

H.E. NO. 2023-2

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

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2018-310

NEWARK POLICE SUPERIOR  
OFFICERS' ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Hearing Examiner grants Newark Police Superior Officers' Association's (SOA) motion for summary judgment. The Hearing Examiner determined that the City of Newark violated 5.4a(1) and (5) when it refused to negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

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.

H.E. NO. 2023-2

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

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-2018-310

NEWARK POLICE SUPERIOR  
OFFICERS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,  
Kenyatta Stewart, Corporation Counsel  
(Chane M. Jones, Esq., Assistant Corporation Counsel)

For the Charging Party,  
(John J. Chrystal, III, President)

**HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION**

On June 27, 2018, July 24, 2018, and June 29, 2021, Newark Police Superior Officers' Association (SOA) filed an unfair practice charge, an amended charge, and a second amended charge, respectively, against the City of Newark (Newark). The charge, as amended, alleges that Newark violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (5),<sup>1/</sup> when it issued

---

<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from: (1) Interfering with, restraining or coercing employees in the exercise of the  
(continued...)

General Order 18-05 regarding body worn cameras, and General Order 18-06 regarding in-car cameras, and refused to negotiate the impact of General Orders 18-05 and 18-06 with SOA.

On February 9, 2021, a Complaint and Notice of Hearing issued. A pre-hearing conference was conducted on May 3, 2021. Newark filed an answer on August 20, 2021.

On September 17, 2021, SOA filed a motion for summary judgment supported by a brief, exhibits, and the certification of its President, Captain John J. Chrystal III. On October 22, 2021, Newark filed its opposition brief, a cross-motion for summary judgment, the Certification of Public Safety Director Brian A. O'Hara, and exhibits. SOA filed a reply brief on November 3, 2021.

On November 4, 2021, the Chair referred the motion to me for disposition. N.J.A.C. 19:14-4.8(a).

### **FACTS**

SOA is the majority representative for all superior officers employed by Newark in the ranks of sergeant, lieutenant, and captain. SOA and Newark are parties to a collective negotiations agreement (CNA) effective January 1, 2013 through December 31,

---

1/ (...continued)  
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 employees in that unit.

2015. SOA and Newark are currently engaged in collective negotiations for a successor agreement.

On July 28, 2015, New Jersey Acting Attorney General John J. Hoffman issued Law Enforcement Directive No. 2015-1, which directed all New Jersey law enforcement agencies and officers to "implement and comply with" various "procedures, standards, and policies concerning the use of body worn cameras and recordings."

On April 20, 2016, Newark and the United States Department of Justice ("DOJ") entered into a Consent Decree regarding police transparency, "with the goals that [Newark] police services . . . fully comply with the Constitution and the laws of the United States, promote public and officer safety, and increase public confidence."

On February 26, 2018, New Jersey Attorney General Gurbir S. Grewal issued Law Enforcement Directive No. 2018-1 concerning public release of video recordings depicting police deadly force incidents. This directive required law enforcement agencies to make available, upon formal request by the media or other public requestor, video captured by body worn cameras and patrol vehicle dash-mounted cameras.

On June 5, 2018, Newark Public Safety Director Anthony F. Ambrose issued General Order 18-05 entitled "Body-Worn Cameras," regarding the use of body worn cameras by police officers.

Specifically, General Order 18-05 regarding body-worn cameras provides as follows:

General Order 18-05, Body-Worn Cameras, has been created to serve as the Newark Police Division's policy governing the use of body-worn cameras (BWC). This order establishes a uniform procedure for activation, deactivation, tagging and management of video.

Prior to use, members will receive an eight-hour training course. The training course will consist of a classroom session covering policy and hands-on training for the use of the BWC.

Also on June 5, 2018, Director Ambrose issued General Order 18-06 entitled "In-Car Cameras," regarding the use of cameras in police cars. General Order 18-06 provides as follows:

General Order 18-06, In-Car Cameras, has been created to serve as the Newark Police Division's policy governing the use of in-car cameras. This order establishes a uniform procedure for activation, deactivation, tagging and management of video.

Prior to use, members will receive an eight-hour training course. The training course will consist of a classroom session covering policy and hands-on training for the use of the in-car camera.

On June 15, 2018, in response to General Orders 18-05 and 18-06, SOA sent two separate letters to Director Ambrose demanding negotiations over the implementation and impact of the orders on terms and conditions of employment. SOA's two letters contain identical language demanding negotiations, and both read in pertinent part as follows:

The SOA demands to negotiate over the aforementioned General Order, or the impact from this general order. This is a new term and condition of employment and the employer is supposed to negotiate over the new terms and conditions of employment prior to its implementation.

Later on June 15, 2018, Director Ambrose replied to both letters by email and denied all of SOA's requests.

On October 19, 2018, Director Ambrose issued Newark Department of Public Safety Memorandum No. 18-321. This memorandum served as an addendum to General Order 18-05 regarding body worn cameras.

On May 25, 2021, the New Jersey Attorney General Grewal issued Law Enforcement Directive No. 2021-5, which directed "all law enforcement and prosecuting agencies operating under the authority of the laws of . . . New Jersey to implement or adopt policies consistent with the [Attorney General's] Body Worn Camera Policy" issued in May 2021.

On June 1, 2021, Newark Public Safety Director Brian O'Hara issued Newark Department of Public Safety Memorandum No. 21-256 regarding Attorney General Law Enforcement Directive No. 2021-5. Memorandum No. 21-256 announced revisions to General Order 18-05 regarding body worn cameras in accordance with Attorney General Directive No. 2021-5.

On June 23, 2021, SOA sent a letter to Director O'Hara in response to the Attorney General Directive No. 2021-5, and

demanded negotiations over the severable impact issues of this policy. In that letter, SOA also renewed its demand for negotiations over the impact of General Orders 18-05 and 18-06, and reads in pertinent part as follows:

Regarding the issuance on May 25, 2021, of the revised AG Directive 2021-5 Revising the [body worn camera] policy, the SOA renews its demand to negotiate over the severable impact issues of this policy and General Order 18-05 and 06 [body worn camera] and In-Car Cameras, for the following reasons.

By way of background, on June 5, 2018, and June 12, 2018, then Director Ambrose issued DPS Memo 18-322 Implementing General Order 18-06 In-Car Camera and DPS Memo 17-244 (Addendum) issuing General Order 18-05, Body Worn Cameras, respectively.

On June 15, 2018, at 5:01 PM, the SOA sent a letter, via email, to then Director Ambrose demanding to negotiate over the impact of those policies. At 5:48 PM Director Ambrose responded, "All Denied."

. . . .

With the newly issued revision of the AG Directive 2021-5 the SOA is renewing its demand to negotiate over the severable impact issues.

In the same June 23, 2021 letter, the SOA recognized Newark's managerial prerogative to implement General Orders 18-05 and 18-06, but requested impact negotiations and identified impact issues:

The SOA recognizes the City has a non-negotiable managerial prerogative and legal obligation to require the use of [body worn cameras/In-Car Cameras. However, related

severable impact issues may be negotiable, when a demand to negotiate the impact is made. The triggering point to negotiate is the demand to negotiate.

These impact issues are, but not limited to:

- Discipline for violation of the policy
- Stipend/premium pay for maintenance/responsibility of the additional equipment
- Buffering time/activation thresholds of the BWC, this has privacy issues
- Review of trolling/trawling for violations of rules and regulations
- The use of BWC data in training
- The right to review images before giving a statement
- Etc.

SOA closed its June 23, 2021 letter to Newark by repeating its demand for impact negotiations:

Therefore, the SOA is renewing its demand to negotiate over the severable impact issues of the General Orders [18-05 and 18-06]. This is a new term and condition of employment, and the employer is supposed to negotiate over new terms and conditions of employment prior to its implementation.

Newark did not respond to SOA's June 23, 2021 letter.

#### **LEGAL ARGUMENTS**

SOA argues that its motion for summary judgment should be granted because "most, if not all," of the material facts are not in dispute. With regard to General Orders 18-05 and 18-06, SOA recognizes that Newark "has a non-negotiable managerial prerogative and legal obligation" to require the use of body worn cameras and in-car cameras, and Newark "has a prerogative to establish related policies and procedures related to training,



maintenance, and inventory” of body worn cameras and in-car cameras. However, SOA argues that Newark has an obligation to negotiate with SOA regarding the impact of these orders after SOA demanded impact negotiations, and Newark violated the Act when it refused to negotiate impact with SOA.

Newark argues in its opposition to SOA’s motion for summary judgment, and in support of its cross-motion for summary judgment, that it has a managerial prerogative to implement General Orders 18-05 and 18-06, and therefore it does not need to negotiate the implementation or impact of those orders with SOA. Newark also argues that Attorney General Law Enforcement Directives Nos. 2015-1, 2018-1, and 2021-5 required that Newark implement its body worn camera and in-car camera policies, as well as various revisions to those policies, which provides a separate basis for its managerial prerogative to implement and revise General Orders 18-05 and 18-06 without negotiations. Newark further argues that its Consent Decree with DOJ provides a third basis for implementing the orders and revisions without negotiations.

#### **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.<sup>2/</sup> 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). In determining whether summary judgment is appropriate, we must ascertain "whether the competent evidential materials presented, when viewed in the light most favorable to the [opposing] party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, 142 N.J. at 523. The summary judgment procedure is not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 183 (App. Div. 1981); UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER (¶16 2006).

The scope of negotiations for police and fire employees is broader than for other public employees because N.J.S.A. 34:13A-16 provides for a permissive as well as a mandatory category of negotiations. Compare Paterson Police PBA Local No.

---

<sup>2/</sup> N.J.A.C. 19:14-4.8(e) 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.

1 v. City of Paterson, 87 N.J. 78, 92-93 (1981), with Local 195, IFPTE v. State, 88 N.J. 393, 403-404 (1982). Paterson provides:

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and firefighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policymaking powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable.

Here, Newark appropriately argues that it has a managerial prerogative to implement General Orders 18-05 and 18-06, as well as revisions to those orders, because Attorney General Law Enforcement Directives Nos. 2015-1, 2018-1, and 2021-5 required that Newark implement its body worn camera and in-car camera policies, as well as the various revisions to those policies announced in Newark's

Memoranda Nos. 18-321 and 21-256. Indeed, SOA recognizes that Newark has a managerial prerogative to do so.

SOA is instead focused on its rejected demands for impact negotiations, as it is well settled that even if a public employer has a managerial prerogative to implement a substantive decision, the procedural aspects of that decision, and their severable economic consequences or "impact," are mandatorily negotiable. See Local 195, IFPTE v. State of N.J., 88 N.J. 393, 410, 417 (1982); State of N.J. v. State Supervisory Employees Assn., 78 N.J. 54, 90-91 (1978).

Beyond the well-settled principle that a public employer must engage in impact negotiations after it exercises its managerial prerogative, it is undisputed that SOA expressly identified the impact issues and demanded impact negotiations, which Newark refused. See State of New Jersey, P.E.R.C. No. 2012-24, 38 NJPER 205 (¶70 2011) (in matters "involving managerial policy changes that result in severable alterations in working conditions, the duty to negotiate arises only where the majority representative makes a demand"). Furthermore, the Commission has specifically recognized that the severable impact from the installation of cameras in the workplace is negotiable upon demand. See Belleville Bd. of Ed. and Belleville Ed. Ass'n, P.E.R.C. No. 2015-79, 42 NJPER 41, 43 (¶12 2015), aff'd 45 NJPER 8 (¶3 App. Div. 2018) (holding that installation of exposed cameras with both audio and video

capabilities in certain public spaces of school district buildings was managerial prerogative, while severable impact of extensive security system on staff was negotiable upon demand); City of Paterson, H.E. No. 2007-3, 33 NJPER 9 (¶7 2007), adopted P.E.R.C. No. 2007-62, 33 NJPER 143 (¶50 2007) (holding that installation of overt security cameras in non-private areas of workplace to protect people and property was managerial prerogative, while impact of employer using video footage for investigation and disciplinary action was negotiable upon demand); City of Paterson, P.E.R.C. No. 2011-5, 36 NJPER 300 (¶114 2010) (holding that installation of security cameras in public safety complex within radio room where 911 calls are received and police/fire services are dispatched was managerial prerogative, but impact of installation may be negotiable upon demand).

SOA's demand for impact negotiations regarding discipline for the violation of the new policies is also well supported. See City of Passaic, P.E.R.C. NO. 2000-54, 26 NJPER 75, 76 (¶31027 1999) (disciplinary review procedures are mandatorily negotiable); see also N.J.S.A. 34:13A-5.3 ("[p]ublic employers shall negotiate written policies setting forth grievance and disciplinary review procedures").

With regard to Newark's argument that its Consent Decree with DOJ provides a basis to refuse to negotiate impact with SOA, that argument has been rejected in two recent matters. See City of

Newark, I.R. No. 2020-7, 46 NJPER 333 (¶82 2020); see also City of Newark, P.E.R.C. NO. 2020-29, 46 NJPER 271 (¶120 2019), denying recon. I.R. No. 2020-3, 46 NJPER 167 (¶41 2019). In City of Newark, 46 NJPER at 333, SOA alleged that Newark failed to negotiate in good faith before unilaterally changing mandatorily negotiable pre-disciplinary procedures. A Commission Designee granted in large part the request of SOA for interim relief pending a final decision on its unfair practice charge against Newark. Newark then moved for reconsideration based upon the argument that the interim relief order restraining Newark from implementing the new pre-disciplinary procedures would violate Newark's Consent Decree. Newark asserted, among other things, that SOA did not establish a likelihood of success on the merits as the new pre-disciplinary procedures were implemented to comply with the Consent Decree. The Commission held that Commission and judicial precedent supported a finding that the Consent Decree "does not permit [Newark] to alter its CNA with the SOA or otherwise avoid its collective negotiations obligations under the Act." City of Newark, P.E.R.C. NO. 2020-29, 46 NJPER 271 (¶65 2019), citing, City of Hackensack, P.E.R.C. No. 2018-54, 45 NJPER 18 (¶5 2018); United States v. City of Hialeah, 140 F.3d 968 (11th Cir. 1998); and United States v. City of Los Angeles, 288 F.3d 391 (9th Cir. 2002). That reasoning also applies here, as Newark cannot rely upon the

Consent Decree to avoid its obligations to negotiate impact with SOA.

Therefore, even though Newark had a managerial prerogative to implement General Orders 18-05 and 18-06, as well as the revisions required by the Attorney General directives and announced in Newark's Memoranda Nos. 18-321 and 21-256, Newark was required to negotiate over the impact of the orders with SOA. Newark had an obligation to negotiate the impact of the orders and revisions with SOA, SOA identified impact issues and demanded impact negotiations, and Newark refused in violation of the Act.

Applying the summary judgment standard to the facts and arguments made by the parties, we conclude that the material facts are not in dispute and that SOA is entitled to judgment as a matter of law on its charge that Newark violated 5.4a(5) and, derivatively, a(1) when it refused to negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

#### **CONCLUSIONS OF LAW**

Newark violated 5.4a(1) and (5) of the Act when it refused to negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

**RECOMMENDED ORDER**

SOA's motion for summary judgment is granted.

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 refusing to negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

2) Refusing to negotiate in good faith with SOA concerning terms and conditions of employment of employees in its unit, particularly by refusing to negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

B. Take the following action:

1) Negotiate the impact of its implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Newark's Memoranda Nos. 18-321 and 21-256, with SOA.

2) 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,

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

/s/Lisa Ruch  
Hearing Examiner

DATED: August 8, 2022  
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 August 18, 2022.**



# 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 refusing to negotiate the impact of the implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Memoranda Nos. 18-321 and 21-256, with SOA.

**WE WILL** cease and desist from refusing to negotiate in good faith with SOA concerning terms and conditions of employment of employees in its unit, particularly by refusing to negotiate the impact of the implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Memoranda Nos. 18-321 and 21-256, with SOA.

**WE WILL** take the following action and negotiate the impact of the implementation of General Orders 18-05 and 18-06, as well as the revisions announced in Memoranda Nos. 18-321 and 21-256, with SOA.

**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 what steps the Respondent has taken to comply with this Order.

Docket No. CO-2018-310

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) 292-9830