

P.E.R.C. NO. 2006-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-2005-128

JERSEY CITY POBA,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the City of Jersey City and a cross-motion for summary judgment filed by the Jersey City POBA. The POBA filed an unfair practice charge alleging that the City violated the New Jersey Employer-Employee Relations Act when it paid police recruits an hourly rate rather than a rate that correlates with the salary guide in the parties' collective negotiations agreement, allegedly in violation of a grievance settlement agreement. In denying both motions, the Commission concludes that although the POBA has not met its burden of proving that recruits are covered by the parties' agreement, it cannot find that the City proved that they are not covered. The Commission holds that final resolution of this disputes requires the consideration of competing evidence.

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, Schwartz Simon Edelstein Celso & Kessler LLP, attorneys (Stefani C. Schwartz, of counsel; Stefani C. Schwartz and Rachel A. Davis, on the brief)

For the Charging Party, Detzky & Hunter, LLC, attorneys (Stephen B. Hunter, on the brief)

DECISION

This case comes to us by way of cross-motions for summary judgment. On November 12, 2004, the Jersey City POBA filed an unfair practice charge against the City of Jersey City. The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> when it paid police recruits an hourly rate

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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  
(continued...)

rather than a rate that correlates with the salary guide in the parties' collective negotiations agreement, allegedly in violation of a grievance settlement agreement.

On February 24, 2005, a Complaint and Notice of Hearing issued. On March 9, the City filed its Answer denying that it violated the Act and asserting that newly hired police officers entering a police academy are not included in the POBA's negotiations unit or covered by the parties' contract.

On December 2, 2005, the City filed a motion for summary judgment. It asserts, in part, that the grievance settlement agreement signed by the Director of Police modifies a significant term of the contract and is not enforceable.

On January 12, 2006, the POBA filed a cross-motion for summary judgment. It contends that its charge subsumes three issues:

1. Has the City violated the Act by failing to pay police officers assigned to the training academies the contract rate?
2. Did the City fail to appropriately place police officers at step 2 of the salary guide as of January 1, 2005?
3. Assuming the answer to the first question is no, is the City bound by a grievance settlement agreement executed by the Police Director?

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1/ (...continued)  
representative."

On February 21, 2006, the City filed a brief opposing the POBA's cross-motion.

On March 15, 2006, the Chairman referred the motion and cross-motion to the full Commission.<sup>2/</sup>

The following facts are derived from the certifications and exhibits filed in support of the cross-motions.

The City and POBA are parties to a collective negotiations agreement effective from January 1, 1999 through December 31, 2001. Under the Recognition Clause, the POBA represents "all non-supervisory police officers." Police recruits are not mentioned in the Recognition Clause.

On June 26, 2002, then Mayor Glenn Cunningham entered into a tentative agreement with the POBA for contract changes retroactively effective to January 1, 2002. That agreement was codified into a Memorandum of Agreement that the City Council approved. The Council resolution specifies that the mayor and business administrator are authorized to sign formal labor contracts on behalf of the City in accordance with the tentative agreement. The parties have not yet executed a 2002-2005 agreement; however, Article 41 of their 1999-2001 agreement provides that all terms and conditions of employment will remain in force until a new agreement is executed.

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<sup>2/</sup> On March 21, 2006, the City requested oral argument. We deny that request as the matter has been fully briefed.

Before January 30, 1998, police recruits received the contractually negotiated step one salary benefits, including for time they were assigned to a police training academy. On January 30, 1998, Mayor Bret Schundler issued an Executive Order modifying the way recruits were compensated. They would receive an hourly rate of pay equal to the prevailing minimum wage and the benefits of other temporary employees. On March 6, 1998, Schundler issued an Executive Order raising the hourly rate. On July 16, 2001, Mayor Cunningham issue an Executive Order again raising the hourly rate and affording recruits benefits under the State Health Benefits Program. On November 19, 2001, Cunningham issued an Executive Order setting a flat salary rate. On October 13, 2004, Mayor L. Harvey Smith issued an Executive Order raising that rate.

According to the Police Department's Fiscal Officer, since January 1998, all individuals who attend a police academy but have not yet been sworn in as police officers have been paid an hourly rate while in training and have not received the benefits or protections of the collective negotiations agreement. He also states that no recruits have ever been placed directly on step two of the salary guide after graduating from the academy and being sworn in as officers. According to former POBA president and former Police Chief and Acting Police Director Ronald Buonocore, the latter statement is "totally incorrect."

According to POBA President Harry Sandwith, before January 1998, the City never disagreed with the POBA's position that, as of their date of initial appointment, new police officers were entitled to all of the salaries and fringe benefits negotiated in the POBA contract and that the POBA required the City to pay police recruits at step one of the salary guide with full benefits. In response to the Executive Orders issued since 1998, the POBA has filed unfair practice charges and grievances that resulted in all affected police officers being made whole in seniority and salary.

After Cunningham issued his November 19, 2002 Executive Order, the parties executed addenda to the collective negotiations agreement. The addenda established that, effective February 17, 2003, the first step of the salary guide would be reduced from \$36,000 to \$34,100. According to Sandwith, salaries were reduced in return for the City's reaffirmation that new police officers were to receive the negotiated first step salaries and benefits.

Also according to Sandwith, in consideration of the language of the February 17, 2003 addendum, Police Director Samuel Jefferson on May 13, 2004 executed three settlement agreements that resolved three grievances related to the salary and benefits of new police officers. One agreement provides that it shall apply prospectively to all newly hired police officers and that

the current collective bargaining agreement "shall be modified" to apply its terms to all individuals hired by the City with the intent that they will ultimately serve as police officers. It further provides that the agreement shall apply even though the individual must satisfy a training program and even though the individual serves as a temporary, provisional or probationary employee. The agreement was signed by Jefferson and Sandwith. According to Jefferson; he did not discuss the terms of the agreement and was only asked to acknowledge that he reviewed the agreement by signing it; he understood that his signature had no binding effect on the City; he was aware that he had no authority to give the final approval for the terms of the settlement agreement and never advised the POBA that he had such authority; and his signature represented that discussions were complete and that the agreement was ready for consideration by the Mayor and Council.

Another settlement agreement applies to police officers sworn in on January 14, 2002. Their seniority date would be the date they entered the police academy. Those who graduated from the academy would be placed on step four effective January 1, 2004 and would receive retroactive pay. That agreement was also signed by Jefferson and Sandwith. The third agreement awarded one officer compensatory and vacation days and placed him on step four of the salary guide effective January 1, 2004. That

agreement was also signed by Jefferson and Sandwith. According to Jefferson, neither of these agreements modified the parties' contract; they merely resolved narrow issues relating to the specific officers involved.

According to Sandwith, he was in Mayor Cunningham's office with Deputy Mayor Gene Drayton and Police Chief Ronald Buonocore and listened on a speaker phone to Cunningham tell Jefferson that all three settlement agreements were consistent with the collective negotiations agreement as clarified in the February 17, 2003 salary addendum. We note, however, that the May 13, 2004 settlement agreement that "modified" the parties' contract was not signed by the Mayor nor were its terms adopted by the Council.

On October 29, 2004, a class of 32 recruits began training to be police officers. They were paid an hourly rate in accordance with the October 13, 2004 Executive Order. After they were sworn in as police officers, they were placed on step one of the salary guide.

The City Code provides that the mayor shall negotiate contracts for the City subject to Council approval. All contracts must be authorized by the Council and bear the signature of the mayor or business administrator.

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

We begin with the POBA's motion for summary judgment on its allegation that the City violated the Act by failing to pay police officers assigned to training academies the contractual salary rate specified in the parties' collective negotiations agreement. In order to rise to the level of an unfair practice, the City's actions had to repudiate the parties' collective negotiations agreement. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). A mere breach of contract is not an unfair practice.

On this record, we deny the POBA's motion for summary judgment. The POBA has not proven that the City repudiated an obligation to pay recruits assigned to the training academies on the negotiated salary guide, by virtue of the contract, past practice, or a settlement agreement signed by the Police Director.

The contract is silent as to recruits. It neither expressly includes nor excludes them. The POBA has not proven that at any time since 1998, police recruits have been covered by the parties' contract while they were still attending the police academy. The two grievance settlements awarding police officers backpay do not award compensation for the time they were in an

academy. Although one of the May 13, 2004 grievance settlements modifies the contract to include recruits, the POBA has not proven that the Police Director had the authority, either real or apparent, to modify the recognition clause of a collective negotiations agreement signed by the Mayor and ratified by the City Council. Even assuming that the Mayor indicated his belief that the modification was consistent with the 2003 salary addendum, the POBA has not proven at this juncture that the City acted in bad faith or repudiated the contract by adhering to the contract interpretation it appears to have followed since 1998.

We also deny summary judgment on the allegation that the City failed to appropriately place police officers at step 2 of the salary guide as of January 1, 2005. Summary judgment is not appropriate where, as here, material facts are in dispute and the parties' supporting certifications paint two very different pictures. In addition, proper placement on the salary guide is generally a matter of contract interpretation and any such contract violation would likely not rise to the level of an unfair practice. See Human Services.

We also deny the City's motion for summary judgment. The contract's recognition clause does not expressly exclude recruits and there is evidence that before 1998, recruits were paid on the police officers' salary guide and that after 1998, officers who were not paid on the guide were made whole. Thus, although the

POBA has not met its burden of proving that recruits are covered by the parties' agreement, we cannot find that the City proved that they are not covered. Final resolution of this dispute requires the consideration of competing evidence, a task we cannot accomplish in reviewing cross-motions for summary judgment.

ORDER

The motion and cross-motion for summary judgment are denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, Fuller, Katz and Watkins voted in favor of this decision. None opposed. Commissioner DiNardo recused himself.

ISSUED: March 30, 2006

Trenton, New Jersey