

I.R. NO. 98-6

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-98-60

FRATERNAL ORDER OF POLICE,  
NEWARK LODGE NO. 12,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the City of Newark from hiring civilian employees to do work traditionally performed by police officers. The charging party, the FOP, failed to demonstrate the harm it is suffering is irreparable.

The designee did order the City to provide the FOP with requested information about the civilianization.

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Appearances:

For the Respondent,  
Michelle Hollar-Gregory, Corporation Counsel  
(Hugo R. Ruiz, of counsel)

For the Charging Party,  
Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

INTERLOCUTORY DECISION

On August 15, 1997, the Fraternal Order of Police, Newark Lodge No. 12 filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Newark engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when on or about August 11, 1997, the

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<sup>1/</sup> 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. (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."

City hired 32 civilians to be used to replace police officers represented by the majority representative in the vehicle processing investigation division, vehicle maintenance and other undefined divisions of the police department. It was further alleged that the City refused to provide any information concerning the subject of civilianization of assignments within the police department to the FOP.

The unfair practice charge was accompanied by an application for interim relief and an order to show cause which was executed and made returnable for September 2, 1997. A hearing was conducted on that date.

The City and FOP are parties to a collective negotiations agreement.

The City does not dispute that it has hired civilian employees. It argues that these employees were hired as part of the COPS MORE Program to get more uniformed officers out on the street. It further argues that the reassignment of duties was not done for economic reasons. The City takes the position its responsive papers to this action effectively provided the information requested by the FOP. The FOP claims it still has not received the requested information.

It is not disputed that no police will be laid-off as a result of the City's transfer of unit work. Rather, it is the City's position that certain police doing vehicle identification work and other related tasks will now be assigned to patrol duty.

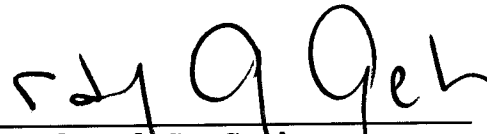
To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be 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 FOP has shown it has a substantial likelihood of success in prevailing on the facts in this case. Although the City argues that its actions are not motivated by economics, there is no evidence that the City had performed a reorganization. See City of Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), app. pending App. Div. Dkt. No. A-006290-95T2, S. Ct. 44,268. Rather, there is evidence that it simply is having civilian employees perform work formerly done by police officers at lower cost.

Nonetheless, the FOP has not shown it will suffer irreparable harm as to the loss of unit work. No police officers are being laid-off and, if it prevails at a plenary hearing, the Commission can order this work be restored to the FOP unit.

An employee organization is entitled to information from an employer sufficient to properly represent unit members. New Jersey

Department of Treasury, P.E.R.C. No. 97-32, 22 NJPER 372 (127196 1996). No good cause has been shown why this information should not be provided to the FOP. I am not satisfied that the City's responsive papers have satisfied its duty. Given the FOP cannot meet its obligation to fairly represent unit members without such relevant information, it is hereby **ORDERED** that the City of Newark provide to FOP Lodge No. 12 its civilianization plans for its Police Department.

  
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Edmund G. Gerber  
Commission Designee

DATED: September 12, 1997  
Trenton, New Jersey