

H.E. NO. 99-21

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-H-97-408

FOP LODGE 12,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the City of Newark violated the New Jersey Employer-Employee Relations Act by changing the practice of recording absences due to alcohol abuse and stress as sick leave, and by refusing to provide the FOP with information it needed to process a grievance. The Hearing Examiner recommended a remedy to make whole an employee who was adversely affected by the change.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

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

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

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On June 5, 1997, the Fraternal Order of Police, Newark Lodge No. 12 (FOP) filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the City of Newark violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A:5.4a(1) and (5).<sup>1/</sup> The FOP

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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 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."

alleged that on or about May 6, 1997, the City unilaterally changed how it designated leave time for alcohol abuse from using sick leave, to requiring the use of vacation leave or unpaid leaves of absence. The FOP further alleged that since May 16, 1997, the City has refused to provide it with information on how other officer's leave time was recorded when they were treated for alcohol and stress disorders.

A Complaint and Notice of Hearing was issued on November 18, 1997. The City filed an Answer by December 1, 1997, denying any violation and asserting certain facts to support its position. A hearing was held on July 13, 1998.<sup>2/</sup>

The parties had a different view of the issues in this case. The FOP framed two issues. First, whether the City unilaterally changed the practice of recording work time lost due to alcoholism and/or stress disorders as sick leave. Second, whether the City had failed to respond to the FOP's request for information (T14-T15).

The City argued that the alleged failure to negotiate was only an issue on the surface. It claimed two different "issues" existed. First, why did Officer William Zois go into a rehabilitation facility, and second, what was the ability of the Police Department to determine how it was going to designate the leave time of officers going into rehabilitation facilities (T42-T43)?

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<sup>2/</sup> The transcript will be referred to as "T".

Both parties filed post-hearing briefs by March 5, 1999.<sup>3/</sup>

Based upon the entire record, I make the following:

**FINDINGS OF FACT**

1. Newark Police Department General Order No. 94-4 dated January 18, 1994 (R-6) noted that department personnel are considered sick:

...when they are affected by a physical or mental disorder which renders him/her unable to capably perform his/her duties during the duration of the illness. (R-6, Article II Section A)

Prior to May 1997, the Department carried employees on sick leave when they were in a rehabilitation facility for stress or alcohol abuse (T67-T68; T77). According to General Order No. 89-2 (R-5), however, employees absent or receiving rehabilitation for illegal substance abuse, could not use sick leave. Those employees are required to first exhaust their vacation, compensatory and

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<sup>3/</sup> After the close of hearing on July 13, 1998, the parties requested the matter be placed on inactive status to consider settlement. The parties advised me in December 1998 of their intent to proceed. Due to requests for extensions of time, briefs were not received until March 5, 1999.

holiday leave time and, if necessary, be listed on unpaid leave of absence thereafter.<sup>4/</sup>

Any officer reporting out on sick leave must inform the Department and, generally, remain at home (T68-T69). Similarly, an officer going into a rehabilitation facility must notify the Department. Usually the officer advises the FOP of an alcohol or stress problem and the Union arranges the officers' admittance into a rehabilitation facility. The facility, in turn, notifies the Department of the employees location (T74-T75). The officer is not obligated to advise the Department why he/she entered the facility. The facility advises the Department of the purpose of the rehabilitation when it calls to confirm the officer's presence (T69).

During the past twelve years, the Union referred 12 or 13 officers to a rehabilitation facility for stress and/or alcohol abuse. The Department carried those officers on sick leave (T67-T68; T70; T74, T76-T77).

2. The parties had a collective agreement effective from January 1, 1995 through December 31, 1997 (J-1).

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<sup>4/</sup> General Order No. 89-2, Article II Paragraph 5 provides in pertinent part:

Employees becoming a patient in a rehabilitation facility for abusing illegal substances, which entails a long term absence from duty, must request a leave of absence, without pay, after exhausting all of their vacation, compensatory and holiday time. This absence from duty is not considered "sick time".

Article 14, the "Sick and Injured Leave" clause of the agreement provides:

The present sick and injured leave policies shall remain unchanged during the term of this Agreement, except that the Director or his/her designee may, at his/her discretion, require medical certification where it is believed sick or injured leave is being abused.

Article 21, the "Maintenance of Standards" clause provides:

All rights, privileges and benefits existing prior to this Agreement are retained with the following exceptions:

1. Those benefits abridged or modified by this agreement or
2. Those changes in benefits which are not substantial and unreasonable.

Elimination or modification of rights, privileges or benefits which are substantial and unreasonable shall be subject to the Grievance Procedure.

Article 4, the parties' grievance procedure, provides for binding arbitration.

3. William Zois has been a police officer with the City since May 1993 (T22). In years prior to his City employment, Zois had at least one DWI conviction, and had treatment for "substance abuse" (T62; R-16).

In May 1994, Zois broke his hand and began taking prescription pain medication authorized by a City physician (T57-T58). Sometime in 1996, Zois had other accidents and was given prescription medication by more than one physician without telling the other physicians he had other medication. His use of the pain medication became habitual (R-16 p.14).

On or about February 7, 1997, Zois had an off-duty auto accident, severely injuring his knee, and creating back, neck and arm problems. As a result of that accident, Zois took sick leave (T23, T55). While on sick leave, Zois was taking prescription pain medication for his knee, which exacerbated his pre-existing alcoholism (T32).

By April 1997, Zois recognized he had a problem with alcohol and he asked the FOP to arrange for his admission to Honesty House, a rehabilitation facility. He entered Honesty House on April 10, 1997 (T23, T47-T49). That same day, Lt. Victor Cugliari, Tour Commander, received a telephone call from Charles Stucky, the Honesty House Director, advising him that Zois was being admitted and would stay at the facility for 30 days to be treated for an alcohol problem (T81, T88). Cugliari also spoke to Zois who told him that he was there for an alcohol problem (T50-T51, T81).

After receiving that telephone call Cugliari, still on April 10, wrote a memorandum to Captain Lucas (R-2) informing him about Zois's location. Cugliari then updated Zois's sick leave record to reflect his entry into Honesty House (T82). R-2 provides:

Please be advised on this date [April 10, 1997] at 11:20 this writer was assigned to the West District desk. I Received a call from the Director of Honesty House in Sterling, N.J. He stated that Officer William Zois will be staying at Honesty House for 30 days to treat an alcohol problem.

I spoke to Officer Zois at that time who confirmed this. The location of Honesty House is 1272 Longhill Road in Sterling, N.J. (201) 647-3211. The address was received thru telephone information.

Officer Zois was booked off injured recovering from a knee operation. His sick card was adjusted. Lt. Tunis from the Surgeons Office notified. Mr. Charles Stucky is the Director of Honesty House.

Ms. Angela Zois was called by this writer to confirm the above information which she did.

Cugliari had no personal knowledge that Zois engaged in any "unbecoming conduct" (T86), and was never advised that Zois was being treated for anything other than alcoholism (T89). Zois testified he never had an illegal substance abuse problem (T35). I credit his testimony. No reliable direct evidence was presented that Zois abused illegal substances.

4. Although Zois was expected to stay in Honesty House for 30 days after his admission on April 10, he left on April 25, returned on April 26, and left for good on Sunday, May 4, 1997 (T24). On Monday, May 5, 1997, Zois reported to Lt. James Tunis at the Department's Medical Service Section. Lt. Tunis directed Zois to return to work on light duty beginning Tuesday, May 6, 1997 (T25-T27). Zois was not given a drug test when he returned to work (T31).

Zois left Honesty House against doctors advice but out of fear for his life (T24-T25, T52). After leaving the facility he was treated for his alcoholism by alcohol rehabilitation counselor, Marianne Bozzi, for about four months (T28, T33, T52). Zois testified he has not had a drink since completing his sessions with Bozzi (T32, T61). I credit that testimony. No contrary evidence was presented.



On May 6, 1997, Honesty House Director Stucky wrote a letter (R-3) to Lt. Tunis informing him that Zois had left the facility on May 4 with a poor prognosis. The relevant language in R-3 provides:

William Zois entered Honesty House on April 10, 1997 and signed out on his own on May 4, 1997. Therefore, he did not complete treatment of 30 days inpatient stay. His prognosis is poor. My recommendation is that he be examined by the police psychiatrist for further fitness for duty with the department. While here, he attended two didactic sessions per day and a group session. He was assigned an individual counselor and attended at least five outside weekly Alcoholics Anonymous meetings under supervision.

That same day, May 6, Police Director Joseph Santiago sent Captain Lucas Director's Memorandum 97-701 (R-4) ordering him to remove Zois from injured status (which is normally sick leave) as of April 10, and to place him on vacation or unpaid leave of absence. The memorandum provides:

In reference to the attached report, Captain Edward Lucas shall immediately remove Police Officer Zois from injured status and place him on vacation or leave of absence, so the officer can complete his treatment.

The officer shall be taken off injured status effective April 10, 1997.

Captain Lucas shall forward a copy of Officer Zois' vacation and compensatory time to the Office of the Police Director by May 16, 1997.

A signed copy of this directive indicating receipt and acknowledgment shall be forwarded to this office on or before May 12, 1997.

Director's Memorandum, R-4, required for the first time, that an officer admitted to a rehabilitation facility for alcohol or

stress would not be carried on sick leave (T67-T68; T77). Exhibit R-4 was not based upon a conversation with Officer Zois (T103), but was intended by the Director to establish a policy on how an officers time would be recorded in such circumstances (T99-T103). After applying that policy to Zois, the City applied the same policy to Officer Thomas Cinque (T68).

On May 12, 1997, Officer Zois telephoned Lt. Ronald Parm, the Police Director's assistant (T91), and informed him that he had been in Honesty House because of a dependency on prescription drugs used to eliminate the pain in his leg (T93, T100-T101). Zois did not mention an alcohol problem (T92). Zois did not remember speaking to Parm about his Honesty House stay, but neither did he deny such a conversation (T51). Thus, I credit Parm's testimony.

As a result of his telephone conversation with Zois, Lt. Parm sent Capt. Lucas the following memorandum dated May 12, 1997 (R-1):

In compliance with Newark Police Director's Memorandum 97-701, pertaining to "Police Officer William Zois, ID 7105, RE: Alcohol Treatment", I hereby submit the following information.

On February 7, 1997, Police Officer William Zois, ID 7103, sustained a serious knee injury as a result of being struck by a motor vehicle, while off duty. Officer Zois, because of this injury, booked off.

Officer Zois, because of his "Off duty" status as a result of the injury, was listed as "sick" status, not "injured" status.

On April 10, 1997, Lieutenant Victor Cugliari, West District Desk Supervisor, received a "call" from the "Director of Honesty House", located in

Sterling, New Jersey. The Director informed Lieutenant Cugliari that Officer Zois had entered Honesty House for treatment. ...

On May 12, 1997, the undersigned had the opportunity to speak to Officer Zois, via telephone. During this conversation, Officer Zois informed me that he entered Honesty House on April 10, 1997, as a result of developing a dependency on the "prescription drugs" being used for the treatment of his knee injury.

...

Captain, please forward this report to the Field Operations Bureau who, in turn, will forward it to the Director's Office.

That same day, May 12, FOP President, Jack McEntee, sent Police Director Santiago a letter (R-7), grieving Director's Memorandum 97-701 (R-4).<sup>5/</sup> There was no showing how far that

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5/ R-7 provides: I am in receipt of the above captioned memorandum. It is the opinion of the Fraternal Order of Police that this memorandum is in violation of the following articles of the current contract between the City of Newark and the Fraternal Order of Police:

- 1) Article 1, Section 1, Recognition
- 2) Article 10, Health Insurance And Life Insurance
- 3) Article 11, Vacations
- 4) Article 12, Sections 1, & 2, Leave of Absence
- 5) Article 14, Sick & Injured Leave
- 6) Article 18, Sections 1, & 2, Accrued Compensatory Time
- 7) Article 20, Section 1, Seniority
- 8) Article 21, Maintenance of Standards
- 9) Article 22, Sections 1, & 2, Management Rights
- 10) Article 23, Rules & Regulations
- 11) Article 25, Extra Contract Agreements
- 12) Article 29, Sections 2, & 4, FOP Privileges & Responsibilities
- 13) Article 30, Section 1, Discipline & Discharge
- 14) Article 34, Fully Bargained Provisions
- 15) Article 35, Duration

Please contact me at your earliest convenience so that we may discuss this matter.

grievance was pursued.

5. On May 16, 1997, FOP President McEntee sent Police Director Santiago a letter (R-9) requesting information needed to process the Zois grievance (R-7). The relevant language in R-9 provides:

I am requesting the department's records of all prior officers who were treated at out patient facilities for the above captioned illnesses and how they were carried by the department during that time frame.

Thank you in advance for your anticipated cooperation.

Director Santiago responded to R-9 on June 5, 1997 (R-10) denying the information claiming it was confidential. The relevant portion of R-10 provides:

Please be advised that the records of individuals who have received treatment for substance abuse are deemed strictly confidential and may not be disclosed without the express written waiver of the officer receiving such treatment. Therefore, I am unable to provide the records you requested.

If I should determine that there are police officers who have violated General Order 89-2, the Drug Screening Policy, with respect to the manner in which they were carried while receiving alcohol or drug treatment, their records shall be adjusted and any appropriate disciplinary action taken. If you should identify any police officer who may have violated the Department's policies, advise me immediately.

President McEntee responded by letter of June 30, 1997 (CP-1) clarifying his original request for information. He sought to alleviate confidentiality issues by limiting the information. CP-1 provides:

Thank you for your letter of June 5, 1997, responding to my request for information dated May 16, 1997. I do not, however, believe that your letter was responsive to my request of May 16. In that communication, I specifically limited the request for information to officers undergoing alcohol treatment and stress disorders.

Your response cited General Order 89-2 which is limited to drug screening and the abuse of illegal substances. The information requested did not pertain to drug screening or abuse of illegal substances. The request was specifically limited to treatment for alcohol and not illegal substances and therefore, I was not seeking any information pertaining to General Order 89-2.

Without conceding or agreeing that the information which I have requested in the letter of May 16 is confidential, you may certainly advise me how many officers were treated for alcohol or stress disorders and how these officers have been carried by the department during the period of their treatment. You may also provide me with the dates of their treatment without any alleged breach of confidentiality.

I am looking forward to your response. Thank you for your cooperation.

The City did not provide the requested information nor respond to CP-1.

6. On June 30, 1997, psychologist, Dr. Irving Guller, provided the Police Department with a psychological report regarding Officer Zois (R-16). The report reflects that Zois told Dr. Guller that he had had prior difficulty with alcohol or drugs (R-16 p.5), and that his use of prescription pain medication had become habitual in 1996 (R-16 p.14). The report also contains some negative information regarding Zois's past behavior, and raises a concern about his honesty. It concludes he should participate in a

dependency program, and continue with counseling, but recommended he was fit to return to full duty. Although Dr. Guller was not presented to authenticate the report, Zois did not deny that his use of prescription pain medication had become habitual in 1996. Thus, I credit that part of the report.

Zois's sick leave record shows 70 sick days used in 1996, and 77 sick days used in 1997 (R-17; C-3).

7. After returning to full time employment, Zois had other injuries. While on duty on April 8, 1998, he was hit by a car and had several operations thereafter (T53-T55).

8. On May 5, 1998, Arbitrator George Sabetella issued an award (CP-2) sustaining the grievance filed on behalf of Officer Thomas Cinque regarding how his leave time was recorded while in a rehabilitation facility for stress. The parties practice was to carry employees booked off for stress as sick leave, but the City placed Cinque on vacation/leave of absence. The arbitrator found that the City's action was intended to alter the established practice and found those actions violative of the contract. The City was ordered to make Officer Cinque whole for time improperly charged.

9. Zois testified he drank a lot while in the marines and was convicted of a DWI charge in 1982 or 1983 (T40, T62), but on cross-examination said his alcohol problem began after he became a police officer (T60). The City inferred Zois was not telling the truth, but I did not find his testimony inconsistent. There is no

evidence that Zois had an alcohol problem between 1983 and 1993, the year he began his City employment. Consequently, I do not infer he was avoiding the truth about his alcoholism and I credit his testimony that he believed his alcohol problem began after May of 1993.

Zois told Parm he was in Honesty House for dependency on prescription drugs, but he did not tell him he went there for alcohol abuse (T81, T92). While the City inferred that the evidence raised a question about why Zois entered Honesty House, I make no such inference. At most, the record evidence shows that Zois entered Honesty House for both dependency on prescription drugs and alcoholism, but there was no evidence suggesting he entered the facility due to the abuse of illegal substances. Therefore, I do not draw a negative inference from Zois's failure to mention his alcohol abuse to Parm.

Dr. Guller's report, R-16, stated that Zois told him that he had at least one summary court martial and several disciplinary actions while in the marines (R-16 p.15). Zois also gave a confusing explanation for the meaning of the general discharge he received from the marines (T64-T65). While Zois was discharged from the marines under less than the traditionally honorable circumstances, I do not find his Marine Corps experience to be relevant to why he entered Honesty House. Zois and Stucky told Cugliari that Zois was at the facility for alcohol abuse. There was no contradictory evidence. Thus, I do not draw a negative inference from Zois's explanation of his discharge.

Dr. Guller's report also noted that Zois had sought treatment for substance abuse (R-16, p.5), but Zois testified that he never had a problem with illegal substance abuse (T41). I credit Zois's testimony. Guller's report does not explain what it meant by substance abuse, and Guller did not testify. Since R-16 does not mention illegal substance abuse, I infer the report refers only to alcohol abuse. Consequently, I do not infer from Guller's report that Zois had abused illegal substances, or that he entered Honesty House for abusing illegal substances.

#### ANALYSIS

The real issues in this case are those framed by the charge. Did the City unilaterally change the practice of recording absences due to alcoholism or stress as sick leave, and did the City violate the Act by failing to provide the FOP requested information? The City framed two different issues because it focused on how it could determine why an officer was entering a rehabilitation facility, rather than whether it had changed a practice. The City's issues are not unimportant, but this case is not about why Zois entered Honesty House, it is about whether the City changed a negotiable practice in deciding not to carry Zois on sick leave, and whether it had a legitimate basis for refusing to produce any of the requested information.



Sick Leave Issue

Generally, the use of sick leave is a mandatorily negotiable term and condition of employment. Burlington Cty. Col. Fac. Assn. v. Bd. of Trustees, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. Ed. v. Piscataway Maintenance & Custodial Assn., 152 N.J. Super. 235, 243 (App. Div. 1977). A majority representative has the right to negotiate over sick leave and, absent statutory or regulatory requirements, over any change in how sick leave can be used. See Hoboken Bd. Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981). A public employer, however, has the managerial prerogative to establish a policy to verify that sick leave is being used appropriately. Jersey City Medical Center, P.E.R.C. No. 87-5, 12 NJPER 602 (¶17226 1986); Piscataway Tp. Bd. Ed., P.E.R.C. No. 82-64, 8 NJPER 95 (¶13039 1982).

Where a collective agreement is silent on a particular term and condition of employment, such as the use of sick leave for alcohol abuse and stress, a majority representative may claim that the practice that has evolved regarding that particular term and condition of employment is an implied contractual right, or may claim that the particular term and condition is an existing working condition which cannot be unilaterally changed by the public employer. Middletown Twp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), mot. to reinstate app. granted, app. pending App. Div. Dkt. No. A-2761-98T3. See also Galloway Tp. Bd. Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 48 (1978); Sayreville Bd. Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); County of Sussex, P.E.R.C. No. 83-4, 8 NJPER 431 (¶13200 1982).

When an established practice is demonstrated, an employer is bound to maintain the practice during the life of an existing agreement, and negotiate over changing the practice after the agreement has expired. The Commission usually defers claims regarding such practices to the parties grievance procedure for resolution. Middletown, 24 NJPER at 29. Here, the FOP filed a grievance over the denial of sick leave to Zois, and alleged a contractual violation, but the City did not provide the FOP with information it requested to process the grievance.

The FOP claimed that a practice had been established on the use of sick leave for alcohol abuse and stress related absences. The record shows that the practice was unequivocal, clearly enunciated and acted upon, and ascertainable over a reasonable time and was a practice accepted by both parties. Id. Thus, I find the sick leave usage involved here was an established past practice.

Having found that an established practice existed allowing sick leave to be used for alcohol abuse and stress absences, the question in the first instance is whether R-4, Director Santiago's letter of May 6 directing Zois to be placed on vacation or leave of absence for his Honesty House stay, was merely denying Zois the use of sick leave for that rehabilitation visit, or whether it represented a change in the practice of allowing the use of sick leave for alcohol abuse or stress. The difference is significant. The former reason would not be a violation of the Act, the latter reason is a violation.

The City is entitled to deny the use of sick leave for a rehabilitation visit when it has a good faith belief, or actual evidence, that the visit was for the abuse of illegal substances or for some other reason ostensibly not covered by the parties practice or contract. But in those situations the employee or union may have the right to grieve/arbitrate over the denial of the sick leave benefit. Borough of Cresskill, P.E.R.C. No. 89-19, 14 NJPER 569 (¶19239 1988); Piscataway Twp. Bd. Ed., P.E.R.C. No. 83-111, 9 NJPER 152 (¶14072 1983). The City does not, however, have the right to change an established practice, or to change an existing working condition without negotiations.

I find that R-4 was intended to change or eliminate the established practice or at least change an existing working condition, rather than deny use of sick leave for good cause. In either case, it violated the Act. In R-4 the Director was seeking to establish a new policy. That policy, I believe, was that visits to rehabilitation facilities would be carried as vacation or a leave of absence in the future.

I found insufficient evidence that Santiago had a legitimate reason to believe that Zois was in Honesty House for any reason other than alcohol abuse when R-4 was issued on May 6. On April 10, Honesty House Director Stucky, and Zois, told Lt. Cugliari that Zois was at the facility for an alcohol problem. In R-2, Cugliari notified Capt. Lucas on April 10 that Zois was being treated for an "alcohol" problem, and I assume Lucas notified Santiago.

Exhibit R-4 was issued on May 6, after Zois had already left Honesty House (May 4) and had reported to the Police Department (May 5), and several weeks after the Department was notified why he was at the facility. If the Department intended to deny him the use of sick leave for his visit based on some legitimate reason I would have expected it to act promptly to record his leave time as vacation or leave of absence and not change his leave record after he already left the facility.

Santiago also issued R-4 before learning that Zois was addicted to prescription pain medication. It wasn't until May 12 that Zois told Parm about the pain medication which resulted in R-1 on the same date. If the pain medication were the reason for Santiago issuing R-4, then R-4 would have been issued after May 12. Similarly, the City's assertion in its post-hearing brief that R-5 forbids the use of sick leave for illegal substance abuse could not have been the basis for changing Zois's leave record because there was no reliable evidence that Zois had entered Honesty House for the abuse of illegal substances.

Finally, the City denied Officer Cinque the use of sick leave for a stress related absence. There was no suggestion in CP-2 that the City suspected Officer Cinque of illegal substance abuse. I infer therefrom that Cinque was denied use of sick leave for stress because Director Santiago had changed the sick leave practice.

In sum, I find that R-4 was issued to end the practice of using sick leave for alcohol abuse and stress absences. The City

was obviously concerned about whether sick leave was being abused in rehabilitation stays. Although the City has the right to verify that a rehabilitation stay is for alcohol abuse or stress, in this case, the City was not verifying Zois's Honesty House stay when R-4 was issued, it was merely changing the sick leave policy. It had already received verification from Stucky about the nature of Zois's problem.

The City's suspicion that Zois had used illegal substances does not justify its actions. Even if Zois was addicted to prescription pain medication when he entered Honesty House he still had an alcohol problem, and his prescription medication problem was not--as far as I know--use of an illegal substance.

The City may believe it had a good faith reason to deny Zois and Cinque the opportunity to use sick leave, but I found insufficient basis to deny either officer the right to be carried as sick for their respective rehabilitation stays. Most of the City's argument regarding Zois seemed based upon R-5 and the prohibition against illegal substance abuse. But there was no evidence that Zois was using illegal substances.

Based upon the above analysis, I find that the City violated the Act by changing the parties sick leave practice.

#### The Request For Information

It is well settled law in New Jersey that a public employer has a duty to provide a majority representative with information

relevant to contract administration which includes grievance processing. Failure to provide such information is a refusal to negotiate in good faith. UMDNJ, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987) adopting H.E. No. 87-65, 13 NJPER 423 (¶18164 1987); Shrewsbury Bd. Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981).

The FOP sought information needed to process Zois's grievance challenging the denial of sick leave for his Honesty House stay. The initial FOP request, R-9, sought a list of all other officers who had been admitted to a rehabilitation facility and how their leave time was recorded. Director Santiago denied the request, R-10, noting that the records of individuals were confidential. The FOP revised its request in CP-1, and asked only to know how many officers were treated for alcohol or stress disorders, and how their leave was recorded by the Department during their rehabilitation period. The City did not provide any information.

Even if the City had a legitimate basis to deny the FOP's initial request because it sought information on individuals, it offered no explanation for denying the FOP's revised request. That request sought general information which protected individual anonymity. The FOP was entitled to know how the City has carried other officers admitted to rehabilitation facilities for alcohol

abuse or stress in order to properly present Zois's grievance. Failure to produce such information interferes with the FOP's ability to administer its contract and ensure the continued implementation of established practices.

Accordingly, based upon the above facts and analysis, I make the following:

Conclusions of Law

The City violated 5.4a(5) and derivatively a(1) of the Act by:

1. Changing the practice of recording an officers stay in a rehabilitation facility for alcohol abuse or stress as sick leave,
2. Refusing to provide the FOP with information it needed to process a grievance arising under the parties collective agreement.

RECOMMENDED ORDER

I recommend the Commission ORDER:

- A. That the City of Newark cease and desist from:
  1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by changing the practice of recording absences for officers in rehabilitation facilities due to alcohol abuse or stress as sick leave, and for refusing to provide requested information needed to process a grievance.

2. Refusing to negotiate in good faith with the FOP, particularly by failing to negotiate over changing the practice of recording absences for officers in rehabilitation facilities due to alcohol abuse or stress as sick leave, and refusing to provide requested information needed to process a grievance.

B. That the City take the following action:

1. Reimburse Officer William Zois for any lost salary he suffered if he was placed on leave without pay during his stay in Honesty House in April and early May of 1997.

2. Recredit Officer William Zois with any vacation, compensatory or holiday time that was deducted from his record during his Honesty House stay in April and early May 1997.

3. Debit Officer Zois's sick leave record for his Honesty House stay in April and May 1997.

4. Reimplement the practice of recording absences due to alcohol abuse or stress as sick leave.

5. Negotiate in good faith with the FOP before changing the above practice.

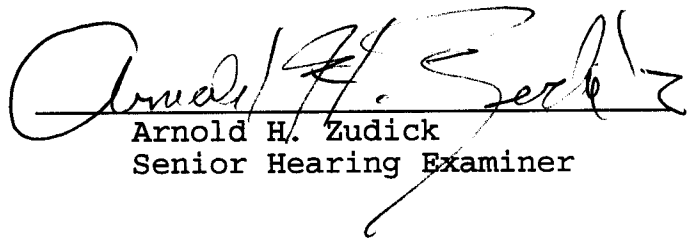
6. Provide the FOP with the information requested in its letter of June 30, 1997.

7. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.



Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

8. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Arnold H. Zudick  
Senior Hearing Examiner

Dated: April 12, 1999  
Trenton, New Jersey



**RECOMMENDED**



# NOTICE TO EMPLOYEES

**PURSUANT TO**

**AN ORDER OF THE**

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**AND IN ORDER TO EFFECTUATE THE POLICIES OF THE**

**NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,**

**AS AMENDED,**

**We hereby notify our employees that:**

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by changing the practice of recording absences for officers in rehabilitation facilities due to alcohol abuse or stress as sick leave, and for refusing to provide requested information needed to process a grievance.

WE WILL cease and desist from refusing to negotiate in good faith with the FOP, particularly by failing to negotiate over changing the practice of recording absences for officers in rehabilitation facilities due to alcohol abuse or stress as sick leave, and refusing to provide requested information needed to process a grievance.

WE WILL reimburse Officer William Zois for any lost salary he suffered for being recorded on leave without pay during his stay in Honesty House in April and early May of 1997.

WE WILL recredit Officer William Zois with any vacation, compensatory or holiday time that was deducted from his record for his Honesty House stay in April and early May 1997.

WE WILL debit Officer Zois's sick leave record for his Honesty House stay in April and May 1997.

WE WILL reimplement the practice of recording absences due to alcohol abuse or stress as sick leave.

WE WILL negotiate with the FOP if we still seek to change the above practice.

WE WILL provide the FOP with the information requested in its letter of June 30, 1997.

Docket No. \_\_\_\_\_ (Public Employer)

Date: \_\_\_\_\_ By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"