

I.R. NO. 2005-6

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-2005-128

JERSEY CITY POLICE OFFICERS BENEVOLENT ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief on the POBA's claim that the City repudiated an earlier settlement agreement. A factual and legal dispute existed with regard to the Police Director's authority to sign the settlement agreement. Thus, the POBA was not able to show a substantial likelihood of success on the merits.

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Appearances:

For the Respondent,  
Schwartz, Simon, Edelstein, Celso, and Kessler,  
attorneys  
(Stephani Schartz, of counsel)

For the Charging Party,  
Cohen, Leder, Montalbano & Grossman, attorneys  
(Bruce Leder, of counsel)

INTERLOCUTORY DECISION

On November 12, 2004, the Jersey City Police Officers Benevolent Association (POBA) filed an unfair practice charge alleging that the City of Jersey City violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> when it repudiated an earlier settlement

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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  
(continued...)

agreement by paying police recruits a rate of pay inconsistent with the rate established by the parties' collective negotiations agreement.

Accompanying the charge was an application for interim relief. On November 17, 2004, I, as Commission Designee, signed an Order to Show Cause scheduling the return date on the interim relief application for December 3, 2004. Thereafter, the parties agreed to postpone the return date to January 17. The parties submitted briefs and certifications in accordance with the Commission's rules. On the scheduled return date, the parties argued orally with regard to the issue. Thereafter, the parties requested a short period of time to attempt to resolve the dispute between themselves. On January 26, I was advised that the parties had not succeeding in working out their differences and a decision was required on the interim relief application. Accordingly, the following facts appear:

The POBA represents the City's rank and file police officers. The POBA's last signed collective negotiations agreement with the City expired in 2001. The parties have negotiated a successor agreement to cover the period January 1,

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1/ (...continued)  
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2002 through December 31, 2005. The parties have not yet signed that agreement and are still discussing certain language issues.

In 1998, the POBA filed an unfair practice charge together with an application for interim relief, alleging that the City violated the Act when it unilaterally set recruits compensation at the rate outside that set by the POBA contract. The Commission Designee denied interim relief, finding that a dispute existed over whether the recruits were covered by the parties' contract. City of Jersey City, I.R. No. 98-25, 24 NJPER 240 (¶29114 1998). Since at least 1998, compensation for police recruits has been set by the mayors' executive orders. Such executive orders were issued on January 30, 1998, March 6, 1998, July 16, 2001, and November 19, 2002. The 2001 and 2002 orders specifically referred to recruits as not covered by any collective negotiations agreement. In mid-2003, the POBA filed a request for arbitration over the pay rate for police recruits attending the police academy. In settlement of that matter, a settlement agreement was entered into which provided as follows:

The current collective bargaining agreement between the parties shall be modified as follows: the terms of this agreement shall apply to any and all individuals hired by the City with the intent that they will ultimately serve as police officers. This agreement shall apply even though the hires must satisfy a training program required by the State of New Jersey and/or the city of Jersey City. This agreement shall also apply despite the fact that the individual hired serves as a temporary, provisional or probationary employee. The absence of a formal swearing in ceremony by the City shall

not act to negate the fact that the terms of this agreement shall apply to the individuals hired with the intent to be employed as a police officer.

The settlement agreement was signed by POBA President Harry Sandwith and the City's Public Safety Director Samuel Jefferson. The POBA then withdrew its demand for arbitration.

On or about November 1, 2004, the City notified the POBA that its new class of police candidates would be paid while at the academy at a rate different from that reflected in the collective agreement. The POBA seeks an order that the City pay recruits attending the police academy at a rate consistent with the parties' contract.

The POBA argues that the academy recruits' status was resolved by the 2003 settlement agreement, which was by its terms a modification to the collective agreement. It maintains that the City's decision to pay the recruits a different rate amounts to a repudiation of the agreement, thus violating 5.4(a)(5) of the Act.

The City does not dispute the facts as set forth above. However, the City asserts that Police Director Jefferson had no authority to enter into the settlement agreement on behalf of the City. It submits the Jersey City Municipal Code, which provides under "Powers and Duties", that the mayor "shall sign all contracts" and shall "negotiate contracts for the City, subject to the council's approval." It argues that the settlement

agreement, which by its terms amended the parties' contract, is ultra virus and, thus, unenforceable. Therefore, it argues that the application for interim relief should be denied.

#### ANALYSIS


To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

In this case, interim relief must be denied. The City argues that it is free to unilaterally set the recruits' compensation since the recruits are not included in the POBA's collective negotiations unit. Indeed, the POBA's claim that the City violated its negotiations obligation by unilaterally setting the recruits salary is predicated upon the viability of the settlement agreement. The City maintains that Police Director Jefferson was never given the authority to enter into the

settlement agreement modifying the collective negotiations agreement. Rather, the City contends, under Jersey City's form of government, only the mayor has the authority to sign contracts, and then only with the City council's approval. Therefore, the City argues, the May 2004 memorandum of understanding is ultra virus and unenforceable. While the POBA disputes the City's claims and asserts that Jefferson had apparent authority to bind the City, the factual and legal dispute over the enforceability of the settlement agreement runs to the very heart of the POBA's repudiation claim and remains an open question. Accordingly, I am unable to find, at this early stage of the process, that the POBA has demonstrated a substantial likelihood of prevailing on the merits of the charge in a final Commission decision. Accordingly, interim relief must be denied.

**ORDER**

The application for interim relief is denied.

  
Susan Wood Osborn  
Commission Designee

DATED: January 31, 2005  
Trenton, New Jersey