

I.R. NO. 97- 20

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-97-334

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Charging Party.

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-97-335

JERSEY CITY POLICE OFFICERS  
BENEVOLENT ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee orders the City of Jersey City to deduct dues assessments from the pay checks of members of the Jersey City Police Officers Benevolent Association and the Jersey City Police Superior Officers Association. The Associations requested that the City make assessments against their members salaries. Both Associations have contracts which provide dues check off from their members salaries. The City has complied with requests for the deduction of assessments in the past. Both Associations are in negotiations for successor agreements. The Associations have demonstrated that they have a substantial likelihood of success in prevailing before the Commission in demonstrating that the City has unilaterally altered terms and conditions of employment during negotiations for a successor agreement and that if interim relief were not granted, they would suffer irreparable harm.

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Appearances:

For the Respondent  
Martin R. Pachman, attorney

For the Charging Party - PSOA  
Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

For the Charging Party - POBA  
Fast & Tenenbaum, attorneys  
(Jacqueline Jassner, of counsel)

INTERLOCUTORY DECISION

On April 2, 1997, the Jersey City Superior Officers Association (PSOA) filed an unfair practice charge alleging that the City of Jersey City committed an unfair practice charge within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A.

34:13A-5.4(a)(1) and (5)<sup>1/</sup> when on March 28, 1997, it refused to deduct the first of two assessments from the paychecks of members of the SOA.

On April 3, 1997, the Jersey City Police Officers Benevolent Association (POBA) filed a similar unfair practice charge also alleging that the City violated subsections 5.4(a)(1) and (5) of the Act when it failed to deduct the first of two assessments from the paychecks of members of the POBA.

The unfair practice charges were accompanied by applications for interim relief. The orders were executed and a consolidated hearing was conducted on April 15, 1997. All parties filed briefs, exhibits and affidavits.

The City concedes that it has not deducted the assessments as requested. It acknowledges that it has and continues to deduct regular dues from all members of the Associations who have submitted a proper authorization form. It maintains that before it deducts the assessments, the Associations are required to provide it with certain information to ensure their requests comply with N.J.S.A. 52:14-15.9(e).

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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."

The contract between the PSOA and the City provides at Article 6, in pertinent part:

Section 1. The City agrees to deduct from the salaries of its employees subject to this Agreement, dues for the Association. Such deduction shall be made in compliance with Chapter 310, Public Laws of 1967, N.J.S.A. R.S. 52:14-15.9(e), as amended. Said monies, together with the records of any corrections, shall be transmitted to the Association office by the fifteenth (15th) of each month following the monthly pay period in which the deductions were made.

Section 2. If, during the life of this Agreement, there shall be any change in the rate of membership dues, the Association shall furnish to the City written notice prior to the effective date of such change.

Section 3. The Association will provide the necessary checkoff authorization form and deliver the signed forms to the Finance Officer.

Section 4. The Association shall indemnify, defend and save harmless the City from any cause of action, claim, loss of damages incurred as a result of this Article.

The contract between the POBA and the City provides at Article 7:

A. The City agrees to deduct from the salaries of its Police Officers subject to this Agreement dues for the Association. Such deduction will be made in accordance with Chapter 310, Public laws of 1967, N.J.S.A. 52:14-15.9(e), as amended. Said monies, together with the records of any corrections, will be transmitted to the Association office by the 15th of each month following the monthly pay period in which the deductions were made.

B. If, during the life of this Agreement, there will be any change in the rate of Police Officers' dues, the Association will furnish to the City written notice thirty (30) prior to the effective date of such change.

C. The Association will provide the necessary check-off authorization form and deliver the signed forms to the Police Department Finance Officer. The Association shall indemnify, defend and save the City harmless against any and all claims, demands, suits or other forms of liability that may arise out of or by reason of action taken by the City in accordance with the instructions of the Association pursuant to this Article.

N.J.S.A. 52:14-15.9(e) provides in pertinent part:

Whenever any person holding employment, whose compensation is paid by this State or by any county, municipality, board of education or authority in this State, or by any board, body, agency or commission thereof shall indicate in writing to the proper disbursing officer his desire to have any deductions made from his compensation, for the purpose of paying the employee's dues to a bona fide employee organization, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.

Any such written authorization may be withdrawn by such person holding employment at any time by the filing of notice of such withdrawal with the above-mentioned disbursing officer ...

As used in this section, dues shall mean all moneys required to be paid by the employee as a condition of membership in an employee organization and any voluntary employee contribution to a committee or fund established by such organization, including but not limited to welfare funds, political action committees, charity funds, legal defense funds, educational funds, and funds for donations to schools, colleges, and universities.

It is not disputed that the last negotiated agreements in both units expired on December 31, 1993. Terms and conditions of

employment for the period January 1, 1994 through December 31, 1999 were set by interest arbitration awards, although the award for the SOA has not yet been fully implemented. Negotiations for successor agreements are underway in both units.

In the past, both Associations have requested the City to implement assessments and the City has complied. The City most recently deducted dues assessments at the request of the PSOA for \$50 on each of the following dates: September 13 and 27, October 11 and 25 and November 8, 1996.

On March 5, 1997, both Associations notified the City that they were requesting additional assessments be taken out of their respective members salaries on March 28 and April 25, 1997.

On March 14, 1997, Michael Moriarity, Director of Police, responded, notifying both Associations, "In order to act upon your request, I will need additional information showing that there has been an increase in your annual dues or that the assessment is a contribution made voluntarily by each member to a particular fund or committee pursuant to N.J.S.A. 52:14-15.9(e). Upon receipt of the additional information, I will give your request further consideration."

On March 19, 1997, the City's Corporation Counsel sent identical letters to counsel for each Association, stating in pertinent part:

This is to confirm that the City of Jersey City will consider complying with your request to deduct the \$100 per union member payroll deduction under N.J.S.A. 52:14-15.9(e) upon receipt of:

1. A copy of that portion of the PSOA and POBA By-Laws that establishes that payment of special assessments are a condition of continued membership in the PSOA and POBA; and

2. A copy of the resolution or union meeting minutes in which the special assessment was authorized by either the membership or the governing body of the POBA and PSOA.

In the future, please provide these materials to the Director when requesting special assessments as they should be routinely provided so that the Police Fiscal Officer will have an auditable record to support the special payroll deductions when they are implemented.

The POBA's Constitution and By-Laws were included in the Associations exhibits for the hearing. They make the payment of dues and assessments a condition of membership.

Similarly, the PSOA included its Constitution and By-Laws in its exhibits. They obligate members to pay dues and assessments. However, the POBA initially responded to Moriarity's letter with a facsimile copy of that portion of the POBA by-laws which states: "I will not reveal to my superior officer or to anyone who is not an active member of this association, any of the business transacted by the same."

The City argues that it has a right under its contracts to request information to ensure that the assessment demands comply with N.J.S.A. 52:14-15.9(e). It argues "the statute which links the amount of dues to be deducted to the authorization form signed by the individual employees does not permit a modification of the amount deducted without individual authorization from the member employee." The City contends that the Associations' requests were

statutorily deficient, and that the POBA's letter was not timely filed because the contract requires 30-day notice of the requested deduction.

Further, the City argues that interpretation of Title 52 falls outside the jurisdiction of the Commission and that the alleged harm is not irreparable since this dispute concerns only money.

The Association contends that the failure of the City to deduct the requested assessment violates terms and condition of employment created by the contract and N.J.S.A. 52:14-15.9(e). The City's inaction is an unlawful unilateral alteration of terms and conditions of employment while the parties were in negotiations for a new contract. Interim relief must be granted because the Associations will be "financial crippled" without receipt of the additional assessments. Even if the POBA's request to implement the assessment did not comply with the notice requirement as to the March 28 date, the City now has timely notice as to the April 25 date.

#### ANALYSIS

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision 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 jurisdiction to interpret State statutes. See Local 195, IFPTE v. State, 88 N.J. 33 (1982); Hunterdon Central H.S., P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981) [6 NJPER 522 (¶11266 App. Div. 1980), App. Div. Dkt. No. A-4607-78, 7 NJPER 383 (¶12172 N.J. 1981)] where the Commission was upheld in interpreting the U.S. Constitution.

N.J.S.A. 52:14-15.9(e) defines dues as "all moneys required to be paid by the employee as a condition of membership in an employee organization." Nothing in the statute expressly requires an employee organization to provide new authorizations when there is a change in the amount of dues.

Although both contracts require the Association to submit "necessary checkoff authorization", this phrase apparently concerns any new Association member's initial authorization card, since the City never asked for such authorization before.

More importantly, the City abandoned any demand to see authorization cards in corporation counsel's letter of March 19. Nor did counsel's letter contest the timeliness of the POBA's notice of an additional assessment. As the POBA points out, the City now

has sufficient notice as to the April 25th date. The City now seeks: 1) a copy of the Association's By-Laws which require the payment of assessments as a condition of membership, and 2) a copy of the resolution or meeting minutes in which the assessment was authorized. The Associations have provided copies of their by-laws. The only question remaining is whether the City has a right to inquire into the internal affairs of the Associations i.e., requiring them to state if the assessments were authorized. Title 52 has no such requirement and, in general, an employer has no right or obligation to over-see or inquire into the internal workings of a union. Compare, Bergen County Sheriff, P.E.R.C. No. 88-9, 13 NJPER 645 (¶18243 1987) where because of union misconduct, an employee had no obligation to pay agency fee dues to the union. Nevertheless, the Commission found that the employer did not commit an unfair practice by withholding improper agency fee deductions. See also Rutgers, The State University, P.E.R.C. No. 96-88, 22 NJPER 249 (¶27130 1996).

Here, both agreements contain a hold harmless clause. If an Association (improperly) requests an assessment to the detriment of its own members, it has nevertheless indemnified the City.

The Associations have supplied the City with information that the assessments are required as a condition of membership. It is not necessary to determine whether the City was entitled to that information. Deduction of assessments at the request of the Association is an established practice and both contracts envision changes in the amount of dues. Accordingly, I find that the

assessment meets Title 52's definition of dues, and that the City cannot refuse to deduct the assessments.


It is well established that a unilateral alteration of a term and condition of employment during negotiations for a successor agreement creates a unique harm which is irreparable. Galloway Tp. Bd. of Ed v. Galloway Tp. Ed. Ass'n, P.E.R.C. No. 76-32, 2 NJPER 186 (1976), rev'd 149 N.J. Super. 352 (App. Div. 1977), rev'd 78 N.J. 25 (1978); State of New Jersey, I.R. No. 96-31, 22 NJPER 257 (¶27134 1996); Evesham Twp. Bd. of Ed., I.R. No. 95-10, 10 NJPER 3 (¶26001 1994).

I find the harm to the Associations to be irreparable.

I believe the Association has demonstrated they have a substantial likelihood of prevailing at a full plenary hearing.

Accordingly, I ORDER that effective April 25, 1997 and again on May 23, 1997, the City assess the pay of members of the POBA and the PSOA, consistent with the original requests of March 5, 1997. This matter will go forward to a plenary hearing.

BY ORDER OF THE COMMISSION

  
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Edmund G. Gerber  
Commission Designee

DATED: April 18, 1997  
Trenton, New Jersey