

I.R. NO. 2021-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2021-069

PATERSON POLICE PBA LOCAL 1 AND
PATERSON POLICE PBA LOCAL 1 SUPERIOR
OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

A Commission Designee grants in part, and denies in part, an application for interim relief filed by the Paterson Police PBA Local 1 and PBA Local 1, Superior Officers Association based on an unfair practice charge alleging that the City of Paterson violated sections 5.4a(a)(1), (2), and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1, et seq., by continuing to deduct PBA dues for its police chief; failing to produce meeting notes taken by a member of the chief's office; changing the license plate specification on the City owned vehicle assigned to the PBA president; and unilaterally modifying terms and conditions of employment during collective negotiations for a successor agreement.

The Designee determined that the charging parties established the necessary standards for granting interim relief, including a substantial likelihood of success on the merits, on two of their allegations, namely, that the City unilaterally mandated the closing and vacating of the police gym and unilaterally placed limitations upon the charging parties' ability to communicate with their members located in the chief's office; and that irreparable harm would result because the parties are in negotiations for a successor agreement. Balancing the public interest and the relative hardship to the parties, the Designee found that the public interest was furthered by adhering to the tenets of the Act, requiring good faith negotiations prior to changing a term and condition of employment and respect for the negotiations process. The Designee further determined that the charging parties failed to meet the standards for granting interim relief for the remainder of the allegations. The unfair practice charge was transferred to the Director of Unfair Practices for further processing.

I.R. NO. 2021-19

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PATERSON,

Respondent,

-and-

Docket No. CO-2021-069

PATERSON POLICE PBA LOCAL 1 AND
PATERSON POLICE PBA LOCAL 1 SUPERIOR
OFFICERS ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent,
Adams Gutierrez and Lattiboudere, LLC, attorneys
(Derly M. Gutierrez, of counsel)

For the Charging Parties,
Shaw, Perelson, May & Lambert, LLP, attorneys
(Mark C. Rushfield, of counsel)

INTERLOCUTORY DECISION

On October 6, 2020, Paterson Police PBA Local 1 and PBA Local 1, Superior Officers Association (PBA, SOA or charging parties) filed an unfair practice charge against the City of Paterson (City), together with an application for interim relief seeking a temporary restraint, certifications, exhibits and a brief. The charge alleges that City and its Chief of Police Chief Michael Baycora (Chief Baycora) committed the following

violations of section 5.4a(1), (2) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.

(Act):

- 1) The City has continued to deduct PBA dues for Chief Baycora and has refused to produce the PBA payroll deduction roster from August 1, 2020 through September 4, 2020.^{2/}
- 2) The City has failed to produce "minutes" of an August 20, 2020 meeting taken by a member of the Chief's office.
- 3) The City changed the license plate on the City owned vehicle assigned to PBA President Cruz.
- 4) The City unilaterally determined to repurpose the office space located within the City's Public Safety Complex that has been used as the police gym since 2011. Chief Baycora instructed that the exercise equipment in the police gym was to be moved into the men's locker room no later than November 9, 2020.^{3/}
- 5) The City unilaterally modified terms and conditions of employment when Chief Baycora declared that PBA President Cruz (Cruz) and SOA President Maher (Maher) were not permitted to speak to anyone within his office without his permission.

-
- 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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.
 - 2/ The parties acknowledge that subsequent to the filing of the charge, the City provided the PBA payroll deduction roster.
 - 3/ To date, the exercise equipment has not yet been moved into the locker room.

The charge alleges that the unilateral changes occurred during collective negotiations for the successor agreements, the most current ones having expired on July 31, 2019. The application for interim relief seeks the rescission of the unilateral directives issued by Chief Baycora, as well as the an order mandating the City to re-register the automobile assigned to Cruz and provide him with a non-municipal license plate; mandating the City to cease paying dues to the PBA collected from the salary of Chief Baycora, and ordering the City to provide the unions with the PBA dues payroll deduction roster from August 1, 2020 through September 4, 2020 and continuing to provide those rosters for each payroll period that occurs thereafter; and directing the City to provide the charging parties with the August 20, 2020 meeting minutes.

On October 13, 2020, I issued an Order to Show Cause without Temporary Restraints, providing dates for the submission of opposing papers and responses. On October 28, 2020, the parties argued their respective cases.

The City argues that the charging parties cannot demonstrate a substantial likelihood of success on the merits as the continued deduction of Chief Baycora's PBA dues, the failure to produce meeting notes, and the change of the license plate on the vehicle assigned to PBA President Cruz are not unfair practices. The City also submits that Chief Baycora has the managerial

prerogative to repurpose the police gym and relocate the exercise equipment back to its prior location in the men's locker room, and the relocation does not unilaterally alter any terms and conditions of employment. The City denies that Chief Baycora barred PBA President Cruz or SOA President Maher from speaking to anyone within his office, instead he requested that union representatives follow proper protocol and procedures when speaking with members within his office about union or personal matters, such as making an appointment with the member in advance and meeting in the Chief's conference room. The City also avers that the charging parties haven't suffered irreparable harm.

The following facts appear.

The PBA (rank and file officers), SOA (sergeants, lieutenants, captains, deputy chief) and the City signed separate collective negotiations agreements (CNAs), - with many identically numbered and worded provisions - extending from August 1, 2012 through July 31, 2019. The parties are engaged in negotiations for successor CNAs.

The City's Continued Deduction of PBA Dues for Chief Baycora

Section 1.1 of the CNA between the SOA and the City provides:

The City hereby recognizes the SOA as the exclusive and sole representative for collective negotiations concerning salaries, hours, and other terms and conditions of employment, for all Police Sergeants, Lieutenants, Captains, Deputy Chiefs, and

Superior Officers of the Paterson Police
Department.

Section 2.1 of the CNA between the SOA and the City
provides:

All employees covered by this Contract who are members of the SOA at the time this Contract is ratified or who hereafter become members during the term of this Contract must retain their membership in the SOA for the duration of the Contract, by offering to pay monthly dues, assessments, and initiation fees required by the SOA. Subject to the provisions of N.J.S.A. 52:14-15.9, the City agrees to deduct twenty-six (26) times per year from the salary of each employee the sum certified as such . . .

In February 2020, former SOA member Deputy Chief Baycora was appointed Chief of Police by the City. Subsequent to his appointment to Chief, Chief Baycora was no longer eligible for representation by the SOA. Regardless, the City continued to deduct union membership dues from the biweekly wages paid by the City to Chief Baycora. In mid-August PBA President Cruz and SOA President Maher contacted Theresa Suarez in the City's Personnel/Payroll offices and advised that the City should cease making dues deductions from Chief Baycora's biweekly wages. The City complied with that request. In an email dated August 20, 2020 entitled "Unauthorized Removal of Biweekly 'PBA Dues' Payroll Deductions" sent to Maher and copied to City Personnel Director Debra Hannibal, Theresa Suarez, Cruz, Acting City Corporation Counsel Farrah Irving, City Police Director Jerry

Speziale, and City Business Administrator Kathleen Long, Chief Baycora wrote:

"This is to confirm our conversation in your office today at 0325 pm, that you and Det. Alex Cruz arbitrarily removed my biweekly payroll deduction of "PBA Dues" from my check beginning with check dated 08/21/20 (#445187). I take this threatening action very seriously, and definitely Retaliatory. I expect a written response as to your actions."

Subsequent to this correspondence, pursuant to Chief Baycora's request, the City reinstated Chief Baycora's the biweekly payroll dues deductions.

In an email dated September 4, 2020, counsel for the PBA and SOA wrote to the City's Acting City Corporation Counsel Irving and Personnel Director Hannibal requesting a copy of the PBA Dues Payroll Deduction Roster from August 1, 2020 through September 4, 2020. In or around October 2020, counsel for the City provided the requested dues information to counsel for the PBA and SOA. In a letter dated October 21, 2020, counsel for charging parties wrote to Chief Baycora advising him, ". . . as a consequence of your ineligibility for membership in either the PBA or SOA, neither the PBA nor SOA can accept 'dues' payments made by you or made on your behalf through deductions you may authorize . . . and as of this date, the PBA has received monies from the City of Paterson paid on your behalf as 'dues'." The letter also enclosed a reimbursement check made out to Chief Baycora, and

advised that any future payments made to the PBA or SOA by Chief Baycora or by the City on his behalf will also be returned until such time that he becomes eligible for membership in the PBA or SOA.

Chief Baycora certifies that he has been a dues paying member of the PBA for over thirty-two years. He also certifies that "while [he] is not part of the union negotiating unit, [he is] entitled to the other benefits associated with membership in the PBA which includes a legal protection plan." He further states that "to the best of [his] knowledge, all prior Chiefs of Police for the City of Paterson continued to be members of the PBA after being appointed Chief of Police."

The City's Failure to Produce Meeting Notes

Chief Baycora certifies that on August 20, 2020 he had a meeting with Cruz and Maher to discuss various issues, including "details and shift assignments" and asked a member of his office, Detective Garcia, to be present at the meeting and take notes. The contents of this meeting resulted in the filing of an unfair practice charge and order to show cause (PERC docket number CO-2021-038). On September 24, 2020, a Commission Designee granted interim relief in that matter and ordered the City to rescind the directives issued on August 20, 2020, pending disposition of the unfair practice charge.

According to Chief Baycora, "[t]he notes were only intended for [his] aid and convenience to make sure there was an accurate accounting of what transpired at the meeting in case [he] needed to refer to the notes in the future." He further certifies that subsequent to the meeting, ". . . Detective Garcia typed up his rough draft notes and gave them to [Chief Baycora], [he] began to review to ensure that the notes were accurate and comprehensive." Chief Baycora certifies that he agreed to give Maher and Cruz a copy of "the typed notes when they have been finalized."^{4/} To date, the notes have not been provided to the charging parties.

The Assignment of Municipal Government License Plates on Cruz's City Vehicle

Cruz certifies that he became PBA President in May of 2011, and at that time he was provided with a City vehicle bearing what he identified as a "confidential license plate precluding its identification as a City vehicle." According to the charging parties, "[u]se of a vehicle with a confidential license plate reduced the likelihood of police officers visited by PBA Pres. Cruz - for example, a police officer visited at his or her home to address a potential domestic dispute - being potentially embarrassed by having a City municipal vehicle appear in the driveway of, or on the sidewalk in front of, his or her home on

^{4/} The charging parties allege that they made multiple demands for the meeting minutes in August and September 2020 and that on September 23, 2020, Chief Baycora responded to the demands and advised that he would not produce the minutes.

one or more occasions." On or about August 20, 2020, at the time of the vehicle's registration renewal, Cruz's vehicle was assigned municipal government license plates, bearing the letters "MG".

Chief Baycora disputes Cruz's assertion that he previously had confidential license plates on the City-owned vehicle that was assigned to him. Instead, Chief Baycora certifies that previously, "the vehicle assigned to Detective Cruz had civilian plates." Chief Baycora explains that when multiple City vehicles (including Cruz's vehicle) required re-registration, the Sergeant assigned as Fleet Manager was advised by the NJ Department of Motor Vehicles (DMV) that those vehicles could not be renewed with civilian license plates. Accordingly, municipal government plates were assigned by the DMV to the vehicle assigned to Cruz, as well as the other City vehicles previously bearing civilian license plates that were up for renewal. According to Chief Baycora, "[c]onfidential license plates are assigned only to City vehicles used for sensitive positions, such as Internal Affairs, those involving undercover work, surveillance, and similar investigative operations" and it's within his "managerial prerogative" to determine what police officers are assigned confidential plates.

The Unilateral Relocation of the Police Gym Into the Men's Locker Room

The charging parties certify that in 2011 they reached an agreement with the City whereby the City permitted them to establish a police gym within the City's Public Safety Complex in exchange for the renovation of the room housing the new police gym, the police rollcall room, patrol kitchen, academy room, and both the men's and women's bathrooms. The renovations were funded by the charging parties. Prior to 2011, the police gym equipment was located within the men's locker room. Both the rank and file and superior police officers have been utilizing the renovated gym since 2011.^{5/}

Chief Baycora certifies that in order to accommodate the State requirements for appropriate social distancing due to the Covid-19 pandemic, he needed to find additional space within the police headquarters. Chief Baycora states that use of the room housing the police gym is "critical for the safety, efficient operations, and betterment of the Police Department, and is needed for the Training, Processing, and Domestic Violence Response Team." He also asserts that subsequent to holding "at least three meetings" with Maher and Cruz regarding the gym location, they "agreed to have the equipment moved from the gym

^{5/} The use of the gym was suspended in 2020 due to the COVID-19 pandemic, the gym has not yet reopened and the equipment has not yet been relocated.

and returned to the men's locker room." Chief Baycora gave the charging parties 90-days to accomplish the move.

The charging parties dispute that there was an agreement reached regarding the closure of the police gym and the relocation of the gym equipment to the men's locker room. Maher certifies that during one of the meetings held to discuss the police gym, both he and Cruz objected to the closing of the gym, noting that the removal of the equipment to the men's locker room would deprive female officers of their continued use of a gym. In a letter to Chief Baycora dated August 6, 2020, Maher and Cruz stated that "[t]he use of the gym built by the PBA and SOA, although currently suspended due to the Covid-19 pandemic, is a right, privilege and benefit that is preserved through application of section 10.1 of the PBA and SOA collective negotiations agreements. [Chief Baycora's] decision to replace the gym with one to be used for a different managerial purpose constitutes a clear violation of section 10.1 . . . [i]t also constitutes a unilateral termination of an employee benefit during a time that the City is to be involved in contract negotiations . . . in violation of the New Jersey Employer-Employee Relations Act."

Chief Baycora's Directive Regarding Union Representatives Speaking to Their Members Within the Chief's Office

On September 30, 2020, a Commission Designee issued an Order to Show Cause with Temporary Restraints restraining and enjoining

the City from "requiring police officers assigned to work in the Chief's office to use contractual leave time, rather than change their hours of work, in order to engage in the off-duty employment program administered by the City." October 1, 2020, Chief Baycora held a meeting within his inner office with Maher and Cruz to discuss another matter. According to the charging parties, subsequent to the meeting they informed Chief Baycora of the restraint and injunction by the Commission on the previous day. The charging parties allege that during this conversation, Chief Baycora inquired about the identities of the officers who reported the incident that led to the issuance of the restraint and injunction, and both Maher and Cruz declined to provide him with the officers' identities. Subsequent to this conversation, the charging parties assert that Cruz and Maher proceeded to advise Chief Baycora's office staff members Captain Popov, Sergeant Luzzi, Police Detective Garcia, and Lieutenant Delgado of the restraint and injunction. Maher certifies that while Cruz and Maher were in Lieutenant Delgado office, Chief Baycora entered the office and instructed Cruz and Maher "that any discussions with [their] negotiation unit members assigned to the Chief's office, other than those involving personal matters, had to go through him and that [they] were not to speak directly with those negotiation unit members about union issues . . ."

Chief Baycora disputes the charging parties' account of what occurred on October 1, 2020. Chief Baycora certifies that he never barred Maher and/or Cruz from speaking to his office staff. Instead, according to Chief Baycora, he "explained to SOA President Maher and PBA President Cruz that if they want to discuss police matters or want information about [his] office, they should come to [him]. If they want to discuss personal or union matters, they can make an appointment with the officer or other arrangements to do so." Chief Baycora further certifies that his "direction to SOA President Maher and PBA President Cruz was that they were required to follow proper protocol, procedures, and common courtesy." He notes that "[i]t is not appropriate for any officer, union president or otherwise, to walk around the Chief's office unannounced and disrupt the vital operations of the Chief's office."

Both CNAs provide at Section 2.11:

The [PBA, SOA] President, and any officer if needed, shall have the right to visit the Director, Chief of Police, Headquarters, Precincts, Motor Pool, and other police occupied facilities, at all reasonable hours for Association business

Section 10.1 of the CNAs provides:

All the rights, privileges and benefits which the employees covered by this contract enjoyed prior to the effective date of this contract are retained by the employees except as those rights, privileges and benefits are specifically abridged or modified by this

contract and the Rules and Regulations except as otherwise prescribed by law.

Section 41.2 of the CNAs provides:

This contract and its provisions will be extended to remain in full force and effect, with no reduction in wages, benefits or other conditions of employment during any extended period of negotiations that take place on a successor contract, subsequent to this contract's expiration, until a successor agreement has been reached.

The charging parties assert that neither collective negotiations agreement require the Chief's permission before a union representative can speak to their members employed within the Chief's office about union matters, and no such limitation has been imposed previously. Maher certifies that he can "attest to the fact that while [Maher and Cruz] never intrude upon negotiation unit members while they are engaged in their duties on behalf of the Police Division, [they] have for at least [the] last 8 years had unfettered and unrestricted access to engage in discussions of union matters with any and all rank and file and superior police officers employed by the City, including staffers of the Chief's Office, without having to make an appointment in advance with the negotiation unit member [they] wish to speak to or move the conversation into a location designated by the Chief of Police . . ."

ANALYSIS

Interim relief may be obtained by a moving party if it demonstrates 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 isn't 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. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmeyer 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 SOA and PBA are seeking interim relief on five separate allegations that the City has engaged in violations of the Act. They contend they are entitled to interim relief on three allegations because the City has unilaterally changed terms and conditions of employment during negotiations for a successor agreement. Specifically, the charging parties allege that the City unilaterally mandated the closure of their police gym and relocation of their equipment, prohibited SOA and PBA union officers from consulting with unit members assigned to the Chief's office regarding union business and removed the confidential license plate from Cruz's City-assigned vehicle,

replacing it with a municipal government license plate. They assert that these unilateral changes have had a chilling effect on their ongoing contract negotiations.

N.J.S.A. 34:13A-33 prohibits the unilateral alteration of terms and conditions of employment set forth in an expired collective negotiations agreement as well as the unilateral imposition of other negotiable terms and conditions of employment without agreement of the majority representative.^{6/} A public employer's unilateral alteration of such terms and conditions during negotiations for a successor agreement constitutes a refusal to negotiate in good faith in violation of subsection 5.4(a) (5) of the Act. Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 78 N.J. 25, 48 (1978). Similarly, N.J.S.A. 34:13A-5.3 provides, in part:

Proposed new rules or modifications of
existing rules governing working conditions

^{6/}

N.J.S.A. 34:13A-33 provides:

"Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative."

shall be negotiated with the majority representative before they are established.

To prove a violation of this section, a charging party must show that a working condition has been instituted or changed without negotiations. Hunterdon Cty. Freeholders Bd. and CWA, 116 N.J. 322 (1989).

The Commission has held that an employer violates its duty to negotiate when it unilaterally alters an existing practice or work rule governing a term and condition of employment even where that practice or rule isn't specifically set forth in a collective agreement. Tp. of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J.112 (2000); Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983). A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed by the Act, undermines labor stability and constitutes irreparable harm. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n., 78 N.J. 25 (1978).

THE CLOSURE OF THE POLICE GYM AND THE CHIEF'S OCTOBER 1, 2020 DIRECTIVE TO CRUZ AND MAHER

The facts appear to demonstrate that since 2011, both rank and file and superior police officers have utilized a police gym located in a room in the City's Public Safety Complex. The charging parties submit, and the City does not dispute, that they

negotiated the establishment of the gym in 2011. At that time, the City agreed to provide the current gym space, and in exchange the charging parties agreed not only to renovate the room and fully furnish the gym at the unions' expense, but also to renovate the rollcall room, patrol kitchen, academy room, and men's and women's bathrooms.

The City asserts that the use of the room currently allocated as a police gym for the Training, Processing, and Domestic Violence Response team is critical for the safety, operations and betterment of the police department. It also claims that allocation of space within the police department is within the managerial prerogative of the Chief of Police. The charging parties disagree and argue that the location of the police gym is mandatorily negotiable and the Chief's unilateral decision to abolish the gym and relocate the exercise equipment into the men's locker room during collective negotiations undermines the charging parties' ability to represent their members.

Physical facilities for employees and conveniences related to employee comfort and safety are terms and conditions of employment that are mandatorily negotiable to the extent that they do not require the employer to expend capital funds.

(¶ 20213 1989); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986) (finding that a contract proposal related to physical facilities for employees was mandatorily negotiable to the extent that it did not require capital expenditures such as insisting that an addition be built onto a school); City of Orange Tp., P.E.R.C. No. 86-23, 11 NJPER 522 (¶16184 1985) (finding that contract proposals regarding the provision of union offices and use of a municipal copying machine were mandatorily negotiable to the extent that they did not require the expenditure of capital funds); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980) (finding that a contract proposal related to setting aside an area for use as a break room was mandatorily negotiable to the extent it did not require a capital expense decision); In re Byram Tp. Bd. of Ed., P.E.R.C. No. 76-27, 2 NJPER 143 (1976), aff'd 152 N.J. Super. 12, 27-30 (App. Div. 1977) (finding that subject matters that intimately and directly affect the work and welfare of employees and do not significantly interfere with management responsibilities are mandatorily negotiable absent limitations related to capital expenditures); Rutgers, The State University, P.E.R.C. No. 96-39, 22 NJPER 23 (¶27010 1995) (finding that one grievance seeking access to already existing staff lounge facilities pertained to a mandatorily negotiable term and condition of employment).

Based on the above, I do not believe that the City has a managerial prerogative to order the closure of the police gym that was established as a result of the parties' negotiations nine years ago. Instead, to the extent that it does not require the City to make any capital expenditures, the location of the police gym appears to be mandatorily negotiable.

A factual dispute exists between the parties concerning whether Chief Baycora's direction to Cruz and Maher on October 1, 2020 was intended to place a broad limitation upon their ability to communicate with their members in his office. The City avers that contrary to charging parties' allegations, Chief Baycora never barred Cruz or Maher from speaking to anyone in the Chief's office. Instead, Chief Baycora certified that he instructed Cruz and Maher "that if they want to discuss police matters or want information about the Chief's office, they should come to [him]. If they want to discuss personal or union matters, they can make an appointment with the officer or other arrangements to do so." Chief Baycora further noted that at that time, he gave Cruz and Maher the option of speaking with their members either in his office or in his conference room.

The Commission has held that "[t]he Act confers a statutory right of communication between majority representatives and unit members" and same is considered a "term and condition of employment." City of Newark, H.E. 2001-3, 26 NJPER 407 (¶31160

2000). The Commission has also determined that “[a]n employer action that tends to interfere with these statutory rights without a legitimate and substantial business justification violates [subsection] 5.4a(1).” Newark State-Operated School Dist., H.E. No. 2004-18, 30 NJPER 284 (¶99 2004), adopted P.E.R.C. No. 2005-49, 31 NJPER 81 (¶38 2005).

The charging parties’ entitlement to access to premises is subject to the terms of the parties’ collective agreement. Section 2.11 of both parties’ CNA specifically conveys upon the SOA and PBA Presidents, and any officer if needed, the right to visit any police occupied facility, at all reasonable hours for Association business. Cruz and Maher certified that they have always had full and unfettered access to meet with their members and discuss union matters at any police occupied facility. They have never had to secure the Chief’s permission before speaking to a member employed within his office about union matters or move the conversation into a location designated by the Chief.

Even accepting, for purposes of this decision, the City’s account of what occurred on October 1, 2020, I determine that the new limitations placed on the charging parties by Chief Baycora regarding access to their members within his office appears to demonstrate a unilateral “. . . modification of existing rules governing working conditions” without negotiations, violative of section 5.4a(5) and a(1) of the Act. The City is not without

remedy should Cruz and/or Maher or any other union representatives exhibit behavior that exceeds the bounds of protected activity in a given context. At that juncture, Chief Baycora would be entitled to take disciplinary or other appropriate action against the employee/union representative that demonstrates such behavior. However, in this matter, the facts do not suggest that Cruz and/or Maher's conduct on October 1, 2020 was egregious or improper. Accordingly, I find that the SOA has met its burden of demonstrating a substantial likelihood of success in a final Commission decision on this allegation.

The charging parties appear to have also demonstrated irreparable harm. A unilateral change in terms and conditions of employment during any stage of collective negotiations has a chilling effect on employee rights guaranteed by the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). By unilaterally imposing the changes articulated above, the City has chilled the negotiations process.

In weighing the relative hardship to the parties regarding the two allegations above, I find that the scale tips in favor of the charging parties, who suffer irreparable harm resulting from the unilateral changes made during the course of negotiations for a successor agreement. The public interest is advanced by requiring the City to adhere to the tenets of the Act specifying

that parties must negotiate before implementation of changes in terms and conditions of employment.

THE LICENSE PLATE CHANGE ON CRUZ'S CITY VEHICLE

The charging parties suggest that the City, through the actions of Chief Baycora, unilaterally altered an existing practice in "depriving PBA President Cruz of a license plate that did not identify his City-provided vehicle as a municipal vehicle" and therefore violated the Act. However, the charging parties fail to cite to any legal authority to demonstrate that the classification of license plates on City-owned vehicles constitutes a term and condition of employment and, therefore, is a mandatory subject of negotiations. The DMV, not the City, issues the license plates assigned to the City's vehicles. DMV abides by its own regulations to determine which vehicles are assigned confidential or civilian license plates, and which are assigned municipal government plates. The City explained that here, when multiple City vehicles (including Cruz's vehicle) required re-registration, the Sergeant assigned as Fleet Manager was advised by DMV that those vehicles could not be renewed with civilian license plates. The fact that Cruz's City-owned vehicle previously possessed either confidential or civilian license plates is irrelevant here as it appears that the assignment of plates is made by the DMV, not the City. At best, Cruz's previous license plate designation constitutes merely a

unilateral practice, and does not rise to the level of an implied agreement. University of Medicine and Dentistry of New Jersey, H.E. No. 88-45, 14 NJPER 228 (¶19084 1988). "A unilateral practice, standing alone, is not tantamount to an implicit agreement to make that practice a binding condition of employment." Jersey City Medical Center, H.E. No. 81-19, 6 NJPER 600 (¶11297 1980), adopted P.E.R.C. No. 81-89, 7 NJPER 97 (¶12039 1981). Consequently, I am inclined to find that by changing Cruz's license plate designation, the City has not unilaterally modified an existing rule governing terms and conditions of employment in violation of section 5.4a(5) and a(1) of the Act. I am not persuaded that the charging parties have demonstrated the likelihood of success on the merits of this allegation, and cannot show that irreparable harm will occur if the requested relief isn't granted.

THE CHIEF'S DUES DEDUCTIONS

Upon his appointment to Chief of Police, Chief Baycora's membership in the SOA ceased. As the Chief of Police, Chief Baycora is statutorily ineligible to be represented by either the SOA or PBA. The Act at N.J.S.A. 34:13A-3(c) defines a public employee as "any person holding a position, by appointment or contract, or employment in the service of a public employer, including the Delaware River Port Authority, except elected officials, members of boards and commissions, managerial

executives and confidential employees." A managerial executive is defined as ". . . persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices. . ." N.J.S.A. 34:13A-3(f). Police chiefs are managerial executives and not covered by the Act. Therefore, regardless of past practice, Chief Baycora is not entitled to any benefits associated with membership in the SOA or PBA, and should not be paying dues.

However, the issue before me is limited to deciding whether there is sufficient factual and legal basis to stay the City from continuing to make union dues deductions from Chief Baycora's payroll. As Chief Baycora is not covered by the Act, his refusal to discontinue paying union dues is likely outside of the Commission's jurisdiction. The current record has not provided sufficient information to find a substantial likelihood of success or irreparable harm over this issue.

Although I recognize that the interim relief standards have not been fully met, in balancing the harms to the parties, I find that during the time this matter is proceeding through the normal unfair practice processing mechanism, the City must continue to provide the charging parties with its dues payment registers for each payroll period that union dues are collected for Chief Baycora by the City.

THE CHIEF'S AUGUST 20, 2020 MEETING NOTES

In Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981), the Commission, relying on federal precedent, held that an employer must supply information to a majority representative if there is a probability that the information is potentially relevant and that it will be of use to the union in carrying out its representational duties and contract administration. Moreover, in State of New Jersey (OER) and CWA, P.E.R.C. No. 88-27, 13 NJPER 752, 754 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp. 2d 198 (¶177 App. Div. 1988), the Commission further explained that relevance is liberally construed. The information need only be related to the union's function as the collective negotiations representative and appear reasonably necessary for the performance of this function. Relevance is determined through a discovery-type standard; therefore, a broad range of potentially useful information is allowed to the union for effectuation of the negotiations process. See NLRB v. Acme Indus. Co., 385 U.S. 432, 437 (1967); Proctor & Gamble Mfg. Co. v. NLRB, 603 F.2d 1310, 1316 (8th Cir. 1979). A refusal to supply potentially relevant information may constitute a refusal to negotiate in good faith and violate 5.4a(5) and derivatively a(1) of the Act. See In re Univ. of Medicine and Dentistry of New Jersey, 144 N.J. 511 (1996); Burlington Cty. Bd. of Chosen Freeholders and CWA,

P.E.R.C. No. 88-101, 14 NJPER 327 (¶19121 1988), aff'd NJPER Supp. 2d 208 (¶183 App. Div. 1989).

A union's right to receive information from an employer is not absolute. The employer is not required to produce information clearly irrelevant or confidential. The duty to provide information is evaluated on a case-by-case basis. State of New Jersey (OER), 13 NJPER at 754. The party asserting confidentiality interests has the burden of proof. NLRB v. U.S. Postal Service, 888 F.2d 1568 (11th Cir. 1989), enforcing 289 NLRB 942 (1988).

Here, the charging parties seek meeting notes taken by a member of Chief Baycora's office staff during a meeting held on August 20, 2020 that they claim resulted in the filing of another unfair practice charge, CO-2021-038. Access to the notes would most likely assist the charging parties in their representation in that charge. Additionally, if the charging parties have a more complete understanding of the City's perspective of the meeting, it may assist with a resolution of that charge. The City asserts that although it is not legally required to provide the notes, Chief Baycora certified that he will provide them once they have been finalized.

Even if it is likely that the charging parties are entitled to all or part of the material they seek, the charging parties have not demonstrated that they will suffer irreparable harm if

they receive Chief Baycora's notes later than anticipated. Harm becomes irreparable in circumstances where the Commission cannot fashion an adequate remedy which would return the parties to the conditions that existed before the commission of any unfair practice at the conclusion of the processing of the unfair practice charge. City of Newark, I.R. 2006-3, 31 NJPER 250 (¶97 2005). Here, no irreparable harm will occur to the charging parties even if the processing of CO-2021-038 is delayed awaiting Chief Baycora's notes; the City is already restrained from imposing the limitations and restrictions alleged in that charge, pending a final decision in that matter.

Based upon the above findings and analysis, I issue the following:

ORDER

The Paterson Police PBA Local 1 and PBA Local 1, Superior Officers Association application for interim relief is denied with respect to the City's continued deduction of PBA dues from Chief Baycora's payroll; the City's failure to produce its meeting notes of the August 20, 2020 meeting; and the license plate change on the City-owned vehicle assigned to PBA President Cruz; the application is granted as set forth below:

-the City is restrained from unilaterally closing and vacating the police gym in its present location in the City's Public Safety Complex;

-the City is restrained from unilaterally imposing an obligation upon the PBA President, SOA President, or any officer of the PBA or SOA to secure Chief Baycora's permission, make an appointment and/or move their conversation into a location designated by Chief Baycora, as a condition to meeting with their members regarding union matters;

-the City shall continue to provide the Paterson Police PBA Local 1 and PBA Local 1, Superior Officers Association with its dues payment registers for each payroll period that union dues are collected for Chief Baycora by the City.

This interim order will remain in effect pending a final Commission order in this matter. This case will be transferred to the Director of Unfair Practices for further processing.

/s/ Marisa Koz
Marisa Koz
Commission Designee

DATED: January 21, 2021
Trenton, New Jersey