

I.R. NO. 2008-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,
DEPARTMENT OF CORRECTIONS

Respondent,

-and-

Docket No. CO-2008-131

NEW JERSEY INVESTIGATORS ASSOCIATION,
FOP LODGE 174,

Charging Party.

SYNOPSIS

The New Jersey Investigators Association, FOP Lodge 174, filed an unfair practice charge, accompanied by an application for interim relief, alleging that the State of New Jersey, Department of Corrections, repudiated the collective negotiations agreement by failing to promote and properly compensate certain unit members and requiring other unit employees to work out-of-title. The State argues that unit employees are not wrongfully working out-of-title and that the FOP has not properly filed grievances or sought Department of Personnel review of its out-of-title work claim. The Commission designee finds that since material facts are in dispute, the FOP has not established a likelihood of success that it will prevail on its legal and factual allegations, a requisite element to obtain interim relief. The designee denied the FOP's application for interim relief.

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Appearances:

For the Respondent, Anne Milgram, Attorney General of
New Jersey (Geri Benedetto, Deputy Attorney General)

For the Charging Party, Marc Gertel, PC, attorneys
(Arnold Feldman, attorney)

INTERLOCUTORY DECISION

On November 19, 2007, the New Jersey Investigators
Association, FOP Lodge 174 (FOP) filed an unfair practice charge
with the Public Employment Relations Commission (Commission)
alleging that the State of New Jersey, Department of Corrections
(State), violated 5.4a(1), (3) and (5)^{1/} of the New Jersey

^{1/} 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; (3) Discriminating in
regard to hire or tenure of employment or any term or
condition of employment to encourage or discourage 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

(continued...)

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., alleging the State's refusal to promote and compensate certain investigators working out-of-title is a repudiation of the parties' collective negotiations agreement. The unfair practice charge was accompanied by an application for interim relief. On November 20, 2007, I executed an Order to Show Cause and set a return date of December 18 for oral argument which, by mutual agreement, was changed to December 19, 2007. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The New Jersey Investigators Association, FOP Lodge 174, is the authorized representative of investigators assigned to the Department of Corrections, the Juvenile Justice Commission, and the State Parole Board serving as internal affairs officers. The parties' agreement is in effect from July 1, 2003 through June 30, 2007. The parties are currently in negotiations for a successor agreement.

There are three positions identified in the petition: investigator, senior investigator and principal investigator. Article XIII of the parties' agreement sets forth a salary compensation plan for the investigator, senior investigator and

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

principal investigator titles. Article XXVIII discourages extended out-of-title work.

In the past, investigators were promoted to senior investigator upon successful completion of the police academy and the working test period. The Association alleges the current investigators have been performing duties of senior investigators without a promotion. In addition, senior investigators have been appointed to principal investigator positions or, have been assigned duties of principal investigators without a promotion and/or principal investigator compensation. Finally, senior investigators that were officially promoted to the principal investigator position as of a certain date have not been paid from the actual date of promotion and seek retroactive compensation. The Association alleges it has written letters and filed grievances with the State regarding the out-of-title work and promotion issues.

The State contends that it is not aware of compulsory out-of-title work being performed by investigators. It also disputes whether the grievance procedure has been followed. The State asserts that promotions are a non-negotiable managerial prerogative and out-of-title work determinations must be filed with the Department of Personnel and are not determined until after DOP has conducted an investigation and has issued its

findings. The State argues that the FOP has not sought a formal out-of-title work determination from DOP.

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).

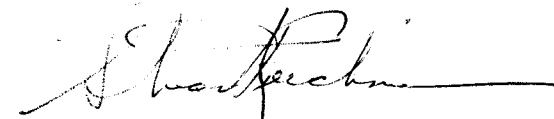
At this early stage of the case, there exists a factual dispute as to whether the investigators are performing out-of-title work and whether or not grievances have been properly filed.^{2/} The State disputes material facts alleged in the charge. To counter the State's contentions, the Association has not proffered any competent proof to substantiate its claim that out-of-title work is being performed and that the grievance procedure set forth in the collective agreement was followed.

^{2/} I do not have to reach the defenses raised by the employer that it has a managerial prerogative to assign and promote or that out-of-title work determinations must be made by the Department of Personnel.

Thus, I find that the Association has not carried its burden of establishing a substantial likelihood of success on the merits, a requisite element to obtain interim relief. Accordingly, this case will proceed through the normal unfair practice processing mechanism.

ORDER

The FOP's application for interim relief is denied.



Stuart Reichman
Commission Designee

DATED: January 3, 2008
Trenton, New Jersey