

I.R. NO. 2005-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket Nos. CO-2005-138 &  
CO-2005-139

PATERSON POLICE PBA LOCAL 1 and  
PATERSON POLICE PBA LOCAL 1  
SUPERIOR OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

A Commission Designee denies an application for interim relief on charges alleging that the City of Paterson failed to negotiate over the installation of surveillance cameras in public areas regarding police employees. The Designee finds that absent Commission precedent, he could not conclude that the Charging Party had established a substantial likelihood of succeeding in proving that the use of surveillance cameras in public areas for security purposes was negotiable.

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Appearances:

For the Respondent  
Dorf and Dorf, P.C.  
(Christopher J. Vaz, of counsel)

For the Charging Parties  
Mark Rushfield, attorney

INTERLOCUTORY DECISION

On November 23, 2004, Paterson Police PBA, Local 1 (PBA) and Paterson Police PBA, Local 1 Superior Officers Association (SOA) filed unfair practice charges with the Public Employment Relations Commission against the City of Paterson (City). The charges allege that the City violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act)<sup>1/</sup> in late October or early November 2004, by unilaterally

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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  
(continued...)

installing surveillance cameras to observe: the area of the police station front desk, and the hallway area outside the police roll call room, both areas where PBA and SOA unit members work. The Charging Parties argue that use of the surveillance cameras is a mandatory subject for negotiations, the City did not raise the issue in negotiations nor in the parties' ongoing interest arbitration proceedings. The PBA and SOA contend they demanded the City terminate use of the cameras, but the City refused.

The unfair practice charges were accompanied by an application for interim relief. These charges are consolidated for purposes of this proceeding. An Order to Show Cause was executed on November 30, 2004, scheduling a return date for December 16, 2004. Pursuant to the City's request and the Charging Party's consent, the return date was rescheduled for January 11, 2005. Both parties submitted briefs, affidavits and exhibits in support of their respective positions pursuant to Commission rules and argued orally on the return date.

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1/ (...continued)  
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 Charging Party argues that installation of surveillance cameras in the workplace is a mandatory subject for negotiations, the City installed the cameras without notice or negotiation, and further argued the City's action was particularly prohibited during the parties interest arbitration proceedings. The City denied violating the Act. It argued that it had a managerial prerogative to install the cameras for security purposes; to help protect employees and visitors to the Public Safety Complex. It further argued that the cameras were not hidden, only viewed public access areas, and that the cameras did not view any areas where employees had an expectation of privacy. The City referred to the cameras as "security cameras".

The following facts appear.

The collective negotiation agreements between the City and the SOA, and the City and the PBA, respectively, expired on July 31, 2003. Subsequently, the SOA and PBA engaged in consolidated collective negotiations with the City. No agreements were reached, and in late summer or early fall of 2004 the parties began the interest arbitration process. The first meeting with the interest arbitrator was held in October 2004, prior to the installation of the surveillance/security cameras. The City did not propose surveillance/security cameras during the negotiation or interest arbitration process.

On or about October 15, 2004, after the initial interest arbitration session, the City installed two surveillance/security cameras. One camera was installed to view the main public entrance and police front desk located in the lobby of the Public Safety Complex. A second camera captures a different part of the lobby that is adjacent to elevators, stairs going up, and a rear entrance. That same camera captures a hallway that extends from the lobby, and views an electronic time and attendance device mounted on the hallway wall. The police roll-call room is accessible from that hallway. While the hallway may be accessible to the public, the roll call room is not. The parties could not agree on whether the elevators were available for public use. Neither camera captures areas of employee privacy such as restrooms, locker rooms, union offices or fitness rooms. Posted notices advise the public and employees that video surveillance is used in public areas of the building. Monitors for the cameras are currently located in Captain Finer's office, and in the internal affairs office. There may be another monitor in the computer technology section. The monitors are not monitored regularly. The images are digitally recorded from at least one of the monitors.

Subsequent to their installation, Police Director Walker sought PBA and SOA consent for the cameras. Consent was denied.

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).

The Commission has not ruled upon the negotiability of surveillance/security cameras. The Charging Party, relying on certain National Labor Relations Board (NLRB) cases argues that the installation of surveillance cameras is mandatorily negotiable. National Steel Corp. v. NLRB, 324 F. 3d 928, 932-933 (7th Cir. 2003); Colgate-Palmolive Co., 323 NLRB (No. 82) 515, 516, 155 LRRM 1034 (1997). The City argues those cases are not dispositive of the security issues raised here, and that the governmental necessity negotiability standard in New Jersey as established in Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78 (1981), and IFPTE, Local 195, 88 N.J. 393

(1982), is different than the standard used in the private sector.

In Colgate-Palmolive, surveillance cameras were placed in a restroom and fitness center to observe employees regarding work place theft and other misconduct. The Board analogized surveillance cameras to physical exams and drug testing and concluded that the benefits of bargaining over the installation of the cameras outweighed any burden on the employer's ability to operate its business. But in Colgate, the cameras viewed areas where employees had an expectation of privacy. Here, the cameras were not placed in such areas.

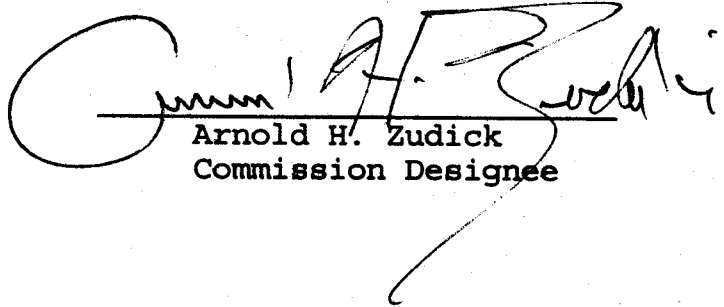
While the Commission is often guided by NLRB and other federal precedent in interpreting our own Act, Lullo v International Association of Firefighters, 55 N.J. 409 (1970), it is not always followed. County of Bergen, P.E.R.C. No. 84-2, 9 NJPER 451 (¶14196 1983).

Interim relief is not the place to resolve the negotiability of surveillance/security cameras for police. Given the lack of Commission precedent on that issue and recognizing governments need to take reasonable, non-evasive, steps to assure the security of public buildings, I cannot conclude that the Charging Party has a substantial likelihood of succeeding in a plenary hearing on the surveillance issue.

Rather, I recommend that the Commission's scope of negotiations forum is the more appropriate place to litigate over the negotiability of these cameras.

ORDER

The application for interim relief is denied.



Arnold H. Zudick  
Commission Designee

DATED: January 14, 2005  
Trenton, New Jersey