

P.E.R.C. NO. 95-80

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-H-95-160

FRATERNAL ORDER OF POLICE,  
NEWARK LODGE NO. 12,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Newark violated the New Jersey Employer-Employee Relations Act by repudiating a contractual provisions permitting dues deductions to the majority representative only. The FOP succeeded the Newark PBA, Local No. 12 as majority representative and the City continued to deduct dues for the PBA. Absent any contrary authority, the Commission holds that an exclusive dues deduction provision must be treated like other terms and conditions of employment set by the predecessor contract. It can be assumed and enforced by a successor union.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Michelle Hollar-Gregory, Corporation  
Counsel (Wendy L. Young, Assistant Corporation Counsel)

For the Charging Party, Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

DECISION AND ORDER

On November 14, 1994, the Fraternal Order of Police, Newark Lodge No. 12, filed an unfair practice charge against the City of Newark. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> by repudiating a contractual provision permitting dues deductions to the majority

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<sup>1/</sup> These subsections 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."

representative only. The FOP succeeded the Newark PBA, Local No. 3 on October 18, 1994 and the City continues to deduct dues for PBA members.

A Commission designee denied the FOP's request for interim relief. The parties then stipulated the facts and waived a hearing and Hearing Examiner's report and recommendations. A Complaint issued and the City filed an Answer relying on the stipulation and its interim relief brief.

These are the stipulated facts:

1. FOP, Lodge 12 is the exclusive collective bargaining representative for police officers of the City of Newark having been so certified by the Public Employment Relations Commission on October 18, 1994.

2. When the FOP became the majority representative, it assumed the collective bargaining agreement that had heretofore existed between the City of Newark (hereinafter, "City") and Newark PBA, Local No. 3 (hereinafter, "PBA"). That agreement had an effective date of January 1, 1992 through December 31, 1994.

3. Upon the assumption of the status of majority representative, the FOP also advised the City of its intent to negotiate the terms and provisions of a new collective bargaining agreement effective January 1, 1995.

4. The aforesaid collective bargaining agreement contained a provision at Article 2, Section 3, in part as follows:

Subject to the provisions of N.J.S.A.  
52:14-15.9e, upon the written authorization by an

employee covered by this Agreement, the City agrees to deduct twice each month from the salary of each employee the sum certified as PBA dues and forward the sum to the PBA treasurer and/or any other duly authorized officer.

Effective January 1, 1993, employees represented by this collective bargaining unit may only request payroll deduction for payment of dues to no other labor organization than the duly certified majority representative. Existing written authorizations for payment of dues to any other labor organization shall be terminated. It is understood and agreed between the parties herein that this provision does not apply to any other voluntary employee organization.

5. N.J.S.A. 52:14-15.9e provides, in pertinent part:

Nothing herein shall preclude a public employer and a duly certified majority representative from entering into a collectively negotiated written agreement which provides that employees included in the negotiating unit may only request deduction for the payment of dues to the duly certified majority representative. Such collectively negotiated agreement may include a provision that existing written authorizations for payment of dues to an employee organization other than the duly certified majority representative be terminated. Such collectively negotiated agreement may also include a provision specifying the effective date of a termination in deductions as of the July 1 next succeeding the date on which notice of withdrawal is filed by an employee with the public employer's disbursing officer.

6. Pursuant to N.J.S.A. 52:14-15.9e, the City and the PBA, during the interest arbitration proceedings that led to the January 1, 1992 collective bargaining agreement, both submitted exclusive dues deduction proposals in their final non-economic offers to the interest arbitrator. The interest arbitrator granted the City's dues deduction proposal.

7. In accordance with the interest arbitrator's Opinion and Award, the City and the PBA included such a provision in Article 2, Section 3 of the collective bargaining agreement.

8. Both parties agree that the stipulated facts constitute the complete record and that each must rely on those facts to sustain their respective burdens of proof.

As noted by the parties, N.J.S.A. 52:14-15.9e permits a public employer and a majority representative to agree that unit employees may authorize dues deductions to the majority representative only. Such an agreement may also require the termination of existing authorizations to other employee organizations.

The City does not dispute the FOP's general right to assume the terms of the predecessor union's collective negotiations agreement. Nor does it dispute its obligation to preserve the status quo pending negotiations for a successor agreement. The City more narrowly contends that the exclusive dues deduction provision of the predecessor agreement does not survive a change in majority representative.

The City relies on Howell Tp. Bd. of Ed., P.E.R.C. No. 94-19, 19 NJPER 452 (¶24213 1993), which held that the board violated the Act when it refused to forward dues to a union after it had lost a representation election and a new union had been certified as the majority representative. That case, however, did not involve the application of an exclusivity provision. Such

provisions cannot be applied to school employees. N.J.S.A. 52:14-15.9e. Absent such a provision, employee authorizations to deduct dues continue after a change in majority representative and may only be withdrawn effective January 1 or July 1 next succeeding the date on which notice of withdrawal is filed. Ibid.

The City also relies on two private sector cases, Modine Manufacturing Co. v. Grand Lodge Int'l Ass'n of Machinists, 216 F.2d 326, 329 (6th Cir. 1954), and Milk Drivers and Dairy Employees, Local 680 v. Cream-O-Land Dairy, 39 N.J. Super. 163, (App. Div. 1956). Those cases, however, also dealt with the rights of an ousted union and not those of a successor union. Modine held that an ousted union could not enforce a union security clause that required employees to join its organization and pay dues. Milk Drivers considered a union's attempt to arbitrate five contract claims after the contract had expired and the union had been replaced by another. The Court held that in light of the fact that the contract had come to an end, the ousted union unquestionably could not seek dismissal of present employees under an expired union security clause or enforce that clause as to new employees. Neither Modine nor Milk Drivers concerned the rights of successor unions in general, nor the right of a successor union in particular to enforce a predecessor contract's exclusive dues deduction provision.<sup>2/</sup>

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<sup>2/</sup> In FOP (Baran), A.B.D. No. 91-2, 16 NJPER 502 (¶21221 1990), the Appeal Board addressed the statutory scheme authorizing the collection of agency fees, N.J.S.A. 34:13A-5.5 et seq. It did not consider the statutory scheme permitting exclusive dues deduction provisions, N.J.S.A. 52:14-15.9e.

Absent any contrary authority, we hold that this exclusive dues deduction provision must be treated like other terms and conditions of employment set by the predecessor contract. It can be assumed and enforced by the successor union.

Because dues have already been transmitted to the predecessor union pursuant to outstanding written authorizations, we will issue a prospective order only. The City must cease deducting dues for any employee organization other than the majority representative as quickly as its payroll procedures allow.

ORDER

The City of Newark 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 repudiating a contractual provision permitting dues deductions to the majority representative only.

2. Refusing to negotiate in good faith with the Fraternal Order of Police, Newark Lodge No. 12 concerning terms and conditions of employment of negotiations unit employees, particularly by repudiating a contractual provision permitting dues deductions to the majority representative only.

3. Deducting dues for any employee organization other than the majority representative, as quickly as its payroll procedures allow.

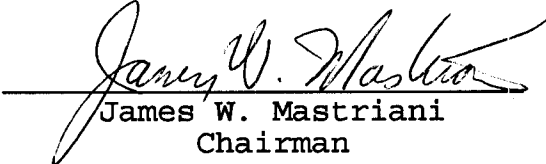
B. Take this action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration.

DATED: March 24, 1995  
Trenton, New Jersey  
ISSUED: March 27, 1995





# 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 repudiating a contractual provision permitting dues deductions to the majority representative only.

WE WILL cease and desist from refusing to negotiate in good faith with the Fraternal Order of Police, Newark Lodge No. 12 concerning terms and conditions of employment of negotiations unit employees, particularly by repudiating a contractual provision permitting dues deductions to the majority representative only.

WE WILL cease and desist from deducting dues for any employee organization other than the majority representative as quickly as our payroll procedures allow.

Docket Nos. CO-H-95-160

CITY OF NEWARK  
(Public Employer)

Date: \_\_\_\_\_

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, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"