

H.E. NO. 2015-8

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

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket Nos. CO-2014-25 &
CO-2014-45

NEWARK POLICE SUPERIOR
OFFICERS' ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission grants the Motions for Summary Judgment in favor of the Newark Police Superior Officers' Association and denies the City's cross motions. The Hearing Examiner, finding no material disputed facts, determined that the City violated a(1) and (5) of the Act by failing to implement the Police Director's decision to sustain the SOA's grievances as set forth in written settlement agreements.

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NEWARK POLICE SUPERIOR
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Charging Party.

Appearances:

For the Respondent
Carmagnola & Ritardi, LLC
(Sean Joyce, of counsel)

For the Charging Party
John Chrystal III, President

**HEARING EXAMINER'S REPORT AND RECOMMENDED
DECISION ON MOTION FOR SUMMARY JUDGMENT**

On July 18, 2013, and August 16, 2013, respectively, the Newark Police Superior Officers Association (SOA) filed Unfair Practice Charges against the City of Newark (City) in the above referenced matters. The charges allege that the City violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7),^{1/} when it repudiated 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
(continued...)

parties' grievance procedure by refusing to implement Memoranda of Agreement whereby Police Directors sustain the grievances.

On March 7, 2014, a Complaint and Notice of Hearing issued on the allegations of N.J.S.A. 34:13A-5.4a(1) and (5) only, along with an Order consolidating the matters.

On March 21, 2014, the City filed a Motion to Dismiss in lieu of an answer. By letter dated April 7, 2014, the City's motion was denied. On April 11, 2014, the City moved for reconsideration of its motion. By letter dated April 11, 2014, the City's motion for reconsideration was denied.

An answer was perfected by the City on April 15, 2014, which constitutes a general denial of the allegations.

On April 22 and 23, 2014, the SOA filed motions, respectively, for summary judgment. On May 6 and 12, 2014, respectively, the City filed responses to the SOA's motions along with cross-motions for summary judgment. On May 22, 2014, the SOA filed responses to the City's cross-motions. On May 23, 2014, the Chair referred the motions to me for disposition, pursuant to N.J.A.C. 19:14-4.8. By agreement of the parties, the

1/ (...continued)
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. (7) Violating any of the rules and regulations established by the commission."

motions were held in abeyance, first pending a decision in a related Superior Court motion^{2/} and again in light of a new administration in Newark. Subsequently, at a pre-hearing conference on August 6, 2014, the parties thereby agreed the motions should proceed to a determination.

Based upon the parties' submissions, I grant the SOA's motions for summary judgment and deny the City's cross-motions. The following facts are gleaned from the pleadings, the briefs and affidavits. The following material facts are not disputed by the parties. Based upon the record, I make the following:

FINDINGS OF MATERIAL FACT

1. The City and SOA are, respectively, public employer and public employee representative within the meaning of the Act.

2. The City and SOA are parties to a collective negotiations agreement effective from January 1, 2009 through December 31, 2012. The parties are in negotiations for a successor agreement.

3. Article IV, entitled "Grievance Procedure and Arbitration" states its "Purpose" as follows: The purpose of

^{2/} The City filed an Order to Show Cause seeking summary relief in Superior Court under R. 4:67-1(a), to confirm the Arbitrator's decision dismissing the SOA grievance in CO-2014-25. By Order dated March 31, 2014, the Honorable Thomas M. Moore, J.S.C., set a return date of May 7, 2014. By Order dated May 22, 2014, Judge Moore denied the City's motion and dismissed the City's Complaint (Docket No. C-47-14).

this procedure is to secure, at the lowest possible level, an equitable solution to problems which may arise affecting the terms and conditions of this Agreement. The parties agree that this procedure will be kept as informal as may be appropriate.

Section 3 sets forth the procedure which consists of six steps ending in binding arbitration.

Step 5 states, in pertinent part:

Should no acceptable agreement be reached within five (5) calendar days after Step 4, then the matter shall be submitted to the Director of Police who shall have ten (10) calendar days to submit his/her decision.

Step 6 states, in pertinent part:

Within two (2) weeks of the transmittal of the written answer by the Director, if the grievance is not settled to the satisfaction of both parties, either party to the Agreement may request that the grievance be submitted to arbitration. . . .

Under Section 5, entitled "General provisions," part (b) states:

If the City fails to meet and/or answer any grievance within the prescribed time limits as herein before provided, such grievance shall be presumed to be denied [sic] may be processed to the next step.

MATERIAL FACTS SPECIFIC TO CO-2014-25

4. On January 13, 2011, SOA President Captain John Chrystal III filed Grievance 2011-03, with Police Director, Barry McCarthy, alleging denial of payment for accrued compensatory

time for retired police Captains Camuso, Cuccolo, Gajda and Post.^{3/}

5. On January 13, 2011, Chrystal filed a request for arbitration on Grievance 2011-03 with the New Jersey State Board of Mediation.

6. Paul Caffera was designated as the arbitrator on the Grievance.

7. On June 2, 2011, the Newark City Council passed City Ordinance, 6PSF-g 06021, signed by the Mayor, which states in the Preamble:

AN ORDINANCE OF THE CITY OF NEWARK IN THE
COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR A
SPECIAL EMERGENCY APPROPRIATION OF \$7,000,000
FOR THE PAYMENT OF CONTRACTUALLY REQUIRED
SEVERANCE LIABILITIES RESULTING FROM THE
LAYOFF OR RETIREMENT OF CITY EMPLOYEES

8. The grievants were all authorized to receive retirement lump sum payments and were specifically listed in the attachment to the Ordinance. However, for whatever reason, the Ordinance authorizing the payments did not resolve Grievance 2011-03.

^{3/} The grievance states that it is on behalf of Cuccolo, Gajda, et al. The SOA asserts that the grievance also applies to Captain Post. The City disputes that the grievance applies to Post. I find this is not a material disputed fact. The City's assertion is belied by et al. in the caption of the Grievance, as well as the City's documents regarding the substantive issues in the grievance and arbitration. See, City's brief in opposition to the SOA motion for summary judgment and cross motion, Exhibit C.

9. Hearings on Grievance 2011-03 were held at the New Jersey State Board of Mediation on September 12, 2011, October 3, 2011, January 24, 2012, January 25, 2012, April 3, 2012, April 4, 2012, April 5, 2012, March 21, 2013 and March 22, 2013, before Arbitrator Paul Caffera.

10. Prior to the conclusion of the arbitration, on June 12, 2013, a meeting was held in the Police Director's Conference Room, regarding the within Grievance 2011-03. Present at this meeting were, Police Director Samuel A. DeMaio (McCarthy's successor), Chrystal, Lieutenant Gary D. Vickers, Secretary of the SOA, Lieutenant Alexander Martinez, First Vice President of the SOA, and Deputy Police Director Gustavo Medina. Documentation was provided to Director DeMaio at this meeting. At the conclusion of the meeting, Director DeMaio stated he needed additional time to review the material that was presented, and thereafter he would advise the SOA of his decision.

11. On June 18, 2013, Director DeMaio called a meeting with Chrystal, Vickers, and Martinez in his office. Director DeMaio advised the SOA that he sustained the within Grievance. At the same meeting, Director DeMaio and the SOA executed a Memorandum of Agreement for each of the four grievants.

12. On July 8, 2013, Director DeMaio sent a Memorandum to Julien X. Neals, Business Administrator for the City of Newark, Re: Settlement Agreements Retired Captains, stating:

In the above captioned matter I have reviewed Grievance 11-03 filed by the Superior Officers' Association with regards to payment for retired Captains Glen Camuso, Richard Cuccolo, Henry Gajda and James Post. In addition to reviewing the grievance I have reviewed all the supporting documentation including the individual time records. I have concluded that the records provided are correct and the retired Captains are entitled to full payment for the time depicted on their retirement applications.

As this matter has needlessly dragged on for three years and in the interest of continued harmonious labor relations, I find this matter is with merit and I am hereby sustaining the grievance.

I have attached the Memorandum of Agreements settling this grievance for each member and request that the appropriate personnel from the Office of Management & Budget are instructed to provide payment. As prescribed in the agreements, payment should be provided within thirty days of the agreements.

Thank you for your assistance,

Samuel A. DeMaio
Police Director

C: Anna Pereira, Corporation Counsel
John J. Chrystal III, Superior Officers'
Association
Marvin Easter, Lieutenant Legal Affairs
Daniel Gonzalez, Police Financial Officer
Paul Caffera, Arbitrator

13. On July 16, 2013, Anna P. Pereira, Corporation Counsel for the City of Newark, sent a letter to Director DeMaio, Chief of Police Sheilah A. Coley, Chrystal, Arbitrator Caffera and to the four grievants.

Dear Director, Chief, Captains and Arbitrator
Caffera,

On today's date, I received a copy of the 4 page Memorandum of Agreement (which appears to have been executed on June 18, 2013) purporting to resolve with finality the grievance as it pertains to Captain F. Post (retired) which is the subject of an arbitration between the Newark Police Superior Officers Association and the City of Newark bearing New Jersey State Board of Mediation Case Number 11-0013.

On today's date, I also received a July 8, 2013 Memorandum authored by Sheilah Coley, Acting Police Director and executed by Samuel A. DeMaio, Police Director. The Memorandum claims to sustain a grievance and indicates that it attaches Memoranda of Agreements for each member. I have not received any Memorandum of Agreement other than the one referenced above pertaining to Captain Post.

This arbitrated matter is being handled by the Department of Law. The City of Newark has not authorized the settlement of this matter nor the entry into this Memorandum of Agreement (nor any other settlement or Memoranda of Agreement that may have been executed relating to New Jersey State Board of Mediation Case Number 11-0013). Any purported settlement of Memoranda of Agreement seeking to memorialize such is null and void and of no force or consequence.

Please be guided accordingly.

14. On July 18, 2013, the SOA filed the within Unfair Practice Charge.

MATERIAL FACTS SPECIFIC TO CO-2014-45

15. On April 16, 2013, Chrystal filed a Grievance 2013-10 with Director DeMaio and Chief of Police Sheilah Coley.

16. The Grievance asserts that the City eliminated lump sum longevity payments for compensatory time in violation of the parties' collective negotiations agreement. The Grievance was specific to Lieutenant Paul Casale, retired.

17. Article XV, Accrued Compensatory Time, Section 3 states:

Each employee covered by this Agreement may, at his/her option, upon separation from the Police Department, receive wages and other benefits due him/her in a lump sum equal to the cost to the City for such wages and other benefits had the employee remained on the payroll to receive them. Base salary, longevity, holiday pay, overtime, vacation allowance, and accrued compensatory terminal leave time shall be considered benefits for the purpose of the section and shall be computed for the length of time due the separated employee.

The aforesaid lump sum payment shall be made on the day of separation. In the event an employee elects the lump sum option is entitled to wages and other benefits during two fiscal years, two lump sum payments shall be made. The first such payment shall be in an amount equal to the wages and benefits to which the employee would have been entitled for the year in which separation occurs and the second such payment shall be in an amount equal to the wages and benefits to which the employee would have been entitled for the year immediately following separation had he/she remained on the payroll. (Emphasis added)

The first payment shall be made upon separation and the second payment shall be made in the second week of January of the subsequent year.

18. On May 7, 2013, 21 days after the Grievance was filed and before either party filed for arbitration at Step 6, Director DeMaio sent a letter to Chrystal sustaining the grievance. The letter states:

Captain Chrystal:

I have reviewed SOA Grievance 2013-10, pertaining to the elimination of longevity in the calculation of Lump sum payments, and I find that this grievance is with merit. Members who retire from the Newark Police Department are entitled to be paid their longevity with their lump sum payments as per Article XV Accrued Compensatory Time, Section 3, of the Collective Negotiations Agreement between the City of Newark and the Newark Police Superior Officers' Association.

I, as have the previous Police Directors, have approved lump sum payments to retirees with longevity calculated into those payments; in accordance with the collective bargaining agreement.

Therefore, I find your grievance is with merit and is sustained. I will be directing Darlene Tate, Supervisor for the Office of Management and Budget, to comply with your agreement, retroactively and prospectively, for all affected members.

Sincerely,
Samuel A. DeMaio
Police Director

19. The City has never paid the lump sum payment to Lt. Casale.

20. On August 16, 2013, Chrystal filed the within Unfair Practice Charge.

ANALYSISSTANDARD OF REVIEW

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). In determining whether summary judgment is appropriate, we must view the evidence submitted in connection with the motion in the light most favorable to the party opposing the motion. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 183 (App. Div. 1981); UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶16 2006).

N.J.A.C. 19:14-4.8(e) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross motion for summary judgment may be granted and the requested relief may be ordered.

CO-2014-25

The parties agree that the SOA filed a Grievance on behalf of several captains seeking payment of accrued compensatory time. The SOA filed for arbitration on the Grievance per step 6 of the parties Grievance Procedure. The parties proceeded with the

arbitration. However, prior to the conclusion of same, the Grievance was sustained by the Police Director and Agreements were executed by the parties. The SOA hereby moves, as a matter of law, for a finding that the City has refused to negotiate in good faith when it repudiated the grievance procedure by failure to implement the Agreements sustaining the underlying Grievance. The City hereby cross moves for a dismissal of the complaint, as a matter of law, asserting that the Agreements are void because the Police Director did not have the authority to enter into the Agreements, the Grievance was not settled within the time frame of Step 5 of the Grievance Procedure, and the Agreements violated the City's policy on restriction on settlement of grievances. In addition, the City argues the merits of the underlying grievance and requests in the alternative that the matter be held in abeyance and a forensic audit be ordered.

I find that no genuine issues of material fact exist which require a plenary hearing.

The Act requires public employers to negotiate grievance procedures by which either majority representatives or individual employees "may appeal the interpretation, application or violation of policies, agreements, and administrative decisions." N.J.S.A. 34:13A-5.3. The Act further provides that such negotiated grievance procedures be utilized for any dispute covered by the terms of the parties' collective negotiations

agreement. Ibid. It is an unfair practice for a public employer to refuse to negotiate in good faith with the majority representative or to refuse to process grievances presented by the majority representative. N.J.S.A. 34:13A-5.4a(5).

Moreover, the Commission has held that a refusal by the public employer to abide by a decision of its designated representative constitutes a refusal to negotiate in good faith. Middletown Township, P.E.R.C. No. 2007-18, 32 NJPER 325 (¶135 2006), aff'd. 34 NJPER 228 (¶79 2008).

First, the City argues that the Grievance was not sustained because Director DeMaio did not have the authority to settle the grievance at Step 6 of the Grievance Procedure. The City cites no law for its assertion. Rather, this is now one of an ever growing line of cases with the identical parties, where the City asserts the Police Director is without authority to settle grievances at Step 5 and 6, and either the Commission or Hearing Examiner has ruled to the contrary. City of Newark, P.E.R.C. No. 2008-034, 33 NJPER 316 (¶120 2007); City of Newark, P.E.R.C. No. 2008-53, 34 NJPER 71 (¶29 2008); City of Newark, H.E. No. 2013-014, 39 NJPER 410 (¶130 2013); City of Newark, H.E. No. 2014-001, 40 NJPER 124 (¶48 2014). The City attempts to distinguish this case because Step 5 of the Grievance Procedure states ". . . then the matter shall be submitted to the Director of Police who shall have ten (10) calendar days to submit his/her decision." The

City extracts from this language that after ten (10) days, the Police Director loses all authority to sustain or settle any grievance. Such a leap in logic is not supported, nor can such an inference be drawn. No provision in the parties' negotiated Grievance Procedure limits the Police Director's authority to resolve grievances at any point, nor does the Police Director require approval to settle grievances.

Article IV of the parties CNA, Grievance and Arbitration, Steps 5 and 6, taken together, authorize the Director to decide or resolve grievances. The Business Administrator is not mentioned at any step in the grievance procedure. None of the provisions in the grievance procedure limit the Director's authority to resolve grievances, nor do any require any further approval of settlements by the Business Administrator. Where there is no language to the contrary contained in the settlement agreement, the SOA is entitled to assume that settlements made by the designated City representatives at the various steps of the procedure are final. (emphasis added)
City of Newark, 39 NJPER 410, supra.

There is no dispute that the Police Director met with the SOA, reviewed information, sustained the Grievance and executed Agreements confirming same. This action by the Police Director is consistent with the Grievance Procedure at Steps 5 and 6, its stated Purpose in Section 1, and the line of City of Newark cases, supra.

Next, the City alleges that the Grievance was not settled within the time frame permitted under Step 5 of the Grievance

Procedure, and therefore the Agreement made by the Police Director at Step 6 of the Grievance Procedure is unenforceable. Thus, the City's refusal to honor the Agreements cannot be a violation of the Act for failure to negotiate in good faith. In support of its argument the City cites no law, but merely refers to the Grievance Procedure.

Step 5 of the Grievance Procedure states the Director shall have ten calendar days to submit a decision. It is undisputed that the grievance was settled at Step 6 of the parties' grievance procedure by the Police Director during the pendency of an ongoing arbitration hearing. As set forth above, there is nothing in the Grievance Procedure that limits the Police Director authority to sustain the Grievance at Step 5 or 6 of the grievance procedure. City of Newark, 39 NJPER 410, supra.^{4/}

The City further argues that the Police Director was not authorized to settle the Grievance during Step 6 of the Grievance Procedure based upon the following language in Step 6 of the Grievance Procedure:

^{4/} The City suggests that PERC should speculate that the SOA was not satisfied with the arbitration proceedings and "instead" forum shopped "back to Step 5" by entering into Agreements with the Police Director. Such speculation has no place in legal analysis. No facts support the City's suggestion, any more than the facts suggest that the City sustained the grievances and executed settlement agreements because the City was not satisfied with the direction of the arbitration proceedings. Moreover, any speculation, either way, would be inappropriate.

Within two weeks of the transmittal of the written answer by the Director, if the grievance is not settled to the satisfaction of both parties, either party to the Agreement may request that the grievance be submitted to arbitration as hereinafter set forth.

The City maintains that this language makes clear that the Police Director does not have authority to settle a grievance at Step 6; that only Corporation Counsel has authority. I disagree. While the City correctly points out that City of Newark, 39 NJPER 410 and 40 NJPER 124, supra, were sustained at Step 5 and not at Step 6 of the Grievance Procedure, City of Newark, 39 NJPER 410, supra, clearly addresses the authority of the Police Director at Step 5 and Step 6 of the Grievance Procedure as set forth above.

Moreover, the City argues that the Step 6 language ". . . makes clear that once a grievance is submitted to arbitration, only the Arbitrator shall have the authority to hear and determine the grievance. . ." I disagree with the City's characterization of that language. It is undisputed that the SOA submitted the Grievance to arbitration, and that the Police Director sustained the Grievance during the pendency of the arbitration hearing. While the City's proposition is correct that only the arbitrator shall have the authority to issue a final decision at Step 6, a decision was not rendered.^{5/} To the

^{5/} The City states that Arbitrator Caffera dismissed the grievance with prejudice. This fact is not disputed by the
(continued...)

contrary, the Grievance was voluntarily sustained by the Police Director, settling the matter. I take administrative notice that grievance arbitrations may be settled by the parties prior to an arbitration decision. The Police Director, an authorized agent of the City, sustained the grievances during the pendency of the arbitration hearing.^{5/}

The City also asserts that the settlement violated the City's policy or restriction on settlement of grievances. The City presents two memoranda, re: restriction of settlement of grievances, dated November 14, 1997 and December 7, 2006, which limit settlement of grievances which will result in significant costs or bind the City to a past practice.^{2/} The former is addressed to the Police Director Santiago, Fire Director Kosspu and Chief of Police O'Reilly. The latter is addressed to All Department Directors. There is also a March 28, 2013, memorandum

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- 5/ (...continued)
SOA. However, I find that it is not a material fact, as the dismissal was in September 2013, over 3 months subsequent to the parties' voluntary resolution of the Grievance.
- 6/ The City drops a footnote in its moving papers that Director DeMaio, who sustained the Grievance, was not the Police Director at the time the Grievance was filed. I find that fact immaterial and irrelevant.
- 7/ The City asserts that the SOA was aware of the policy in June 2011 based upon the SOA's letter requesting arbitration. Neither the policy nor the Business Administrator is mentioned in that letter. Regardless, I find whether or not the SOA was aware of the policy to be immaterial and irrelevant.

to Police Director Rankin and Fire Director Dunham to be mindful of the attached October 14, 1997 memorandum. There are no facts to indicate whether Police Director DeMaio ever received any of the memoranda.

These exact memoranda were recently addressed in City of Newark, H.E. No. 2014-1.

At best, these documents may support that Police Director DeMaio violated an internal policy dating to 1997. The SOA was not a party to that policy nor is there any evidence that the SOA was notified of its existence. In any event, the policy does not abrogate the clear contract language of the parties' negotiated grievance procedure which designates the Police Director to review and resolve grievances. . . .

Interestingly, the Memoranda speak of grievance settlements generally. They do not address settlements at Step 6. It remains unclear if Police Director DeMaio ever received any such memorandum, if he did receive it, whether he did not think it was applicable because the settlement did not have the effect of incurring significant costs to the City (either by total cost, or in light of the City ordinance, 6PSF-g 006021, appropriating 7,000,000 for payment of contractually required severance liabilities from retirement of City employees) or did not bind the City via a past practice. Regardless, it remains unknown if the SOA was aware of it, or whether they were aware but thought the Police Director did or did not consider it.

Assuming, arguendo, that Director DeMaio was aware of either Memoranda and should have sought approval by the Business Administrator before sustaining the grievance, the November 14, 1997 Memorandum sets forth, "Failure to adhere to the foregoing directive may result in disciplinary action." The appropriate remedy for failure by DeMaio to adhere to a City policy would be disciplinary action against him, not a refusal to comply with the Agreement.

Lastly, the City argues that the Settlement Agreement is unenforceable because it provides for more than the collective negotiations agreement requires. The City cites no law in support of its position. Neither merits of the underlying grievance, nor the wisdom of the settlement agreement are relevant to the issue of whether the employer repudiated the grievance procedure. Borough of Keansburg, P.E.R.C. No. 2004-29, 29 NJPER 506, 507 (¶1602003), City of Newark, H.E. No. 2013-14.

In the same vein, the City requests the matter be held in abeyance and a forensic audit be conducted. The City cites no law to support such an action, and accordingly, I give it no consideration.

Based on the foregoing, the City's refusal to abide by the Agreements violated 5.4a(1) and (5), and movant is entitled to the relief requested as a matter of law. Consequently, I grant

the SOA's motion for summary judgment and deny the City's cross motion for summary judgment.

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Here, the City argues that Grievance 2013-13 was not settled within the time frame of Step 5 of the Grievance Procedure. Specifically, Step 5 sets forth in part, ". . . the Director of police who shall have ten (10) calendar days to submit his/her decision." The City also cites Section 5, Subsection (b) of the Grievance Procedure, which states, "If the City fails to meet and/or answer any grievance within the prescribed time limits as herein before provided, such grievance shall be presumed to be denied [and] may be processed to the next step." Taken together, the City asserts that because a decision was not issued by the Police Director within 10 days, the grievance was denied and it should have proceeded to Step 6; a step wherein the Police Director no longer had power to sustain or resolve the grievance. The City cites no law to support its position.

There is no dispute that on April 16, 2013, the SOA submitted Grievance 2013-13 to the Police Director. The Grievance was resolved on May 7, 2013, twenty one days later.

Nothing in the provisions of the Grievance Procedure creates an inference as the City suggests. Rather, Section 5 permits a grievance to be processed to the next step, in this case, Step 6 Arbitration, based upon a 10 day lapse of time from when the

Police Director received the grievance. The parties stipulate the Grievance was submitted to the Police Director on April 16, 2013. Ten days thereafter would be April 26, 2013. Step 6 of the Grievance Procedure states in relevant part:

Arbitration:

Within two (2) weeks of the transmittal of the written answer by the Director, if the grievance is not settled to the satisfaction of both parties, either party to the Agreement may request that the grievance be submitted to arbitration as hereinafter set forth.

Pursuant to the City's contention, as no written decision was issued by the Police Director within 10 days at Step 5, under Section 5, the SOA's grievance was presumed to be denied as of April 26, 2013. The City further contends that Step 5 was no longer operative and the SOA would have had to file for Step 6 arbitration, at which point the Police Director no longer had authority to resolve the Grievance. I disagree. Per Step 6, the SOA would then have had two (2) weeks to request arbitration, or until May 10, 2013. The Grievance was resolved on May 7, 2013. As such, the Grievance was settled within the time frame of Step 5, or at a minimum before the expiration of time the SOA had to file for arbitration under Step 6. Regardless whether the Police Director sustained this Grievance during or at the conclusion of Step 5, it was before the parties' time to file under Step 6 had elapsed. Either way, the Police Director had the authority to

settle the Grievance, for reasons set forth above. See, City of Newark, 39 NJPER 410, supra.

Finally, the City repeats its arguments made in CO-2014-25 and cites no law in support of its assertions. First, they argue the merits of the Grievance and that DeMaio's decision to sustain the Grievance provided the SOA more than they were contractually entitle to receive, and therefore the Grievance settlement is void. Again, the contractual merits of a grievance are not relevant to whether an employer repudiated the grievance procedure. Bor. of Keansburg, supra. The City is not prevented from making an unfavorable agreement or conferring benefits greater than it is contractually required to provide. Second, the City regurgitates that DeMaio's decision to sustain Grievance 2013-13 violated the City's policy on restriction of settlement agreements. For reasons set forth in the above analysis in CO-2014-25, the proposition is rejected without further discussion.

Based upon the foregoing, the City's refusal to abide by the Agreement violated 5.4a(1) and (5), and movant is entitled to the relief requested as a matter of law. Consequently, I grant the SOA's motion for summary judgment and deny the City's cross motion for summary judgment.

CONCLUSIONS OF LAW

The City of Newark violated 5.4a(1) and (5) of the Act when it refused to pay Captains Camuso, Cuccolo, Gajda and Post

compensatory compensation pursuant to the Agreements sustaining Grievance 2011-03.

RECOMMENDED ORDER

1. The SOA's motions are granted.
2. The City's motions are denied.
3. The City is ordered to

A. Cease and desist from:

1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by repudiating the Agreements sustaining Grievance Nos. 2011-03 and 2013-10 and pay Captains Camuso, Cuccolo, Gajda and Post compensation consistent with the Settlement Agreements, and to pay Lieutenant Casale longevity consistent with the Agreement.

2) Refusing to negotiate in good faith with the SOA concerning terms and conditions of employment of employees in its unit, particularly, by repudiating the Agreements sustaining Grievance Nos. 2011-03 and 2013-10 and pay Captains Camuso, Cuccolo, Gajda and Post compensation consistent with the Settlement Agreements, and to pay Lieutenant Casale longevity consistent with the Agreement.

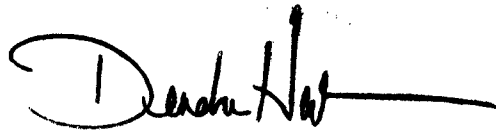
B. Take the following action:

1) Pay Captains Camuso, Cuccolo, Gajda, Post and Lieutenant Casale compensation pursuant to the Agreement reached

in settlement of Grievance Nos. 2011-03 and 2013-10 with interest pursuant to R. 4:42-11.

2) Post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

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



Deirdre K. Hartman
Hearing Examiner

DATED: February 3, 2015
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 file 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

H.E. NO. 2015-8

25.

Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 11, 2015.



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 by repudiating the Agreements sustaining Grievance Nos. 2011-03 and 2013-10 and pay Captains Camuso, Cuccolo, Gajda and Post compensation consistent with the Settlement Agreements, and to pay Lieutenant Casale longevity consistent with the Agreement.

WE WILL cease and desist from refusing to negotiate in good faith with the SOA concerning terms and conditions of employment of employees in its unit, particularly, by repudiating the Agreements sustaining Grievance Nos. 2011-03 and 2013-10 and pay Captains Camuso, Cuccolo, Gajda and Post compensation consistent with the Settlement Agreements, and to pay Lieutenant Casale longevity consistent with the Agreement.

WE WILL pay Captains Camuso, Cuccolo, Gajda, Post and Lieutenant Casale compensation pursuant to the Agreement reached in settlement of Grievance Nos. 2011-03 and 2013-10 with interest pursuant to R. 4:42-11.

Docket Nos. CO-2014-25 &
CO-2014-45

City of Newark
(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