

I.R. NO. 2006-3

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2005-337

NEWARK POLICE CRIME SCENE  
IDENTIFICATION OFFICERS  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Newark Police Crime Scene Identification Officers Association sought interim relief alleging that the City of Newark unilaterally transferred negotiations unit work to non-unit employees when it adopted a new protocol providing for police officers and detectives in the Crime Scene Unit to perform work which has historically and exclusively been performed by identification officers. The Commission Designee found that the Association did not establish that it will suffer irreparable harm since the Commission will be able to fashion a complete and adequate remedy at the conclusion of the processing of the unfair practice charge. Irreparable harm is a required element of the test to obtain interim relief. The Association's application for interim relief was denied.

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Appearances:

For the Respondent, JoAnne Y. Watson, Corporation  
Counsel  
(Phillip Dowdell, Assistant Corporation Counsel)

For the Charging Party, Oxfeld Cohen, attorneys  
(Sasha A. Wolf, of counsel)

INTERLOCUTORY DECISION

On June 27, 2005, the Newark Police Crime Scene  
Identification Officers Association (Association) filed an unfair  
practice charge with the Public Employment Relations Commission  
alleging that the City of Newark (City) violated 5.4a(1) and  
(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A.

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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  
(continued...)

34:13A-1 et seq., when it proposed a new protocol whereby the Crime Scene Unit would handle all identification work for crime scenes involving city vehicles, commercial burglaries, pattern burglaries, residential burglaries, scenes involving a loss with a value in excess of \$5,000, illegal dumping cases, and bias crimes. The Association contends that the identification work performed by detectives in the Crime Scene Unit is work which has traditionally and exclusively been performed by identification officers represented by the Association. The Association asserts that the new protocol was being implemented without prior negotiations regarding mandatory terms and conditions of employment.

The unfair practice charge was accompanied by an application for interim relief pursuant to N.J.A.C. 19:14-9, requesting that the City be restrained from transferring crime scene identification work traditionally and exclusively performed by negotiations unit employees to non-unit police officers and detectives.

On June 28, 2005, I executed an Order to Show Cause and set a return date for oral argument on July 28, 2005. The parties

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1/ (...continued)  
representative."

submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The Association represents all identification officers, employed by the City. The City and the Association are parties to a collective negotiations agreement covering the period 2001 through 2008. Police officers and detectives are included in another collective negotiations unit represented by a different employee organization. The job duties of identification officers include the collection and filing of fingerprints and processing fingerprints both at crime scenes and for new inmates.

On or about May 20, 2005, a memorandum from Deputy Chief Vincent Gagliano was circulated among identification officers proposing a new protocol whereby the Crime Scene Unit, which includes police officers, detectives, and identification officers, would handle all identification work for crime scenes involving city vehicles, commercial burglaries, pattern burglaries, residential burglaries, scenes involving losses with a value in excess of \$5,000, illegal dumping cases and bias crimes. Four additional identification officers have been assigned to the Crime Scene Unit to assist with the greater workload. The Association claims that prior to the May 20, 2005 Gagliano memorandum, identification work was handled by only identification officers. As a result of the memorandum, non-unit police officers and detectives assigned to the Crime Scene Unit

would now also handle identification work.<sup>2/</sup> The new protocol set forth in the Gagliano memorandum is being, or has been, implemented without negotiations between the City and the Association. No identification officer has lost his/her job or been demoted as the result of the new protocol.

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).

As noted, an essential element for the grant of interim relief is that irreparable harm will occur if the requested injunctive relief is not granted. Harm becomes irreparable in circumstances where the Commission cannot fashion an adequate remedy which would return the parties to the conditions that

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<sup>2/</sup> There remains a dispute between the parties regarding whether police officers had previously handled identification work prior to the issuance of the Gagliano memorandum or whether such work was exclusively performed by identification officers.

existed before the commission of any unfair practice at the conclusion of the processing of the unfair practice charge.

In City of Newark, I.R. No. 98-6, 23 NJPER 539 (¶28266, 1997), the charging party, Fraternal Order of Police, Newark Lodge No. 12, alleged that the city hired 32 civilian employees to replace police officers performing duties in the vehicle processing investigation division, vehicle maintenance and other divisions of the police department. The Commission Designee found that the FOP had established a substantial likelihood of success in its argument that the City unilaterally transferred unit work to non-unit civilian employees. Nevertheless, the Designee found that the FOP had not shown that it would suffer irreparable harm since no unit employees were laid off, and, even assuming that the FOP prevailed at a plenary hearing, the Commission was able to fashion a complete and adequate remedy by ordering that the work be restored to the FOP unit. Id. at 540.<sup>3/</sup>

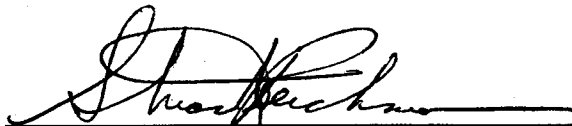
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<sup>3/</sup> In other interim relief cases involving the improper transfer of unit work where the Commission Designee granted the charging parties' applications for interim relief, irreparable harm in each case was based on the fact that the unit work transfer occurred while the parties were in the midst of collective negotiations for a successor agreement and thus created a chilling effect on employee rights which is not adequately remediable by the Commission at the conclusion of the unfair practice charge. See County of Union, I.R. No. 2002-12, 28 NJPER 279 (¶33105 2002); Borough of Palisades Park, I.R. No. 98-24, 24 NJPER 239 (¶29113 1998); Borough of Bogota, I.R. No. 97-18, 23 NJPER 322 (continued...)

I find City of Newark to be controlling in this matter. No negotiations unit employee stands to lose his/her job nor is any unit employee being demoted. At the conclusion of this case, if the City is found to have violated the Act, the Commission is able to fashion a complete and adequate remedy by directing it to return work wrongfully removed from the unit. Accordingly, the Association has not established that it will suffer irreparable harm, a required element of the test to obtain interim relief. Consequently, I decline to grant the Association's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The Newark Police Crime Scene Identification Officers Association's application for interim relief is denied.



Stuart Reichman  
Commission Designee

Dated: July 29, 2005  
Trenton, New Jersey