

I.R. NO. 98-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-98-318

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

The Jersey City Police Officers Benevolent Association applied for interim relief alleging that the City of Jersey City unilaterally modified terms and conditions of employment when it reduced the wages and health benefits of police recruits attending the police training academy. A Commission Designee distinguished City of Newark, H.E. No. 88-3, 13 NJPER 621 (¶18233 1987), aff'd. P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987), and found that the POBA did not establish the elements necessary for granting interim relief and denied its application. The Commission Designee found that it was not clear whether the recruits were included in the collective negotiations unit.

I.R. NO. 98-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-98-318

JERSEY CITY POLICE OFFICERS
BENEVOLENT ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Sean M. Connelly, Corporation Counsel
(Paul W. Mackey, First Assistant Corporation Counsel)

For the Charging Party, Schneider, Goldberger, Cohen, Finn
Solomon, Leder, Montalbano, attorneys
(Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On March 3, 1998, the Jersey City Police Officers Benevolent Association ("Charging Party" or "Association") filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Jersey City ("City") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (3) and (5).^{1/} The Association alleges that the

^{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

Footnote Continued on Next Page

City unilaterally modified terms and conditions of employment when it reduced the wages of police recruits attending the police training academy and delayed the time when the recruits would be eligible to receive health benefits from 60 days after the start of their employment to 60 days after the completion of the twenty-two week police training course given by the police training academy.

The last executed agreement between the Association and the City covered the period January 1, 1991 through December 31, 1993. Between January 1, 1994 through December 31, 1996, terms and conditions of employment were set as the result of an interest arbitration award. The parties executed a memorandum of agreement covering the period January 1, 1997 through December 31, 1998.

The unfair practice charge was accompanied by a request for interim relief. An order to show cause was executed and a hearing was conducted on March 27, 1998. The parties submitted briefs, affidavits and exhibits and argued orally.

1/ Footnote Continued From Previous Page

condition of employment to encourage or discourage 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."

The Association also alleged that the City failed to place certain officers on step 2 of the salary guide, improperly denied retroactive pay and wrongly recouped overtime pay from trainees while attending the police academy. The Association does not seek interim relief on those issues.

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).

Historically, the City has paid newly hired employees attending the police academy at the rate reflected in step one of the salary guide contained in the collective agreement between the Association and the City. On or about February 9, 1998, a new class of employees started training at the police academy. Rather than receive the rate of pay reflected in step one of the collective agreement, the employees were advised that they would receive minimum wage--\$5.15 per hour--during their term in the police academy. On March 6, 1998, the mayor issued Executive Order 1998-013 modifying the wages for the employees attending the police training academy to \$5.15 per hour for the first thirty days of employment; \$6.25 per hour for the 31st day through the

60th day of employment and \$7.50 per hour beginning with the 61st day of employment and thereafter.^{2/}

The Association contends that the motive behind the City's action to reduce wages and delay coverage of health benefits derived from the fact that a group of police officers at the police academy, prior to the February 9, 1998 class, had filed a complaint with the Department of Labor seeking overtime compensation for hours of work at the police academy. Ultimately, the City was informed that under the Fair Labor Standards Act, it was required to pay police recruits overtime compensation for certain hours worked at the police academy. In conversations between Association president Thomas Bell and City officials, Bell was advised that the City wished to lower the starting salaries paid to recruits attending the police academy. Bell affirms that he met with City officials on three occasions to discuss the matter and provided the City with a written proposal to lower the recruits' starting salary.^{3/}

The City asserts that it employed approximately thirty-four temporary trainees under N.J.S.A. 11A:4-13 and N.J.S.A. 52:17B-69. These employees were hired for a period

^{2/} At the rate of \$7.50 per hour, an employee receives an annualized salary of approximately \$27,300, including overtime.

^{3/} In his affidavit, Police Director Moriarty states that the proposal of the Association to lower starting salaries related to newly sworn officers, not recruits attending the police academy.

aggregating not more than six months in a twelve month period. The Request for Personnel Action/New Hire, State of New Jersey, Department of Personnel forms on each of these employees, stated that they were temporary appointments for six months or less in the aggregate. Appended to the forms was the statement that such employees: "may, in the future, be hired as regular/permanent police officers upon successful completion of training at certified police training academy under N.J.A.C. 13:1-1 or to be terminated." The City goes on to state that these temporary trainees were not hired by the City by use of a certification issued by the State Department of Personnel for the "Civil Service" title of police officer. Rather, the performance of those temporary trainees who successfully complete the training at the Sea Girt Police Academy will be reviewed to determine whether the City will then hire them off of the eligibility list for the title of police officer and, thereby, dispose of the State Department of Personnel's certification by appointing the trainees as regular/permanent police officers.

The twelve month probationary or working test period will only commence for these employees upon successful completion of the police academy and after appointment as regular/permanent police officers. The City may not necessarily hire all of these individuals as regular/permanent police officers. Based upon poor police academy performance, the City may by-pass some of the individuals on the list of eligibles. The City states that as

temporary employees, these trainees were not covered by medical insurance as per New Jersey State Health Benefit Plan regulation and general City policy. The City states that although, for convenience of wage and salary administration and to attract qualified candidates, it had historically paid employees attending a police training academy the same rate of pay as a sworn police officer, the City determined to initiate a new pay rate for temporary employees attending a police academy. The need to change the salary was occasioned by the fact that the United States Department of Labor had tentatively informed the City that employees in attendance at the Sea Girt Police Academy were entitled to overtime pay (time and one half) for all hours over forty per week under the Fair Labor Standards Act. The City decided to discontinue its practice of paying trainees at the first step of the collective agreement between the Association and the City because trainees would be paid more than regular police officers serving at step one as the result of the overtime payments accrued during their time in the police academy.

The crucial issue in determining whether the Association can demonstrate that it has a substantial likelihood of prevailing on the merits in this case is determined by whether recruits are included in the Association's unit. The Association contends that employees attending the police academy are "police" within the meaning of the Act. The Association argues that Jersey City police officers in training have always been treated as police

officers under the collective agreement. They were paid pursuant to the salary guide in the contract and received health insurance coverage after a sixty day waiting period which was calculated from the first day of employment.

The City contends that since the inception of the collective negotiations relationship between the City and the Association under the Act, newly appointed police recruits hired to attend a police training academy have not been members of the Association; have not been included within the unit recognition clause negotiated between the City and the Association, have not voted for union officers, or in union ratification votes; and have not been subject to the numerous terms and conditions of employment contained in the various union agreements negotiated between the parties. The City argues that these employees have not received the benefits afforded to Association members under the prescription and optical programs administered by the Association. The newly hired police recruits were never included in the collective negotiations unit represented by the Association until after successful completion of academy training.^{4/} At

^{4/} Moriarty affirms that he has maintained a consistent position with the Association that police trainees are not members of the collective negotiations unit. He states that the Association has never filed grievances on behalf of trainees until this matter arose. Moriarty asserts that while attending the academy, these employees perform no police duties and are not subject to the supervision or chain of command of any uniformed member of the Jersey City police force.

that time, recruits were sworn in as police officers and only then were they conferred with police powers. Only after the successful completion of the academy training, did the City authorize the newly sworn police officers to carry firearms in the performance of their duties and such employees were then assigned responsibilities which included the investigation, apprehension or detection of persons suspected or convicted of violating the criminal laws of the state. Further, the City contends, historically, only after the completion of the training academy and the swearing in of the recruits did the Association approach the employees and join them into membership in the Association. It was not until after recruits were sworn in as police officers that dues or fees in lieu of dues were deducted from the employee's salary and the recruits became subject to the coverage of the Association's labor agreement.

In City of Newark, H.E. No. 88-3, 13 NJPER 621 (¶18233 1987), aff'd. P.E.R.C. No. 88-24, 13 NJPER 727 (¶18274 1987), FOP Newark Lodge No. 12 alleged, among other things, that Newark refused to recognize the FOP as the exclusive representative of police recruits assigned for training at the Newark Police Academy. Newark, like Jersey City, was a "civil service" jurisdiction. On March 30, 1987, Newark appointed approximately 38 newly hired employees to the Newark Police Department and assigned them to attend the Newark Police Academy for training in accordance with the dictates of the New Jersey Police Training

Commission. The FOP contacted the director of Newark's Police Academy to arrange to address the recruits attending the academy. During the prior nine years, the FOP had addressed the recruits usually on their first or second day in the academy. Newark denied the FOP's request to address the class.

The FOP was initially certified as the employee representative of Newark Police Officers in 1978 and remained in that capacity as the new class of recruits entered the academy. Since the FOP was certified as the employee representative in 1978, the Commission conducted five representation elections involving Newark police officers. For two of the elections, the language contained in the Agreements for Consent Election indicated that the employees eligible to vote included "...all police officers currently included in the academy." None of the other Agreements for Consent Election made reference to the academy, however, at those times no class of recruits existed. The recognition article contained in the parties collective agreement did not expressly refer to police recruits. While attending the academy, recruits wore uniforms which differed from regular police officers, were not issued badges until they were issued weapons. Weapons were not issued to recruits until they had completed all of their training at the academy, or, at the earliest, until after they had successfully completed firearms training. Recruits were subject to the established chain of command in the Newark police department. During their time in the

academy the recruits were covered by the police pension system. The recruits' normal work schedule was from Monday through Friday, 8:00 a.m. to 4:00 p.m. at the Newark Police Academy building. The recruits were paid at the "first step" salary scale reflected in the collective agreement. The agreement also provided for the payment of a fee in lieu of dues to the majority representative "...as soon as possible after thirty days from the beginning date of employment in a position in this unit." (Citations omitted). The City deducted fees in lieu of dues from the recruits' pay and turned over the money collected to the FOP. With the exception of the recruits who started in the academy on March 30, 1987, no dispute existed between the parties with regard to whether previous classes of recruits were included in the collective negotiations unit represented by the FOP. However, in prior classes the recruits were sworn in on the day they began their training at the academy whereas the March 30 class of recruits had not been sworn in and swearing in was not scheduled until graduation from the academy.

The hearing examiner found that Newark's recruits were considered probationary police officers and, under the facts presented in that case, were potentially eligible to perform regular law enforcement duties. The hearing examiner also noted that the definition of police officer used in the police training act may not be dispositive of whether such employee is serving as a policeman within the meaning of the New Jersey Employer-Employee

Relations Act. Finally, the hearing examiner rejected Newark's argument that recruits were not police officers merely because they had not taken the oath of office. The Commission affirmed the hearing examiner "under all the circumstances of this case...." 13 NJPER 728.

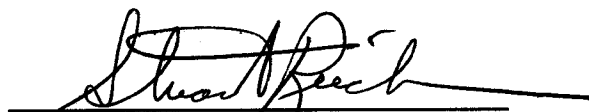
For purposes of interim relief, I find that City of Newark is not controlling. The factual premise upon which City of Newark was decided differs from the facts argued in this case. Jersey City asserts that police recruits are not now, nor ever have been police officers under the recognition clause of the collective agreement and, therefore, are neither covered by the agreement nor included in the unit. Robert J. Kakoleski, Deputy Police Director and Police Fiscal Officer, states in his affidavit that the City has never collected dues or representation fees from any police recruit until after the recruit has graduated from the police academy and has been sworn as a police officer. Further, Kakoleski cites numerous contractual articles which have never been applied to police recruits attending the police academy, including a provision which provides supplementary health and welfare benefits supplied to unit members by the Association. Kakoleski affirms that the City does not make payments to the Association for police recruits in training nor does the Association enroll such employees in the benefit program. Kakoleski affirms that while classes of police recruits previously received health benefits after sixty days of employment, such

benefits were provided as a function of general City policy and not pursuant to the collective negotiations agreement. He states that the most recent class of employees attending the training academy were hired strictly as temporary employees, thus, under the State Health Benefit Plan regulations, are ineligible for receipt of health benefits. The sixty day waiting period to enroll in the State Health Benefits Plan will only commence for these employees after they have received "regular" appointments off of a list of eligible candidates for the title of police officer based upon a certification issued by the New Jersey State Department of Personnel.

Taken as a whole, the claims and arguments advanced by the City undermine the heavy burden required to be carried by the charging party in demonstrating that it has a substantial likelihood of prevailing on the merits in a final Commission decision. The grant of interim relief is an extraordinary remedy and requires that each element be satisfied. If the City prevails in this case and police recruits are not included in the unit, the City has no obligation under the Act to engage in collective negotiations with the Association prior to changing the recruits' terms and conditions of employment. Accordingly, I must deny charging party's application for interim relief. The unfair practice charge will continue to be processed in accordance with Commission rules.

ORDER

Charging Party's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: April 7, 1998
Trenton, New Jersey