

I.R. NO. 97-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-96-370

PATERSON HOUSING POLICE, PBA LOCAL 274,

Charging Party.

SYNOPSIS

The Paterson Housing Police, PBA Local 274 sought an injunction restraining the City of Paterson from placing the PBA president on a swing shift so he would be unavailable to conduct union business during normal business hours. It further sought to restrain the City from restricting the union president use of a housing police office for the conduct of union business. At the hearing, the City submitted un rebutted evidence that the housing police are temporarily short on manpower and accordingly, it raised a substantial question as to whether it has a legitimate managerial need to assign the PBA president to a swing shift, at least on a temporary basis. However, an interim order was entered into requiring the City to provide adequate office space for the union president pending a full hearing.

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Appearances:

For the Respondent,
Susan E. Champion Corporation Counsel
(Alan Stein, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On May 23, 1996, the Paterson Housing Police, PBA Local 274 filed an unfair practice charge with the Public Employment Relations Commission against the City of Paterson. It alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 (a) (1), (3), (5) and (7)^{1/} when on or about April 15,

^{1/} These subsections 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 this act.

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1996 it directed PBA President Sweeney Melendez to turn in his keys to an office used for union business. It is alleged in doing so that during contract negotiations the City rescinded the practice of providing the PBA with a union office. It is further alleged that on May 17, 1996, the Housing Police Department issued an order that effective June 2, 1996, Melendez' work schedule would be changed from a regular Monday through Friday day schedule (10 a.m. to 6 p.m.) with weekends off to a shift which rotates every 28 days from nights (6 p.m. to 2 a.m.) to days (10 a.m. to 6 p.m.). This action also occurred during contract negotiations in direct contravention of a six-year practice whereby the City had scheduled PBA Presidents on the day shift so that they could attend to PBA business during the City's normal business hours. It was also alleged that all housing police officers were directed that a private citizen, Leo Renaud, who acted as an assistant to the PBA on several labor issues, was permanently forbidden from entering the Paterson Housing Police Department.

All these actions were alleged to have been taken in retaliation for Melendez' active role in employment matters.

1/ Footnote Continued From Previous Page

(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."

The unfair practice charge was accompanied by an order to show cause which was executed and ultimately heard on both June 20, 1996 and June 25, 1996.

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. DeGioia, 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).

The City introduced evidence by way of affidavit that Mr. Renaud was a private citizen and it had no knowledge of Renaud's association with the PBA. Mr. Renaud was very active as a private citizen before the City Council and the directive to Mr. Renaud was taken to limit his interference with police business.

The PBA has not demonstrated that the City knew that Leo Renaud was a representative of the PBA when it barred Renaud from entering the Paterson Housing Police Department. The PBA has not shown that it has a substantial likelihood of success in prevailing on these allegations.

At the hearing, the City introduced evidence that its housing police are at below normal manning levels; specifically, since February 1996, at least five officers have either left the department or on extended leave. Of these, two left in April and one in May. All housing police officers other than Melendez are on rotating swing shifts. Captain Stancil testified that to ensure proper police coverage, the City had to move Melendez to a swing shift as well.

The allegations of the City concerning the manpower shortage of the housing police were not disputed. The City has raised a material question as to managerial necessity to assign Melendez at least on an emergency basis to a swing shift to ensure proper police coverage. Bor. of Atlantic Highland v. Atlantic Highland PBA Local 242, 192 N.J. Super 71 (App. Div. 1983); compare Township of Mt. Laurel, 215 N.J. Super. 108 (App. Div. 1987); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶20211 1989) aff'd App. Div. Dkt. No. A-918-89T1 (9/25/90). Accordingly, the PBA has not met its heavy burden for the granting of interim relief on this issue.

The housing police office has a common room. Off the common room was at least one smaller office. Melendez, as well as previous PBA presidents, had access of these offices as well as the use of a copy machine, fax machine and a telephone. The smaller room off the main room is now a private office for Captain Stancil.

Stancil was promoted to the position of Captain in November 1995. Stancil testified that she did not want to have any officers in the police department complex when no superior officers were on duty. Accordingly, she asked Melendez to turn over his keys to the office.

There is conflicting testimony whether Melendez handed his keys over to Captain Stancil in November 1995 or in April 1996. Regardless, the office is always open during regular business hours so Melendez continues to have daytime access to the office. However, if Melendez is transferred to the night shift, he will be working 6 p.m. to 2 a.m. when the housing police office is normally locked.^{2/}


The use of, and access to, an office for union business is a term and condition of employment. Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1989); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985). Melendez does have a right to use such facilities, and pending a final Commission decision, it is anticipated that he will be working when the housing police office is normally closed. The City has made a unilateral change in a term and condition of employment. The City must make an accommodation to allow the use of housing police offices by Melendez

^{2/} Although there was testimony that another facility was available, it is in poor repair, is dirty, has no phone or other office equipment and has no restroom facilities or running water. In any event, these offices were never offered to Local 247 for its use.

and provide him with a key or otherwise arrange for his access to the office. PBA Local 274 will suffer irreparable harm if the President is denied the use of office facilities while he is on duty. Melendez does not need to have access to Captain Stancil's private office except that he does have the right to use the telephone, facsimile machine and photocopy machine. Accommodation must be made to allow Melendez access to such equipment either through allowing him access to Stancil's office or having such equipment placed in the common room of the Police offices. In entering such an order the hardship to the City is minimal.

Accordingly, it is hereby ordered that the City of Paterson provide 24 hour access to Sweeney Melendez as President of PBA Local 274 to the housing police office. Further, it is ordered that he be provided access to a photocopy machine, a facsimile machine and a telephone.

The application for interim relief is otherwise denied. This is an interim order only. This matter will go forward to a plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: July 2, 1996
Trenton, New Jersey