

I.R. NO. 99-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-99-156

SUPERIOR OFFICERS ASSOCIATION,  
NEWARK POLICE DEPARTMENT,

Charging Party.

**SYNOPSIS**

The Superior Officers Association, Newark Police Department, was told to no longer post notices on the door of its office located in a building owned by the City of Newark. The SOA argued that the directive unilaterally changed an established practice without prior negotiations. The Commission Designee denied the SOA's application for interim relief on the grounds that the SOA had alternative means to communicate with unit members, consequently no irreparable harm was established.

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Appearances:

For the Respondent,  
Michelle Hollar-Gregory, Corporation Counsel  
(Lisa Alexander-Taylor, Assistant Corporation Counsel)

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

**INTERLOCUTORY DECISION**

On November 16, 1998, the Superior Officers Association ("SOA" or "Charging Party") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the City of Newark ("City") committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act ("Act"), N.J.S.A. 34:13A-5.4a(1) and (5).<sup>1/</sup> The unfair

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<sup>1/</sup> 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

practice charge was accompanied by an application for interim relief. On November 18, 1998, an order to show cause was executed and a return date was scheduled for December 15, 1998. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules; the parties argued orally on the established return date.

The SOA claims that for many years the parties had maintained a practice of allowing the SOA to post its newsletter and other notices to unit members on the door of its office located at One Lincoln Avenue, Newark, a City owned building. SOA contends that its officers also used the office door to advise members of the officers' location and how a particular officer may be contacted while out of the office.

The SOA further contends that on or about October 22, 1998, it was advised by the police director to refrain from posting notices on the office doors. It appears that on October 26, 1998, the police director issued Director's Memorandum No. 98-1401 stating:

Effective immediately, nothing shall be posted or attached to any door, window, wall, or any place else than in or on an authorized bulletin board without express permission of a Division

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1/ Footnote Continued From Previous Page

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."

Commander, Bureau Commander, Chief of Police or the Police Director himself. Permission shall be granted in the form of an original signature-a **stamp shall not be utilized.** [Emphasis in original.]

The SOA asserts that in light of some confusion with respect to the police director's memorandum, SOA notices were reposted on its door. Apparently, as a consequence, on November 2, 1998, the police director sent the SOA a letter indicating that neither:

...the department nor the City permit the posting of any literature on or in any City property or facility except in designated areas and only with authorization from the appropriate parties.

\* \* \*

As such, you shall refrain from posting, or permitting anyone to post, any literature, signs, memoranda or handbills on or in any City of Newark property or facility without my prior written consent in the form of my original signature on the document to be posted. Failure to adhere to this directive shall subject you and/or your officers to disciplinary action.

The City contends that it is longstanding policy and practice to prohibit the posting of notices, posters, placards, signs, solicitations, etc., without the prior approval of an appropriate authority. The City cites Special Order from the Chief of Police No. 75-35, October 28, 1975, which reads:

1. The representative organizations are entitled by contract to exclusive bulletin boards. This Order does not in any way abrogate that right.
2. Others wishing to post notices, etc., must use the general bulletin board of their commands, after permission is granted by the Commanding Officers of Bureaus.

3. Affixing posters or placards on any police facility wall is prohibited, unless permission is first sought from the Chief of Police. When such permission is granted, each Divisional Commander has the option to permit or reject posting on walls, in the facilities of his command. [Emphasis in original.]

The City also cites Police Director Memorandum No. 90-51, March 26, 1990, which reads:

1. Department general bulletin boards shall not be used for the posting of labor organizational information or solicitations unless such information is required by law or administrative code, or the posting of such information is authorized by this office.

2. Commanding Officers shall ensure that all general bulletin boards within their respective commands are in compliance with this directive.

The City further cites certain City ordinances, dating back to 1966, which prohibit the posting of signs and other materials on City owned property.

The City points out that the 1996 through 1999 collective agreement between the City and the SOA addresses Association privileges and responsibilities. Article 26 of the collective agreement states:

The Association may use the department mail or message routing system and may use department mail boxes. Such use shall be reasonable. The Association shall pay for its own postage and stationery.

The City asserts, and the SOA acknowledged during argument, that the office door is not the sole method of communicating with SOA membership. While it appears that the use of the SOA's office door serves as the primary means of communicating with the

membership, the SOA has in the past and is able to continue in the future to use the department mail or message routing system to communicate with its membership. It appears that SOA officers routinely carry beepers or cellular telephones.

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).

I find that the SOA will not be irreparably harmed if it no longer posts notices on the office door. Although the posting of notices on the office door may be an effective and customary means of communicating with the SOA's membership, it does not serve as the sole means of communication. The SOA has used and may continue to use the department mail or message routing system and department mail boxes. While SOA officers can no longer post their whereabouts on the office door, they appear to be reachable by the membership by beeper or cellular telephone. Further, it would appear that if the SOA incurs unavoidable additional expenses as the result of the

City's actions which are found at the conclusion of the case to have violated the Act, the Commission is able to fashion a remedial order making the SOA whole for such loss. It is well established that money damages are not irreparable. Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (128225 1997); City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976).

ORDER

The SOA's application for interim relief is denied. This interim order will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.

  
Stuart Reichman  
Commission Designee

DATED: December 22, 1998  
Trenton, New Jersey