

H.E. NO. 2021-5

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

In the Matter of

CITY OF EAST ORANGE,

Respondent,

-and-

Docket No. CO-2019-270

EAST ORANGE SUPERIOR OFFICERS'
ASSOCIATION, FRATERNAL ORDER OF
POLICE, LODGE NO. 188 a/w FOP
NEW JERSEY LABOR COUNCIL,

Charging Party.

SYNOPSIS

A Hearing Examiner grants Charging Party's motion for summary judgment and denies Respondent's cross-motion for summary judgement. The Hearing Examiner determined that Respondent violated 5.4a(1) and (5) when it unilaterally implemented a sick leave policy while the parties were in contract negotiations.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that 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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NEW JERSEY LABOR COUNCIL,

Charging Party.

Appearances:

For the Respondent,
Eric M. Bernstein & Associates, L.L.C.
(Eric M. Bernstein, Esq. and Brian M. Hak, Esq., of
counsel and on the brief)

For the Charging Party,
Markowitz and Richman
(Matthew D. Areman, Esq., on the brief)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On May 2, 2019 and May 15, 2019, East Orange Superior Officers' Association, Fraternal Order of Police, Lodge No. 188 a/w FOP New Jersey Labor Council (FOP) filed an unfair practice charge and an amended charge, respectively, against the City of East Orange (East Orange). The amended charge alleges that on or about December 6, 2018, East Orange unilaterally implemented Revised General Order 6:27, requiring employees to use paid leave concurrently with leave under the Family Medical Leave Act 29

U.S.C. §2601 et seq. (FMLA), and/or the New Jersey Family Leave Act, N.J.S.A. 34:11B-1 et seq. (NJFLA), and that such paid leave must be taken in a specific sequence. The amended charge further alleges that East Orange's unilateral implementation of Revised General Order 6:27 occurred while the parties were engaged in negotiations for a successor contract. FOP asserts that East Orange's unilateral implementation of Revised General Order 6:27 during contract negotiations constitutes a violation of 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{1/}

On or about February 14, 2020, the Director of Unfair Practices issued a Complaint on the amended charge and assigned the matter to me for a hearing. On March 3, 2020, East Orange filed an Answer to the Complaint. In its Answer, East Orange denies violating sections 5.4a(1) and (5) of the Act, and asserts certain affirmative defenses.

On April 15, 2020, FOP filed a motion for summary judgment pursuant to N.J.S.A. 19:14-4.8, together with a brief, the certification of Sean Lavin, and exhibits. On May 8, 2020, East

^{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;" and "(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."

Orange filed a cross-motion for summary judgment pursuant to N.J.S.A. 19: 14-4.8, together with a brief, the certification of Phyllis Bindi, East Orange Chief of Police, and exhibits. On August 30, 2019, FOP filed a response to East Orange's cross-motion.

On May 26, 2020, the Commission referred the motions to me for a decision. N.J.A.C. 19:14-4.8. I have conducted an independent review of the parties' briefs and supporting documents submitted in this matter. Based upon the record, I make the following undisputed

FINDINGS OF FACT

1. East Orange and FOP are, respectively, public employer and public employee representative within the meaning of the Act.

2. FOP is the exclusive majority representative for all sergeants, lieutenants and captains employed by East Orange.

3. FOP and East Orange are parties to a collective negotiations agreement (CNA), effective July 1, 2013 through December 31, 2017.

4. Upon expiration of the CNA, the parties engaged in negotiations for a successor agreement until August 28, 2019, when the parties entered into a Memorandum of Agreement, effective January 1, 2018 through December 31, 2022.

5. Article IX of the parties' expired CNA, entitled "Vacation and Vacation Pay," outlines the manner in which employees may earn and use vacation time.

6. Article X of the parties' expired CNA, entitled "Sick Leave Incentive Program and Retirement Benefit," outlines an incentive program through which employees may receive additional vacation days for non-use of sick leave.

7. Neither Article IX nor Article X address FMLA or NJFLA leave in any way.

8. On December 6, 2018, during negotiations for a successor agreement, East Orange implemented Revised General Order 6:27, amending certain provisions of the sick leave policy as it relates to leave taken under the FMLA and/or NJFLA.

9. Specifically, Revised General Order 6:27 requires that employees use their paid leave entitlements concurrently with any FMLA and/or NJFLA leave, and further requires that such paid leave must be taken in a specific sequence as set forth in the Order. Section II, Part E of Revised General Order 6:27 provides in pertinent part:

Employees of this agency are required to use paid leave concurrently with FMLA leave in the following sequence, which is subject to change at the Chief's discretion:

1. Vacation leave (including contract vacation days, sick leave incentive days and "in lieu" days) accrued in the current year; then
2. If applicable, accumulated vacation leave (including contract vacation days, sick

leave incentive days and "in lieu" days) carried over from prior years with the Chief's approval; then,

3. Personal leave; then,

4. Excused days off (applicable only to employees with a 5/2 work schedule); then,

5. Compensatory time; then,

6. Accumulated sick leave.

FMLA leave taken after all other paid leaves are exhausted shall be unpaid.

If an employee's vacation leave is already scheduled in accordance with the agency's policy on vacation selection under General Order 2:25 (Vacation Selection), but he/she takes FMLA leave prior to that vacation leave, the number of days (or hours) taken for FMLA leave will be deducted from the employee's scheduled vacation leave in the order it falls on the calendar.

10. Section III, Part E of Revised General Order 6:27 includes the same requirements and language as Section II, Part E above, but with regard to NJFLA leave instead of FMLA leave.

11. As provided above in Revised General Order 6:27, if an employee takes FMLA and/or NJFLA leave prior to "already scheduled" vacation leave, the employee may have the amount of FMLA and/or NJFLA leave taken deducted from the "already scheduled" vacation leave.

12. There were no negotiations between East Orange and FOP regarding these new requirements that paid leave must be used to run concurrently with FMLA and/or NJFLA leave, and that concurrent paid leave must be taken in a specific sequence prior to East Orange's implementation of Revised General Order 6:27.

ANALYSIS

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

N.J.A.C. 19:14-4.8(d) provides:

If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross motion for summary judgment may be granted and the requested relief may be ordered.

In considering a motion for summary judgment, all inferences are drawn against the moving party and in favor of the party opposing the motion. No credibility determinations may be made, and the motion must be denied if material factual issues exist. N.J.A.C. 19:14-4.8(e); Brill, supra; Judson, supra. The summary judgment motion is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); UMDNJ, P.E.R.C. No. 2006, 32 NJPER 12 (¶6 2006).

The parties agree that East Orange implemented Revised General Order 6:27 without prior negotiations. Therefore, I find that no genuine issue of material fact exists with respect to this issue that would require a plenary hearing.

As a preliminary matter, the parties disagree regarding the precise legal issue to be decided for purposes of summary judgment. In its cross-motion, East Orange claims that FOP has acknowledged that East Orange has a past practice of requiring employees to use paid leave concurrently with FMLA and/or NJFLA leave and therefore, the sole legal issue here involves the requirement that such paid leave must be taken in a specific sequence. East Orange further contends that this limited issue of the sequence requirement is consistent with the scope of FOP's charge.

In its response to East Orange's cross-motion, FOP disputes East Orange's claim that FOP is only challenging the specific sequence requirement. FOP argues that there is nothing in the record to support East Orange's allegation of a past practice requiring employees to use paid leave concurrently with FMLA and/or NJFLA leave, or FOP's alleged acknowledgment of same.

Bald assertions without support in an affidavit or certification based upon the personal knowledge of the affiant cannot support or defeat summary judgment. See, e.g., Ridge at Back Brook, LLC, v. Klenert, 437 N.J. Super. 90, 97-98 (App. Div. 2014). Bare conclusions in pleadings without factual support in tendered affidavits are both insufficient to defeat a meritorious application for summary judgment, as are conclusory assertions in

an answering affidavit. See Brae Asset Fund, L.P., v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

Here, East Orange relies on the certification of Chief Phyllis Bindi to support its cross-motion for summary judgment. Chief Bindi certifies that prior to East Orange's implementation of Revised General Order 6:27 on or about December 6, 2018, "the Police Department was experiencing a huge abuse of leave time by certain members of the Department." Further, Chief Bindi certifies that the abuse of leave time "necessitated the enactment" of Revised General Order 6:27, wherein "paid leaves are required to be used concurrently with FMLA/NJFLA leave in the sequence provided for in the Policy." These statements by Chief Bindi undermine East Orange's assertion that it has a past practice of requiring that employees use paid leave concurrently with FMLA and/or NJFLA leave. Furthermore, Chief Bindi's certification includes no mention of East Orange's alleged past practice, and East Orange has failed to provide any other factual support for this allegation. Therefore, based on the lack of factual support, East Orange cannot rely on bald assertions in its brief to create a material issue of fact regarding its alleged past practice of requiring that employees use paid leave concurrently with FMLA and/or NJFLA leave.

It is clear from Sean Lavin's certification that FOP filed the charge because of the provisions in Revised General Order

6:27 requiring that employees take paid leave concurrently with FMLA and/or NJFLA leave, as well as the provisions detailing the specific sequence that such paid leave must be taken. Therefore, the legal issue for purposes of summary judgment is whether East Orange's implementation of Revised General Order 6:27, with its requirements that employees use paid leave concurrently with FMLA and/or NJFLA leave, and that paid leave must be taken in a specific sequence, is mandatorily negotiable.

A subject is negotiable between public employers and employees when

(1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees working conditions.

In re Local 195, IFPTE, 88 N.J. 393, 404-405 (1982). This balancing test must be applied to the facts and argument in each case. See City of Jersey City v. Jersey City POBA, 154 N.J. 555, 574-575 (1998).

In general, paid and unpaid leaves of absence intimately and directly affect employee work and welfare and do not significantly interfere with the determination of governmental

policy. See, e.g., Burlington Cty. College Faculty Ass'n v. Board of Trustees, Burlington Cty. College, 64 N.J. 10, 14 (1973); Piscataway Tp. Bd. of Ed. v. Piscataway Maintenance & Custodial Ass'n, 152 N.J. Super. 235, 243-44 (1977); South River Bd. of Ed., P.E.R.C. No. 81-108, 7 NJPER 156 (¶12069 1981); Hoboken Bd. of Ed., P.E.R.C. No. 81-97, 7 NJPER 135 (¶12058 1981), aff'd NJPER Supp.2d 113 (¶95 App. Div. 1982), app. disp. 93 N.J. 263 (1983). Negotiations will be preempted, however, if contract language conflicts with a statute or regulation that expressly, specifically and comprehensively sets that term and condition of employment. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982); Morris School Dist. Bd. of Ed. and The Ed. Ass'n of Morris, 310 N.J. Super. 332, 341-342 (App. Div. 1998), certif. den. 156 N.J. 407 (1998) (statutory sick leave sections provide only minimum standards). To be preemptive, such a statute or regulation must eliminate the employer's discretion to agree to grant the benefit sought.

Generally, both the FMLA and the NJFLA are intended to provide eligible employees with twelve (12) work weeks of unpaid leave per year for specified family or medical reasons. See 29 U.S.C. §2601 et seq.; N.J.S.A. 34:11B-1 et seq. Additionally, FMLA allows an employer to require the employee to substitute accrued paid leave, or use paid leave concurrently, for any part

of FMLA leave. 29 U.S.C. §2601 et seq. The FMLA's implementing regulations provide, in relevant part, as follows:

[T]he employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term substitute means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. . . . An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy. . . . Employers may not discriminate against employees on FMLA leave in the administration of their paid leave policies. [29 CFR 825.207(a) (emphasis added).]

Likewise, the NJFLA's implementing regulations provide, in relevant part, that "[i]f an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave". N.J.A.C. 13:14-1.7 (emphasis added).

In its motion, FOP argues that when East Orange implemented Revised General Order 6:27, it directly affected negotiable terms and conditions of employment by modifying the manner and order in which paid leave time will run while an employee is on FMLA and/or NJFLA leave. FOP relies on Lumberton Twp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 37 (¶32136 2001), aff'd 28 NJPER 427 (¶33156 App. Div. 2002), to argue that the FMLA sets minimum standards that can be negotiated to create greater or additional protections. FOP asserts that, "[t]his unilateral change also

specifically repudiates Article IX, Vacation and Vacation Pay and Article X, Sick Leave and Incentive Pay of the parties' most current CNA." And FOP further asserts that the unilateral implementation of Revised General Order 6:27 further violates the Act because it occurred while the parties were engaged in negotiations for a successor agreement.

In its cross-motion, East Orange asserts that the newly-implemented provisions of Revised General Order 6:27 are entirely consistent with the statutory framework set forth in both the FMLA and NJFLA. Further, East Orange argues that under Local 195, supra, East Orange's ability to determine governmental policy would be restricted if it had to negotiate over the issue of concurrent leave time and the sequence of its use. East Orange argues that it had a significant interest in curbing abuses of leave time that were being committed by certain members of the Department and, therefore, East Orange's right to modify its leave policy cannot be negotiated away.

This matter is identical to that addressed in Lumberton Tp. Bd. of Ed., P.E.R.C. No. 2002-13, 27 NJPER 37 (¶32136 2001), aff'd 28 NJPER 427 (¶33156 App. Div. 2002), wherein the Lumberton Board of Education adopted a policy, without prior negotiation, requiring employees to use paid leave concurrently with FMLA leave. The Board argued that the FMLA empowered it to adopt such a policy, but the Commission and the Appellate Division disagreed

and concluded that the adoption of a policy requiring employees to use paid leave concurrently with FMLA leave is mandatorily negotiable. 28 NJPER at 427-428. The Commission noted that although the FMLA sets minimum family leave benefits, it does not eliminate all employer discretion to negotiate with the union for greater leave benefits so that FMLA unpaid leave and accrued paid leave could run consecutively instead of concurrently. Id.

In Lumberton Tp. Bd. of Ed., the Commission relied in part on Hoboken Bd. of Ed., P.E.R.C. 81-97, 7 NJPER 135 (¶12058 1981), aff'd, NJPER Supp. 2d 113 (¶95 App. Div. 1982), app. disp. 93 N.J. 263 (1983). In Hoboken Bd. of Ed., the Commission found that the order in which an employee exhausts annual and accumulated sick leave is mandatorily negotiable. There, the Hoboken Board of Education unilaterally changed the method of calculation of sick leave, and required deductions from sick leave to be made in a specific order, i.e., that accumulative sick days must be used before non-accumulative sick days. The Commission determined that because applicable statutes did not mandate or even suggest a "set" procedure requiring the exhaustion of accumulative before non-accumulative sick days, the Board's change in the sick leave policy was arbitrable. 7 NJPER at 135.

Here, Revised General Order 6:27 requires that employees use their paid leave concurrently with FMLA and/or NJFLA leave, and

that such paid leave must be taken in a specific sequence. East Orange's position that FMLA and/or NJFLA regulations provide East Orange with discretion to unilaterally require the use of paid leave to run concurrently with FMLA and/or NJFLA leave without negotiations is not supported by Commission case law. The Commission has consistently found that the FMLA and NJFLA mandate a minimum level of family leave benefits that does not bar the employer from granting greater benefits through negotiations. See Lumberton Tp. Bd. of Ed., supra; New Jersey State Police v. State Troopers Fraternal Ass'n., P.E.R.C. No. 2019-30, 45 NJPER 304 (¶79 2019); Piscataway Tp. Bd. of Ed. v. Piscataway Tp. Ed. Assoc., P.E.R.C. No. 2016-3, 42 NJPER 95 (¶26 2015). Furthermore, East Orange fails to cite any authority in support its assertions.

Therefore, because the implementation of a policy requiring employees to use paid leave concurrently with FMLA and/or NJFLA leave is mandatorily negotiable, East Orange should have negotiated this issue with FOP before its implementation of Revised General Order 6:27. Furthermore, the specific sequence in which paid leave must be used to run concurrently with FMLA and/or NJFLA leave is also mandatorily negotiable. See Hoboken Bd. of Ed., supra. Therefore, East Orange should have negotiated this sequence issue with FOP before its implementation of Revised General Order 6:27 as well.

Finally, with regard to East Orange's unilateral implementation of Revised General Order 6:27 during contract negotiations, it is well settled that changes in negotiable terms and conditions of employment must be addressed through the collective negotiations process because unilateral action is destabilizing to the employment relationship and contrary to the principles of our Act. See, e.g., Atlantic County., 230 N.J. 237, 252 (2017); State of NJ and CWA, P.E.R.C. No. 2018-35, 44 NJPER 328 (¶193 2018); Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28, 29-30 (¶29016 1997), aff'd, 334 N.J. Super. 512 (App. Div. 1999), aff'd, 166 N.J. 112 (2000); Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 337-338 (1989); Galloway Twp. Bd. of Educ., 78 N.J. 25, 52 (1978). In Atlantic County, supra, the New Jersey Supreme Court reiterated this statutory duty to negotiate:

Thus, employers are barred from "unilaterally altering . . . mandatory bargaining topics, whether established by expired contract or by past practice, without first bargaining to impasse." Bd. of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 22, 675 A.2d 611 (1996) (citation omitted); accord Galloway Twp. Bd. of Educ. v. Galloway Twp. Educ. Ass'n, 78 N.J. 25, 48, 393 A.2d 218 (1978) (finding Legislature, through enactment of EERA, "recognized that the unilateral imposition of working conditions is the antithesis of its goal that the terms and conditions of public employment be established through bilateral negotiation").

[230 N.J. at 252.]

Similarly, in Galloway, the Supreme Court found that if continuation of a scheduled salary increment is determined to be an existing working condition that constitutes an element of the status quo, then "the unilateral denial of that increment would constitute a modification thereof without the negotiation mandated by N.J.S.A. 34:13A-5.3 and would thus violate N.J.S.A. 34:13A-5.4a(5)." 78 N.J. at 49-50; see also Howell Tp. Bd. of Ed., P.E.R.C. No. 86-44, 11 NJPER 634 (¶16223 1985); State of New Jersey, P.E.R.C. No. 87-21, 12 NJPER 744 (¶17279 1986); Camden Housing Authority, P.E.R.C. No. 88-5, 13 NJPER 639 (¶18239 1987); Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-114, 17 NJPER 336 (¶22149 1991); CWA and State, I.R. No. 82-2, 7 NJPER 532, 536-537 (¶12235 1981).

It is also well settled that a public employer's unilateral change to terms and conditions of employment during negotiations for a successor contract has a chilling effect, undermines labor stability, and constitutes a refusal to negotiate. See Academy Urban Leadership, IR No. 2020-9, 46 NJPER 353 (¶86 2020); State of NJ and CWA, P.E.R.C. No. 2018-35, 44 NJPER 328 (¶193 2018); Nutley Tp., IR No. 99-19, 22 NJPER 262 (¶303109 1999).

Accordingly, East Orange's unilateral implementation of Revised General Order 6:27 without negotiations violates sections 5.4a(1) and (5) of the Act. Consequently, I grant FOP's motion for summary judgment and deny East Orange's cross-motion for

summary judgment. FOP is entitled to the relief it requested as a matter of law, which includes restoring the status quo ante with regard to General Order 6:27, requiring East Orange to negotiate in good faith over any proposed changes to General Order 6:27, and requiring East Orange to post a notice regarding its violation of the Act.

RECOMMENDED ORDER

1. FOP's motion for summary judgment is granted. East Orange's cross-motion for summary judgment is denied.

2. East Orange is ordered to:

A. Cease and desist from:

1.) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by implementing Revised General Order 6:27, which requires paid leave time to be used concurrently with FMLA and/or NJFLA leave and in a specific sequence, without prior negotiations.

2.) Refusing to negotiate in good faith with FOP concerning terms and conditions of employment of employees in its unit, particularly by implementing Revised General Order 6:27, which requires paid leave time to be used concurrently with FMLA and/or NJFLA leave and in a specific sequence, without prior negotiations.

B. Take the following action:

1.) Restore the status quo ante with respect to the policy prior to the issuance of Revised General Order 6:27, implemented in December 2018.

2.) Negotiate in good faith with FOP over any proposed changes by East Orange to General Order 6:27, and maintain the status quo during negotiations.

3.) Post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

4.) Within twenty (20) days of receipt of this order, notify the Chair of the Commission regarding what steps the Respondent has taken to comply with this order.

/s/ Lisa Ruch
Lisa Ruch
Hearing Examiner

DATED: February 10, 2021
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman 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. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by February 25, 2021.



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 employees in the exercise of the rights guaranteed to them by the Act, particularly by implementing Revised General Order 6:27, which requires paid leave time to be used concurrently with FMLA and/or NJFLA leave and in a specific sequence, without prior negotiations.

WE WILL negotiate in good faith with FOP concerning terms and conditions of employment of employees in its unit, particularly by implementing Revised General Order 6:27, which requires paid leave time to be used concurrently with FMLA and/or NJFLA leave and in a specific sequence, without prior negotiations.

WE WILL restore the status quo ante with respect to the policy prior to the issuance of Revised General Order 6:27, implemented in December 2018.

WE WILL negotiate in good faith with FOP over any proposed changes by East Orange to General Order 6:27, and maintain the status quo during negotiations.

WE WILL post in all places where notices to employees are customarily posted, copies of the attached notice marked as "Appendix A." Copies of such, on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and,

WE WILL within twenty (20) days of receipt of this order, notify the Chair of the Commission regarding what steps the Respondent has taken to comply with this order.

Docket No. CO-2019-270

City of East Orange
(Public Employer)

Date: February 10, 2021

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, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830