of SOA unit employees set forth in General Order 93-2. The City shall reinstate all such procedures and protections in General Order 93-2. This interim order will remain in effect pending a final Commission order in this matter. This case shall be returned to the normal unfair practice charge process.

/s/ Marisa Koz
Marisa Koz
Commission Designee

DATED: January 15, 2020
Trenton, New Jersey