

I.R. NO. 2002-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2000-224

FRATERNAL ORDER OF POLICE
LODGE NO. 12,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief and orders the employer to provide the union with documents related to an employee's psychological testing and resulting in disciplinary charges. The employer was ordered to provide the documents within ten days. The employer was restrained from conducting a disciplinary hearing for 45 days to permit the union an opportunity to review the materials before the disciplinary hearing.

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Appearances:

For the Respondent,
Joanne Watson, Corporation Counsel
(Richard Gordon, Asst. Counsel)

For the Charging Party,
Markowitz and Richman, attorneys
(Stephen Richman, of counsel)

INTERLOCUTORY DECISION

On February 7, 2000, the Fraternal Order of Police Lodge No. 12 (FOP) filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Newark (City) violated 5.4a(1) 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; (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.

Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when it failed to provide the FOP with requested documents related to Police Officer James Watson's disciplinary hearing and grievance.

On October 30, 2000, a Complaint was issued on the charge and the matter was assigned to Hearing Examiner Arnold H. Zudick for hearing. At the February 7, 2001 hearing, the Hearing Examiner ruled that, based on the City's failure to file an Answer to the Complaint, the allegations in the charge were admitted as true. N.J.A.C. 19:14-3.1. The matter was then held in abeyance to permit the parties an opportunity to voluntarily resolve the dispute.

On April 10, 2002, the FOP filed an application for Interim Relief with accompanying affidavit from FOP Lodge 12 President Jack McIntee. As the assigned Commission designee, I signed an Order to Show Cause scheduling the return date on the interim relief application for April 24, 2002. The Order to Show Cause was served on the City on April 17. The Order permitted the City to file responsive papers by April 22. No response was filed. The parties appeared before me on the scheduled return date. The City asserts that it has provided the FOP with certain documents concerning Watson's discipline and is willing to provide additional documents. The following facts appear.

Police Officer James D. Watson is employed by Newark Police Department and is represented by FOP Lodge 12. In late December, 1999 Watson was ordered to undergo psychological testing by the City's psychiatrist. Watson was told he was selected for this

examination by the City's "Random Analysis Management System" (RAMS), which apparently tracks employee performance by use of a point assignment system. Watson went for the psychological assessment in January 2000. On January 18, 2000, Watson was ordered to surrender his service weapon and was reassigned to an inside post. On January 20 Watson was issued a notice of discipline indicating that the City intends to terminate him as unfit for duty. The notice scheduled a disciplinary hearing.

On January 21, Watson filed a grievance over the City's directive to report for the psychological examination and the surrender of his weapon. On January 25, the FOP requested the City to provide the following information so that it could represent Watson in the grievance and the disciplinary hearing:

- all material and documents related to the RAMS system;
- the origin of the information placed into the RAMS system;
- the basis of the City's decision to send Watson for the psychological examination;
- Watson's personnel and disciplinary records;
- the results of the psychological examination;
- any other relevant information or documents the City used in its disciplinary decision.

On February 7, 2000, the FOP filed this charge alleging the City had not supplied any of the requested materials which the FOP claims it needs to represent Watson. The City postponed Watson's scheduled disciplinary hearing.

At the Show Cause proceeding, the City produced the following documents: (1) Watson's disciplinary record current as of mid-2001; (2) certain pages of the document describing the RAMS program; and (3) the psychological report on Watson.

The remaining requested documents have not yet been produced; however, the City has not opposed the submission of the additional documents to the FOP. The FOP has been notified that Watson's disciplinary hearing is now scheduled for April 30, 2002.

* * *

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).

It is well settled that a public employer has a duty to provide a majority representative with information relevant to contract administration which includes grievance processing. Failure to provide such information is a refusal to negotiate in good faith. Univ. of Medicine and Dentistry of New Jersey, P.E.R.C.

No. 93-114, 19 NJPER 342 (¶24155 1993); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 89-127, 15 NJPER 340 (¶20150 1989); New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 88-12, 13 NJPER 661 (¶18249 1987), adopting H.E. No. 87-65, 13 NJPER 423 (¶18164 1987); Shrewsbury Bd. Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981).

The FOP sought information needed to process Watson's grievance concerning the order to report for psychological testing and to surrender his weapon, as well as to represent him in the disciplinary hearing in which the City now seeks Watson's termination. The FOP cannot meet its obligation to fairly represent unit member Watson in both the disciplinary proceeding and the grievance without such relevant information. Further, the FOP's defense of Watson in these matters could be irreparably compromised if it does not receive the materials in sufficient time to prepare its case. Accordingly, I find that the FOP has met the standard for interim relief in this matter. The City does not oppose the application for interim relief and has not contended that it will suffer any harm if the documents are provided to FOP, or that the requested materials are confidential.

ORDER

Accordingly, the City of Newark is directed to provide FOP Lodge 12 the following documents within ten calendar days:

1. A complete copy of the RAMS system program document.

2. All documents, including internal affairs investigation reports, leading to the City's directive to Watson to undergo psychological examination and/or forming the basis for Watson's disciplinary charges.

3. Watson's personnel record and updated disciplinary records.

The City is restrained from conducting the hearing on Officer Watson's disciplinary charges for a period of 45 calendar days.



Susan Wood Osborn
Commission Designee

DATED: April 26, 2002
Trenton, New Jersey

