

I.R. NO. 2023-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN TOWNSHIP,

Respondent,

-and-

Docket No. CO-2023-042

PBA LOCAL 154,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief filed by PBA Local 154 (PBA) against Franklin Township (Township) alleging that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., specifically sections 5.4a(1) and (5), by unilaterally revising its medication disclosure policy, which previously required Township police officers to disclose if they are taking medication which may diminish their alertness, or impair their senses or physical ability to perform their duties, to also require police officers to disclose if they are taking blood thinners or anti-coagulant medication, regardless of the impact on their ability to perform their duties. PBA further alleges that the revised medication disclosure policy impermissibly intrudes upon officers' expectation of privacy regarding their use of prescription blood thinners or anti-coagulants, regardless of the impact on their ability to perform their duties.

The Designee grants PBA's application, and orders the Township to rescind its revision to its medication disclosure policy, and to expeditiously negotiate in good faith its proposed revision to require officers to disclose their use of prescription blood thinners or anti-coagulant medication, regardless of the opinion of their prescribing physician regarding the impact of the medication on their ability to perform their duties, as well as any impacts of that revision.

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Appearances:

For the Respondent,
Rainone Coughlin and Minchello, LLC, attorneys
(Michael R. Burns, of counsel)

For the Charging Party,
Detzky Hunter and DeFillippo, attorneys
(David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On September 2, 2022, PBA Local 154 (PBA) filed an unfair practice charge against Franklin Township (Township), together with an application for interim relief, a supporting brief, a certification and exhibits.

The charge alleges that the Township's unilateral revision of its medication disclosure policy in August, 2022 violates sections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).^{1/} Specifically,

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)

PBA alleges that the Township unilaterally revised its medication disclosure policy, which previously required Township police officers to disclose if they are taking medication which may diminish their alertness, or impair their senses or physical ability to perform their duties, to also require police officers to disclose if they are taking blood thinners or anti-coagulant medication, regardless of the impact on their ability to perform their duties. PBA further alleges that the revised medication disclosure policy impermissibly intrudes upon officers' expectation of privacy regarding their use of prescription blood thinners or anti-coagulants, regardless of the impact on their ability to perform their duties, in violation of sections 5.4a(1) and (5) of the Act.

PROCEDURAL HISTORY

As noted above, on September 2, 2022, PBA filed an application for interim relief, a supporting brief (PBA Br.), exhibits, and a certification of PBA President Brian Quigley (Quigley cert.).

On September 12, 2022, I conducted a telephone conference call with the parties, and requested that the Township submit

1/ (...continued)
rights guaranteed to them by this act;" and "(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."

information regarding why it needs its police officers to disclose their use of blood thinners or anti-coagulants, including certifications, by September 19, 2022. On September 19, 2022, the Township filed its submission (Opp. Br. 1), including the certification of Raven Williams, the Township's human resources officer (Williams cert.).

On September 20, 2022, I issued an Order to Show Cause pursuant to N.J.A.C. 19:14-9.2, which provided that the Township's answering brief was due September 23, 2022; PBA's reply brief was due September 27, 2022; and a hearing via telephone conference call would be conducted on September 29, 2022.

On September 23, 2022, the Township filed an answering brief (Opp. Br. 2), and the certification of Quovella Maeweather, the Township's director of public safety (Maeweather cert.). On September 27, 2022, PBA filed a reply brief (PBA Reply), and a supplemental certification of Brian Quigley (Quigley supp. cert.). On September 29, 2022, the parties argued their respective cases on the application for interim relief in a hearing conducted via telephone conference call.

FINDINGS OF FACT

The following pertinent facts appear.

PBA is the majority representative for all rank and file police officers employed by the Township, and is a party to a

collective negotiations agreement (CNA) with the Township for the term January 1, 2019 through December 31, 2023. (Quigley cert., ¶¶2, 4.)

Quigley has been employed by the Township since December, 2006, and has been PBA President since January 1, 2021. (Id., ¶¶1, 3.) Quovella Maeweather has been employed as the Township's director of public safety since April, 2020. (Id., ¶5.) Maeweather is "directly involved in shaping and developing policies that the [p]olice employees must abide by," including "those policies related to medication disclosures." (Maeweather cert., ¶2.) Williams, as the Township's human resources officer, has also been "directly involved in discussions that affect [the Township's] personnel policies" and "changes in those policies." (Williams cert., ¶2.)

The Township's Medication Disclosure Policy, Section 3:6.1(3)

Prior to August 10, 2022, Section 3:6.1(3) of the Township's Rules and Regulations provided as follows:

Medication While on Duty and Notification
About Medication:

Employees of the department shall disclose to the Director of Public Safety or his/her designee that they are taking medication (prescription or non-prescription) that may diminish their alertness or impair their senses or physical ability to perform their duties. Employees shall notify their supervisor as far in advance of their reporting to duty as is possible, as to the medication required, its properties and the possible effects on the person's physical and

mental abilities, the dosage, and the period during which the employee is required to take the medication. It shall be the duty of the employee to obtain this information from his/her prescribing physician. If the medication is a nonprescription drug, the employee shall make this notification. The information so provided shall be confidential.

The department reserves the right to take appropriate action in the case of any employee who is impaired on duty for any reason, including the use of prescription or non-prescription medication.

(Quigley cert., ¶6; Exh. B) (emphasis added).

May, 2022 Meeting Regarding Section 3:6.1(3)

In May, 2022, Quigley forwarded a memo to Maeweather "requesting clarification [regarding] the scope of the medication disclosure requirement set forth in Section 3:6.1(3) as same applied to both prescription and non-prescription medication."

(Id., ¶7.) With regard to prescription medication, Quigley requested that Maeweather "confirm that disclosure was only required if . . . said medication does, in fact, diminish the officer's alertness/senses/physical ability to perform his/her duties," or "in the opinion of the prescribing physician, said medication will diminish the officer's alertness/senses/physical ability to perform his/her duties." (Id., ¶8.) With regard to non-prescription medication, Quigley requested that the director "confirm that disclosure was only required if said medication indicates that it may diminish the officer's alertness/senses/

physical ability to perform his/her duties," assuming that "said dosage was taken while on duty or within close proximity of the start of his/her tour of duty." (Id., ¶9.)

A few days later, Quigley met with Maeweather to discuss Quigley's concerns, as well as how the Township "would maintain and otherwise respect the confidential nature of any such medication disclosure." (Id., ¶10.) Maeweather "confirmed the accuracy of [Quigley's] memo [regarding] when such medication disclosure was mandated" for prescription and non-prescription medication, and "advised that only she and one other supervisor would have access to any such medication disclosures." (Id.)

June, 2022 Adverse Medical Event

In June, 2022, an on-duty Township police officer "experienced an adverse medical event."^{2/} (Maeweather cert., ¶3; Williams cert., ¶3.) "Further investigation revealed" that the officer "was being treated with blood thinners." (Maeweather cert., ¶4; Williams cert., ¶4.) The Township was "not aware that the officer was using these blood thinners and was concerned that the officer had not provided any documentation indicating that the prescribing physician had cleared him for duty while

^{2/} The Township did not submit any additional information, from either a medical professional or anyone else, about the adverse medical event, and thus it is unclear under what circumstances the event occurred, what type of symptoms the officer experienced during the event, and the seriousness of those symptoms.

taking these medications."^{3/} (Maeweather cert., ¶4.)

The officer that experienced the adverse medical event in June "was subsequently examined by a [Township] physician, re-evaluated by his own doctor, and ultimately taken off the medication." (Williams cert., ¶7.) This was because "'due to his job description it is felt that the risks outweigh the benefits for him to take blood thinners.'"^{4/} (Id.) The officer was "subsequently cleared to return to duty." (Id.)

July 19, 2022 Meeting

On July 19, 2022, Quigley spoke with Williams in her office, along with Kenny Daly, the president of the Township's Superior Officers Association, and Township police officer Kevin Frizziola. (Quigley supp. cert., ¶3.) Although Quigley is not

^{3/} Williams further certifies that the officer was being treated with blood thinners "that had the potential for serious negative side effects." (Williams cert., ¶4). However, it is unclear what the basis is for Williams' conclusion about potential "serious negative side effects" as no information from a physician had been provided to the Township about the officer's use of blood thinners prior to June, Williams is not a physician, and no medical source is cited for this statement.

^{4/} As this language appears in quotation marks in Williams' certification, but there is no reference to a source, it is unclear if this was the opinion of the Township's physician, the officer's physician, or someone else. Also, because of the lack of detail in the Township's submissions regarding the adverse medical event, it is unclear whether a medical professional opined that blood thinners caused or contributed to the event, or whether the Township simply learned about the officer's use of blood thinners during the course of the officer's subsequent treatment.

aware of the June adverse medical event, Quigley believes that it may have involved Township police officer O.T. (Id.) At the July meeting, Quigley spoke to Williams about officer O.T.^{5/} (Id.) During the meeting, Williams "flatly stated that, pursuant to [the Township's] policy, any police officer taking blood thinners was prohibited from continuing to work in that capacity. Period." (Id.) Quigley asked for a copy of the policy, and Williams advised she would provide a copy. (Id. at ¶4.) However, Quigley never received any responsive documentation from Williams until August 10, 2022, when Maeweather subsequently issued an expanded version of Section 3:6.1(3). (Id. at ¶5.)

The Township's Decision to Include Blood Thinners and Anti-Coagulants in Section 3:6.1(3)

At some point between the adverse medical event in June and August 10, 2022,^{6/} the Township determined "[i]n meetings with

^{5/} As Quigley certifies that he is not aware of the June adverse medical event, it is unclear why Quigley would have been speaking to Williams about officer O.T. in the July meeting. Presumably, this meeting may have been a continuation of the May meeting regarding the meaning of the policy, but PBA's submissions are not clear on this point.

^{6/} Neither Maeweather nor Williams provide a date regarding when the Township decided to include a specific reference to blood thinners and anti-coagulants in its medication disclosure policy, but it appears that this decision was made after the June adverse medical event because Williams certifies that the change occurred "as a result of . . . discussions [between Williams and Maeweather] and [the Township's] experience with the potential side effects." (Williams cert., ¶6.) However, as neither Maeweather nor Williams address the July 19, 2022 meeting between Quigley, (continued...)

. . . Maeweather" and Williams that its medication disclosure policy "should specifically include a reference to blood thinners and anti-coagulants."^{2/} (Maeweather cert., ¶5; Williams cert., ¶5.) This determination was made "as a matter of officer safety," and to "ensure that all proper procedures were being followed with respect to medications that could have a negative impact on an officer's ability to perform the essential functions of their job." (Id.) Furthermore, the determination was made because "the use of [blood thinners and anti-coagulants] can put the officer on them at a substantially higher risk of serious injury from otherwise minor incidents," "particularly internal injuries in which the excessive bleeding may not be readily apparent." (Maeweather cert., ¶8; Williams cert., ¶8.) Thus, the Township considered disclosure of blood thinners and anti-coagulants to be "important from both a safety as well as a performance perspective." (Maeweather cert., ¶8.)

The Township's August 10, 2022 Medication Disclosure Policy

^{6/} (...continued)
Williams, Daly and Frizziola in Williams' office in their certifications, it is difficult based on this factual record to determine whether the decision to add language to the policy was made before or after the July 19, 2022 meeting where PBA raised questions about the policy.

^{7/} Although Maeweather and Williams participated in the meetings, neither Township official identify any other Township official, employee or medical professional who may have been involved in the meetings, nor do either identify any medical source that may have been consulted or relied upon in the decision-making process.

On August 10, 2022, Maeweather issued an updated version of Section 3:6.1(3), the Township's medication disclosure policy. (Quigley cert., ¶11.) The sole change from the original was the addition of the phrase "to include blood thinners and anti-coagulant medications" into the policy as follows:

Medication While on Duty and Notification
About Medication:

Employees of the department shall disclose to the Director of Public Safety or his/her designee that they are taking medication (prescription or non-prescription to include blood thinners and anti-coagulant medications) that may diminish their alertness or impair their senses or physical ability to perform their duties.

(Id., ¶11; Exh. C) (emphasis added).

On August 22, 2022, Quigley forwarded a memo to Maeweather "to avoid any misunderstanding [regarding] the effect and impact of the . . . revision to Section 3:6.1(3)," and advised Maeweather that

it is the PBA's express understanding that Section 3:6.1(3) requires an officer to disclose that he/she is taking prescribed blood thinners and anti-coagulants only if: (1) said medication does, in fact, diminish the officer's alertness/senses/physical ability to perform his/her duties; or (2) in the opinion of the prescribing physician, said medication will diminish the officer's alertness/senses/physical ability to perform his/her duties.^{8/}

^{8/} Notably, this language matches the language used by Quigley in PBA's May, 2022 memo requesting clarification, which
(continued...)

(Id., ¶12; Exh. D.)

On August 23, 2022, Maeweather sent an email to Quigley disagreeing with PBA's interpretation of Section 3:6.1(3), stating the following:

Your interpretation is incorrect.

Personnel are required to report the use of blood thinners or anti-coagulant medications. Once they report the use, the determination will be made by their treating physician and/or the township physician whether or not the use of such medications diminishes the officer's ability to perform his/her duties - or present a safety concern for the treated officer.

I pose this question to you and your membership . . . Should the township NOT be concerned whether an officer is at a higher risk for injury and/or death while taking blood thinners or anti-coagulant medications? It is a safety concern. PERIOD.

(Id., ¶13; Exh. E) (emphasis added).

LEGAL ARGUMENTS

PBA contends that it is entitled to interim relief that enjoins and restrains the Township from unilaterally revising its medication disclosure policy to require that police officers disclose whether they are taking blood thinners or anti-coagulants "where the officers are not aware of any impairment or have been advised that said risk is minimal or even non-existent." PBA contends that it has demonstrated a likelihood of

8/ (...continued)
Maeweather confirmed. (Quigley cert., ¶¶7-10.)

success on the merits, as the Township violated the Act by unilaterally revising the policy, which intrudes upon officers' expectation of privacy, and violates the Township's negotiations obligations to PBA. (PBA Br. at 7-8.) PBA also contends that the Township's unilateral revision of its medication disclosure policy will result in immediate and irreparable harm to officers if they are required to disclose their use of blood thinners or anti-coagulants, regardless of the impact of the medication on the officers' ability to perform their duties, and therefore PBA should not have to wait for the resolution of the unfair practice charge before it is granted the requested relief. (Id. at 9-10.) Furthermore, PBA argues that

The Township opposes PBA's request for interim relief, and argues that it must be denied because PBA has not established a likelihood of success on the merits, because the Township did not unilaterally change its medication disclosure policy, as the August addition of blood thinners and anti-coagulants was simply a "clarification" of the existing policy. (Opp. Br. 1 at 2.) The Township also asserts that the original medication disclosure policy has been in existence for longer than six months prior to the filing of the instant charge, and thus it falls outside of the Commission's ability to assert jurisdiction. (Opp. Br. 2 at 2.) The Township contends that PBA members will not experience any irreparable harm, as no "significant changes to the workplace

are taking place.” (Opp. Br. 1 at 2.)

In its reply brief, PBA reiterates its unilateral change arguments (Reply Br. at 2-3), and refutes the Township’s argument that the charge is untimely, arguing that it was triggered only by the August 10, 2022 revisions to the medication disclosure policy, and not the original policy. (Id. at 1.) PBA further argues that it is not challenging the Township’s ability to require officers to disclose the use of medications, including blood thinners and anti-coagulants “which adversely impact their ability to perform their duties,” but it is challenging the revision that mandates disclosure of blood thinners and anti-coagulants which do not have an adverse impact, especially in light of Williams’ statements regarding prohibiting such officers “from serving as police officers.” (Id. at 3.)

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain 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); Whitmeyer 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).

N.J.S.A. 34:13A-5.3 sets forth a public employer's obligation to negotiate with a majority representative before changing working conditions:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

A public employer may violate section 5.4a(5) of the Act if it modifies terms and conditions of employment without first negotiating in good faith to impasse or having a managerial prerogative or contractual right to make the change. State of New Jersey (Ramapo State College), P.E.R.C. No. 86-28, NJPER 560 (¶16202 1985).

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Paterson Police PBA Local No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), with Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982). Paterson provides:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by

statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

Furthermore, it is well settled that the health and safety of employees is a mandatorily negotiable term and condition of employment. See In re Hunterdon Cty. Bd. of Chosen Freeholders, 116 N.J. 322, 332 (1989) (employee safety is mandatorily negotiable in the absence of issues demonstrably affecting governmental policy); Maurice River Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987) (negotiation proposal that would allow employees to refuse to work under conditions that would endanger their health, safety or well-being is mandatorily negotiable); Tp. of Franklin, P.E.R.C. No. 85-97, 11 NJPER 224 (¶16087 1985); Union Cty., P.E.R.C. No. 84-23, 9 NJPER 588 (¶14248 1983). See also N.J.S.A. 34:6A-26 ("the safety and health of public employees in the workplace is of primary public

concern" and employers and employees should cooperate to enforce health and safety standards).

Where, as in the matter before me in this application, a public employer is charged with refusing to negotiate over terms and conditions of employment violating section 5.4a(5), a charging party must show that the dispute involved a change in a mandatorily negotiable subject. Cumberland Cty., P.E.R.C. No. 2021-1, 47 NJPER 100 (¶24 2020); City of Newark, P.E.R.C. No. 2019-21, 45 NJPER 211 (¶55 2019).

Section 5.3 of the Act provides:

Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

To prove a violation of this section, a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J. 322 (1989); Red Bank Reg. Ed Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 140 (1978).

The Commission and Supreme Court recognize a distinction between non-negotiable decisions and negotiable impact issues involving terms and conditions of employment. In Woodstown-Pilesgrove Reg. Ed. Ass'n v. Woodstown-Pilesgrove Reg. School Dist. Bd. of Ed., 82 N.J. 582 (1980), the Court adopted a balancing test requiring that "the nature of the terms and conditions of employment must be considered in relation to the

extent of their interference with managerial prerogatives.” Id. at 592. The Court admonished, “[i]t is only when the result of bargaining may significantly or substantially encroach upon the management prerogative that the duty to bargain must give way to the more pervasive need of educational policy decisions” Id. at 593. Terms and conditions of employment arising as impact issues will thus be mandatorily negotiable unless negotiations would significantly interfere with the related prerogative. See also City of Elizabeth v. Elizabeth Fire Officers Ass’n., Local 2040, IAFF, 198 N.J. Super. 382 (App. Div. 1985) (employer may require employees on sick leave to submit doctors’ notes verifying illness but the issue of who pays for health examinations was a severable and mandatorily negotiable issue); Piscataway Tp. Educ. Assn. v. Piscataway Tp. Bd. of Ed., 307 N.J. Super. 263 (App. Div. 1998) (mere connection between exercise of a prerogative to require calendar changes necessitated by weather-related school closings - and the impact of that exercise on employees does not render impact issue non-negotiable).

I now examine the first Crowe factor, whether PBA has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

The relevant facts appear to be undisputed in this matter. It is undisputed that the express language of the original policy required that Township police officers must disclose that they

were taking prescription medication that "may diminish their alertness or impair their senses or physical ability to perform their duties." (Emphasis added.) The policy required that this information must come from the employee's prescribing physician ("[i]t shall be the duty of the employee to obtain this information from his/her prescribing physician"). Notably, the original policy was silent regarding any specific medications, or any specific types of medications, that must always be disclosed. The original policy also did not include a Township physician in any way.

It is also undisputed that in May, 2022, Quigley forwarded a memo to Maeweather "requesting clarification" of the policy, and requested that Maeweather "confirm that disclosure was only required if . . . said medication does, in fact, diminish the officer's alertness/senses/physical ability to perform his/her duties," or "in the opinion of the prescribing physician, said medication will diminish the officer's alertness/senses/physical ability to perform his/her duties." (Emphasis added.) Then Quigley met with Maeweather, who "confirmed the accuracy of [Quigley's] memo [regarding] when such medication disclosure was mandated," and "advised that only [Maeweather] and one other supervisor would have access to any such medication disclosures." Thus, in May, 2022, Maeweather confirmed PBA's interpretation that prescription medication need only be disclosed if it "does,

in fact, diminish" or "in the opinion of the prescribing physician . . . will diminish" an officer's ability to perform their duties, without any mention of any specific medications or types of medications that needed to be disclosed, and without any mention of a Township physician.

It is also undisputed that in June, 2022, an on-duty officer experienced an adverse medical event, and "[f]urther investigation revealed" that the officer "was being treated with blood thinners," that had not been previously disclosed. The officer "was subsequently examined by a [Township] physician, re-evaluated by his own doctor, and ultimately taken off the medication," because "'due to his job description it is felt that the risks outweigh the benefits for him to take blood thinners.'" The officer was "subsequently cleared to return to duty."

However, as noted above, there are numerous unanswered questions regarding the adverse medical event due to the lack of detail in the Township's submissions, and PBA denies knowledge of any information about the event. It is unclear under what circumstances the event occurred, what type of symptoms the officer experienced during the event, and the seriousness of the event. It is unclear what the basis was for Williams' conclusion about potential "serious negative side effects" from use of the blood thinners, as the Township had no information from the officer's prescribing physician about the blood thinners prior to

June, Williams is not a physician, and no medical source is cited for this conclusion. With regard to the conclusion that "'due to his job description it is felt that the risks outweigh the benefits for him to take blood thinners,'" it is unclear if this was the opinion of the Township's physician, the officer's physician, or someone else. Notably, it is unclear from the Township's submissions whether a medical professional ever opined that blood thinners were related to or caused the June adverse medical event.

However, despite these numerous unanswered questions regarding the adverse medical event, it is undisputed that on July 19, 2022, Quigley, Daly and Frizziola spoke with Williams in her office, and Williams "flatly stated that, pursuant to [the Township's] policy, any police officer taking blood thinners was prohibited from continuing to work in that capacity. Period."

(Emphasis added.) In other words, Williams' new position in July was presumably that any unit employee using blood thinners is not employable as a Township police officer, and without the benefit of any proffered medical opinion in a certification or document, the Township is free to declare such unit employee(s) unfit for duty. Quigley asked for a copy of the policy, and Williams advised she would provide a copy, but Quigley never received any responsive documentation from Williams until Maeweather issued the August version of the policy.

Thus, a review of the undisputed facts between May and July demonstrates that in that time period, Maeweather has gone from confirming PBA's interpretation of the policy, to disavowing PBA's interpretation of the policy, to advising that the use of prescription blood thinners disqualifies officers from "continuing to work in that capacity. PERIOD," presumably regardless of the opinion of the officer's prescribing physician. Furthermore, Maeweather's disavowal of the May agreement constitutes a change in working conditions without negotiations. See Hunterdon Cty. Freeholders Bd., supra, 116 N.J. at 322; Red Bank Reg. Ed Ass'n, supra, 78 N.J. at 140.

It is also undisputed that at some point after the adverse medical event in June, Maeweather and Williams determined that the policy "should specifically include a reference to blood thinners and anti-coagulants." Maeweather and Williams certify - - again, despite the fact that neither are medical professionals, and without any citation to any medical source or authority -- that this determination was made "as a matter of officer safety," and to "ensure that all proper procedures were being followed with respect to medications that could have a negative impact on an officer's ability to perform the essential functions of their job," because "the use of [blood thinners and anti-coagulants] can put the officer on them at a substantially higher risk of serious injury from otherwise minor incidents," "particularly

internal injuries in which the excessive bleeding may not be readily apparent." However, it is unclear what the basis was for this decision, other than the vaguely-described June adverse medical event and the officer's subsequent treatment, and it is unclear whether any medical professional or source was consulted in the process. It is undisputed, however, that PBA was not consulted.

It is further undisputed that on August 10, 2022, the Township added "blood thinners and anti-coagulant medications" to the policy, and on August 22, 2022, Quigley asked Maeweather about the status of the parties' May agreement. In response, on August 23, 2022, Maeweather again disavowed the May agreement, stating that officers "are required to report the use of blood thinners or anti-coagulant medications," presumably regardless of the opinion of their prescribing physician regarding the impact of the medication on their ability to perform their duties. Furthermore, once the use is reported, Maeweather advised that the determination whether the medication impacts the officer's ability to perform their duties "or presents a safety concern" for the officer "will be made by their treating physician and/or the township physician."

Thus, not only did Maeweather again disavow the May agreement, but the procedure for disclosure further evolved such that officers must first disclose their use of blood thinners or

anti-coagulants, presumably regardless of the opinion of their prescribing physician regarding the impact of the medication on their ability to perform their duties, and then their prescribing physician and/or the Township's physician will make the determination about whether the medication diminishes their ability to perform their duties or presents a safety concern. It is again unclear how the determination would be made regarding which physician -- the Township's physician or the officer's prescribing physician -- would opine about the officer's ability to perform their duties. It is also unclear what criteria would be used to determine whether the use of the medication would present a safety concern.

The Township's argument that the revision to include blood thinners or anti-coagulants is merely a "clarification" of the original policy, and not a unilateral change to the original policy, is baseless for numerous reasons. First, it appears to be based on the assumption that all prescribing physicians who prescribe blood thinners or anti-coagulants to police officer patients would advise those patients that blood thinners and anti-coagulants "may diminish their alertness or impair their senses or physical ability to perform their duties." However, the Township did not provide any support for that assumption in any of its submissions. Indeed, the Township's argument ignores the possibility that an officer may have been prescribed a blood

thinner or anti-coagulant after their prescribing physician had expressly advised that the medication would not "diminish their alertness or impair their senses or physical ability to perform their duties." Indeed, this hypothetical situation, i.e., a "cleared for duty" non-disclosure, may have been the situation with the officer who had an adverse medical event in June.

Next, the Township's "clarification" argument ignores the ongoing Quigley/Maeweather communications between May and July regarding the policy, as well as the express language of the August version of the policy. And finally, the "clarification" argument ignores Maeweather's August 23 email, which includes new requirements that the opinion of the Township's physician may be substituted for the opinion of the officer's prescribing physician, and the new undefined "public safety" criteria for disclosure.

It appears to me that the Township has not demonstrated that it has a managerial prerogative to revise its medication disclosure policy to require officers to disclose their use of prescription blood thinners or anti-coagulants, regardless of the opinion of their prescribing doctor, as set forth in the August version of Section 3:6.1(3). This is especially the case in light of the Township's certifications, which raise numerous unanswered questions regarding the June adverse medical event as the basis for the change in the policy. Applying the first two

requirements of mandatory negotiability set forth in Paterson and Local 195, I find that the August revision to Section 3:6.1(3) intimately and directly affects the work and welfare of public employees because it involves employee health and safety in the workplace and negotiations over those subjects have not been preempted by statute or regulation. See In re Hunterdon Cty. Bd. of Chosen Freeholders, supra, 116 N.J. at 332; Maurice River Bd. of Ed., supra, 13 NJPER at 123; Tp. of Franklin, supra, 11 NJPER at 224; Union Cty., supra, 9 NJPER at 588; see also City of Atlantic City, I.R. No. 2011-47, 41 NJPER 110 (¶40 2011) (granting unopposed interim relief application where City unilaterally adopted new policy mandating that police officers disclose elective medical procedures and prescriptions, as officers "will be irreparably harmed by their mandated disclosure of elective medical procedures and prescriptions which are unrelated to the performance of police duties").

It also appears that Maeweather's statements and the August version of the policy unilaterally impose mandatorily negotiable terms and conditions of employment, especially relating to the Township's police officers' privacy concerning or related to mandatory disclosure of the use of prescription blood thinners or anti-coagulants. See e.g., City of Trenton, P.E.R.C. No. 2005-20, 30 NJPER 413 (¶135 2004) ("Employees have a strong privacy interest in being protected against inquiries that could lead to

the disclosure of illnesses or disabilities unrelated to sick leave abuse"). Furthermore, as PBA appropriately argues, PBA's application for interim relief is based on the Township's August revision to its medication disclosure policy - not the implementation of the original policy, and therefore is timely.

Accordingly, I find that PBA has demonstrated a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element under the Crowe factors.

With regard to irreparable harm, beyond the officers' loss of privacy regarding their use of prescription blood thinners or anti-coagulants, Maeweather's statement in July that "any police officer taking blood thinners was prohibited from continuing to work in that capacity. Period," constitutes a threat of discipline or termination against those officers, regardless of the opinion of their prescribing physician regarding the impact, if any, of the medication on their ability to perform their duties. This potential discipline would result in potential losses of income and health insurance benefits, and carries severe personal impact to both the officer and the officer's dependents. No monetary award at the conclusion of this matter would redress the harm that could occur in the interim.

In weighing the relative hardship to the parties, I find in this early stage of processing that the scale tips in favor of

PBA. Township police officers subject to disclosure of their use of prescription blood thinners or anti-coagulants, regardless of their prescribing physician's opinion, who may face the threat of discipline described by Maeweather in July will suffer a severe hardship, as would their dependents. PBA will be undermined if such disciplines are imposed unilaterally. The harm to the Township is relatively less harmful while it engages in good faith and expedited negotiations on mandatory negotiable subjects with PBA.

Finally, I find that the public interest is advanced by requiring the Township to negotiate its revision to its medication disclosure policy to require police officers to disclose the use of prescription blood thinners or anti-coagulant medication as set forth in Section 3:6.1(3), as well as any impacts of that revision.

Under these circumstances, I find that PBA has sustained the heavy burden required for interim relief under the Crowe factors and grant the application pursuant to N.J.A.C. 19:14-9.5(b) (3).

ORDER

PBA's application for interim relief is granted. The Township is ordered to rescind its August revision to its medication disclosure policy as set forth in Section 3:6.1(3) of

the Township Police Department's Rules and Regulations. The Township is further ordered to expeditiously negotiate in good faith its proposed revision to the policy to require Township police officers to disclose their use of prescription blood thinners or anti-coagulant medication, regardless of the opinion of their prescribing physician regarding the impact of the medication on their ability to perform their duties, as well as any impacts of that revision.

The matter will be transferred to the Director of Unfair Practices for further processing.

/s/Lisa Ruch
Lisa Ruch
Commission Designee

DATED: October 20, 2022
Trenton, New Jersey