

P.E.R.C. NO. 2016-57

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2015-093

FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants an unopposed motion for summary judgment filed by the Fraternal Order of Police, Newark Lodge No. 12 (FOP). The Commission concludes that the City of Newark violated N.J.S.A. 34:13A-5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act by failing to provide information requested by the FOP about the City's use of special police officers, finding the information potentially relevant to the FOP's representational duties. The Commission orders the City to provide the FOP with the requested information to the extent that the information is in the City's possession or control.

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, Kenneth G. Calhoun, Assistant
Corporation Counsel^{1/}

For the Charging Party, Markowitz and Richman,
attorneys (Stephen C. Richman and Matthew D. Areman, of
counsel)

DECISION

This case comes to us by way of motion for summary judgment filed by the Fraternal Order of Police, Newark Lodge No. 12 (FOP) on December 23, 2015 in an unfair practice case against the City of Newark. The charge asserts that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsection 5.4(a)(1) and (5)^{2/}, by failing to

^{1/} Although there has been no appearance in this matter on behalf of Respondent, we have identified its representative as named in the unfair practice charge and proofs of service filed by the Charging Party.

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)"

provide the FOP with information it requested in response to a Memorandum issued by the Police Chief assigning special police officers (SPOs) to perform work that allegedly had been police unit work.

The hiring of SPOs and the conditions, terms, and limitations of their employment are governed by the Special Law Enforcement Officers' Act, N.J.S.A. 40A:14-146.8 to -146.18. N.J.S.A. 40A:14-146.9(h) defines "special law enforcement officer" as:

[A]ny person appointed pursuant to this act to temporarily or intermittently perform duties similar to those performed regularly by members of a police force of a local unit, or to provide assistance to a police force during unusual or emergency circumstances, or at individual times or during regular seasonal periods in resort municipalities.

N.J.S.A. 40A:14-146.11(a) provides for Class One and Class Two special police officers. Class One officers are authorized to perform routine traffic detail, spectator control and similar duties and to issue summonses for traffic violations and disorderly persons offenses. Class Two officers are authorized to perform all of the duties of a regular police officer and, if

2/ (...continued)
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."

authorized by the municipality, to carry and use firearms after being fully trained and certified.

On August 14, 2014, Chief of Police Anthony Campos ordered recent Newark Special Police graduates to utilize their volunteer hours to receive field training with department members, citing the statutorily authorized duties of Class Two SPOs (Memorandum 14-0238, FOP Motion Exhibit 2). By letter of September 10, 2014, FOP President James Stewart, Jr. acknowledged receipt of the memorandum and requested that Police Director Eugene Venable provide the FOP with the following information:

- (1) The names of all recently graduated Newark Special Police Officers.
- (2) The dates, commands and hours of work where Newark Special Police Officers volunteer their time in compliance with Chief of Police Memorandum 14-0238.
- (3) All Newark Police Department Tour Sheets related to the utilization of these Newark Special Police Officers and their assignment during utilization.
- (4) The names of all unit members who were reassigned as a result of the utilization of Newark Special Police Officers during this program.
- (5) The names of any unit members who were denied overtime as a result of the utilization of Newark Special Police Officers during this program.

[FOP Motion Exhibit 3]

On October 17, 2014, the FOP filed an unfair practice charge alleging that the City failed to provide the FOP with the requested information. On October 29, the Director of Unfair Practices wrote to the parties regarding the charge. She requested the City to submit a statement of position by November

21 explaining why the allegations in the charge, if true, would or would not constitute unfair practices. The City did not file a statement of position.

A December 12 telephone conference between the parties and a Commission staff agent did not resolve the dispute. On February 23, 2015, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the charge. The transmittal letter to the parties reminded the City of its obligation to file an answer and that, if no answer was filed, all allegations in the complaint would be deemed to be admitted to be true, unless good cause to the contrary was shown. The City did not file an answer to the complaint.

On December 23, 2015, the FOP filed a motion for summary judgment and brief with the Commission. It asserts that the City's failure to provide the FOP with the requested information or otherwise respond to its September 10, 2014 letter violates the Act. The FOP argues that it is entitled to the information because it is necessary for administration of its collective negotiations agreement concerning mandatorily negotiable terms and conditions of employment such as the transfer of work from FOP police officers to SPOs. It also argues that N.J.S.A. 40A:14-146.8, et seq. does not preempt negotiation of contractual provisions limiting the use of SPOs, or arbitrating claims that unit members' work opportunities have been diminished by the use

of SPOs. The FOP asserts that because the City did not file an answer as required by N.J.A.C. 19:14-3.1, the allegations set forth in the charge must be deemed admitted. Therefore, it argues, there can be no genuine issue of material fact and pursuant to N.J.A.C. 19:14-4.8(e) and Commission and judicial precedent, the FOP is entitled to judgment as a matter of law and a remedy ordering the City to provide the requested information.

The City did not file a response opposing the FOP's motion for summary judgment. On January 11, 2016, the Chair referred the motion and cross-motion to the full Commission for decision pursuant to N.J.A.C. 19:14-4.8(a).

In an unfair practice proceeding, the respondent is required to submit an answer to the complaint:

Within 10 days of service on it of the complaint, the respondent shall file an answer. The hearing examiner, upon proper cause shown, may extend the time for filing an answer. The answer shall specifically admit, deny or explain each of the allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a specific denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained shall be deemed to be admitted to be true and shall be so found by the hearing examiner and the Commission, unless good cause to the contrary is shown. The answer shall include a detailed statement of any affirmative defenses. The answer shall be in writing and the party or representative filing the answer shall make this dated and signed certification: "I declare that I have read the above statements and that the statements are true to the best of my knowledge and belief."

[N.J.A.C. 19:14-3.1; emphasis added]

The Commission and its Hearing Examiners have consistently enforced N.J.A.C. 19:14-3.1 by admitting as true a charging party's allegations when a respondent has either not filed an answer or has filed an answer that did not comply with our rules. See, e.g., City of Newark, P.E.R.C. No. 2015-51, 41 NJPER 385 (¶121 2015); City of Newark, P.E.R.C. No. 2015-64, 41 NJPER 447 (¶138 2015); Runnemede Bor., H.E. No. 2005-9, 31 NJPER 70 (¶32 2005); City of Newark, P.E.R.C. No. 2002-28, 28 NJPER 50 (¶33015 2001); Fort Lee Bor., P.E.R.C. No. 98-118, 24 NJPER 208 (¶29096 1998); Fairfield Tp., P.E.R.C. No. 97-60, 23 NJPER 13 (¶28013 1996); Passaic Cty., P.E.R.C. No. 88-64, 14 NJPER 124 (¶19047 1988); and City of New Brunswick, P.E.R.C. No. 87-68, 13 NJPER 11 (¶18008 1986).

The City's failure to file an answer after being notified of the consequences of failing to do so triggers the requirement that the allegations in the complaint be deemed true in the absence of good cause to the contrary. Not having filed an answer or offered any explanation for not having done so, the City has not shown good cause as to why the Commission should not deem the allegations of the charge to be true. N.J.A.C. 19:14-3.1.

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.

The first question is whether there exists any genuine issue of material fact. The FOP, through the admissions resulting from the City's non-compliance with our procedural rules, has presented evidence that it requested and did not receive information potentially relevant to its representation of unit members. There is no genuine issue of material fact because the City has not submitted any evidence by way of affidavit or document to sustain a judgment in its favor. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995).

The next question is whether, given the undisputed facts in this record, the charging party is entitled to its requested relief as a matter of law. The answer is yes.

N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers from "refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment." An employer's refusal to provide a majority representative with information that the union needs to represent its members constitutes a refusal to negotiate in good faith. UMDNJ, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996). An employer

must supply information if there is a probability that the information is potentially relevant and that it will be of use to the representative in carrying out its statutory duties. State of N.J. (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶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). Relevance is determined through a discovery-type standard; therefore, a broad range of potentially useful information is allowed to the union for effectuation of its representational duties.

However, a union's right to receive information from an employer is not absolute. The employer is not required to produce information that is irrelevant, confidential, or not in its control or possession. State of N.J. (OER).

We find that the information requested by the FOP in response to Chief Campos' memorandum regarding SPOs must be produced to the extent that it is in the City's possession or control. Given the admissions arising from the City's failure to answer the charge or to show good cause for not deeming the charge's allegations to be true, we also find that the information requested is potentially relevant to the FOP's representational duties. We therefore grant summary judgment in favor of the FOP and conclude that the City of Newark violated N.J.S.A. 34:13A-5.4(a)(5) and (1) by failing to provide the requested information.

ORDER

The City of Newark is ORDERED to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of their rights under the Act, particularly by refusing to provide the FOP with certain information regarding Newark's Special Police Officers.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment, particularly by refusing to provide the FOP with certain information regarding Newark's Special Police Officers.

B. Take the following affirmative action:

1. Provide the FOP with the specific information and documents requested by the FOP President in his letter dated September 10, 2014 to the Police Director to the extent the information and documents are in the City's possession or control.

2. 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.

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

BY ORDER OF THE COMMISSION

Commissioners Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed. Chair Hatfield and Commissioner Bonanni were not present.

ISSUED: February 25, 2016

Trenton, New Jersey



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 their rights under the Act, particularly by refusing to provide the FOP with certain information regarding Newark's Special Police Officers.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment, particularly by refusing to provide the FOP with certain information regarding Newark's Special Police Officers.

WE WILL provide the FOP with the specific information and documents requested by the FOP President in his letter dated September 10, 2014 to the Police Director to the extent the information and documents are in the City's possession or control.

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