

P.E.R.C. NO. 88-24

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-H-87-287

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 when it: (1) stopped recognizing the FOP as majority representative of Newark police recruits; (2) repudiated the collective agreement by not permitting the FOP to address recruits; (3) interfered with the recruits' right to form, join or assist any employee organization when it threatened recruits with discipline if they did not turn over FOP informational packets and allowed the PBA, but not the FOP, access to the academy and the opportunity to serve lunch and meet with the recruits.

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Charging Party.

Appearances:

For the Respondent, Glenn A. Grant, Corporation Counsel  
(JoAnne Y. Johnson, First Asst. Corp. Counsel)

For the Charging Party, Markowitz & Richman, Esqs.  
(Joel G. Scharff, of counsel)

DECISION AND ORDER

On April 2, 1987, the Fraternal Order of Police, Lodge No. 12 ("FOP") filed an unfair practice charge against the City of Newark ("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 subsections 5.4(a)(1), (2), (3), (4) and (5),<sup>1/</sup> when

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4)

it: (1) stopped recognizing the FOP as the exclusive representative of police recruits assigned for training at the Newark Police Academy; (2) refused to permit FOP representatives to address the recruits; (3) ordered the recruits to submit authorization cards to supervisory personnel and (4) assisted a minority employee organization in soliciting authorization cards.

Simultaneously with filing the charge, the FOP sought a temporary restraining order against the City. Following a hearing, Commission Designee Alan R. Howe restrained the City from: (1) refusing to permit the FOP access to the recruits; (2) refusing to permit the recruits to sign FOP authorization cards and (3) demanding that such cards be submitted to the City. The Commission designee set a return date for April 7, 1987.

On April 7, 1987, a hearing was held before Commission Designee Howe. On April 10, 1987, he dissolved the temporary restraints. I.R. No. 87-23, 13 NJPER 435 (¶18167 1987). He found that the FOP did not meet the requisite substantial likelihood of success on the merits because there was a factual issue on a

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1/ Footnote Continued From Previous Page

Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

material issue: whether the FOP was the majority representative of the recruits.

On April 21, 1987, a Complaint and Notice of Hearing issued. Hearing Examiner Stuart Reichman was assigned to the case. On May 27, 1987, after receiving an extension of time, the City filed its Answer. It denied violating the Act.

On April 24, 1987, the FOP moved for reconsideration of the decision dissolving the temporary restraints. Hearing Examiner Reichman was appointed to hear the motion.

On June 2, 1987, the Hearing Examiner conducted hearings on both the motion for reconsideration and the Complaint. The parties examined witnesses and introduced exhibits. They also filed post-hearing briefs.

On July 7, 1987, the Hearing Examiner issued his report and recommended decision. H.E. No. 88-3, 13 NJPER \_\_ (¶ \_\_\_\_ 1987). He found that the police recruits are covered by the recognition clause in the parties' collective agreement and concluded that the City violated the Act when it: (1) stopped recognizing the FOP as majority representative of the police recruits; (2) repudiated the collective agreement by not permitting the FOP to address recruits;<sup>2/</sup> (3) interfered with the recruits' right to form, join

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<sup>2/</sup> However, the Hearing Examiner also found that the issue of when the FOP has the right to address the recruits is properly resolved through negotiated grievance procedures.

or assist any employee organization when it threatened recruits with discipline if they did not turn over FOP informational packets<sup>3/</sup> and (4) allowed the PBA, but not the FOP, access to the academy and the opportunity to serve lunch and meet with the recruits. As a remedy for these violations, he recommended ordering the City to stop such conduct; recognize the FOP as majority representative of the police recruits; permit the FOP to address the recruits at the police academy, and post a notice of the violations found and remedies ordered. The Hearing Examiner also granted FOP's application for interim relief pending the Commission's decision.

The Hearing Examiner served his report on the parties and informed them that exceptions were due July 20, 1987. Neither party filed exceptions or requested an extension of time.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 5-12) are accurate. We adopt and incorporate them here. Under all the circumstances of this case, we agree with his conclusions of law and enter the following remedial order.<sup>4/</sup>

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3/ While finding a violation of subsection 5.4(a)(1), he recommended dismissal of the allegations of a 5.4(a)(3) violation since "no recruits were actually disciplined or otherwise adversely affected in regard to hire or tenure of employment or any term and condition of employment."

4/ We dissolve the temporary restraints.

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, specifically by (1) ordering police recruits, under threat of discipline, to return information packets distributed by the Fraternal Order of Police, Newark Lodge No. 12, (2) refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits to the Newark Police Department, (3) refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address police recruits in the Newark Police Academy until shortly before they graduate, and (4) refusing to allow police recruits to meet with the Fraternal Order of Police, Newark Lodge No. 12, while allowing a minority employee organization to meet with the recruits.

2. 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, specifically by refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits and by refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address recruits while attending the Newark Police Academy.

B. Take the following affirmative action:

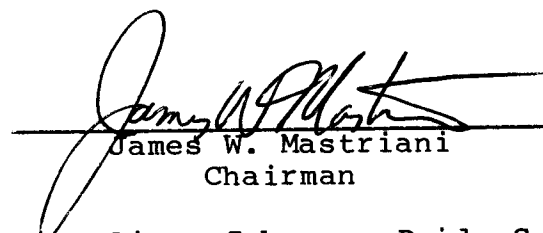
1. Recognize the Fraternal Order of Police, Newark Lodge No. 12, as the employee representative of the police recruits and apply the terms of the collective agreement now in effect between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12, to the police recruits.

2. Allow the Fraternal Order of Police, Newark Lodge No. 12, to address the recruits in the Police Academy.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be 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.

4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey  
August 19, 1987  
ISSUED: August 20, 1987

# NOTICE TO ALL 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, specifically by (1) ordering police recruits, under threat of discipline, to return information packets distributed by the Fraternal Order of Police, Newark Lodge No. 12, (2) refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits to the Newark Police Department, (3) refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address police recruits in the Newark Police Academy until shortly before they graduate, and (4) refusing to allow police recruits to meet with the Fraternal Order of Police, Newark Lodge No. 12, while allowing a minority employee organization to meet with the recruits.

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 of employees in that unit, or refusing to process grievances presented by the majority representative, specifically by refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits and by refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address recruits while attending the Newark Police Academy.

WE WILL recognize the Fraternal Order of Police, Newark Lodge No. 12, as the employee representative of the police recruits and apply the terms of the collective agreement now in effect between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12, to the police recruits.

WE WILL allow the Fraternal Order of Police, Newark Lodge No. 12, to address the recruits in the Police Academy.

Docket No. CO-H-87-287

CITY OF NEWARK

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

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



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

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-and-

Docket No. CO-H-87-287

FRATERNAL ORDER OF POLICE,  
NEWARK LODGE NO. 12,

Charging Party.

SYNOPSIS

A Hearing Examiner for the Public Employment Relations Commission found that the City of Newark violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and/or (5), when it (1) refused to recognize the Fraternal Order of Police, Lodge No. 12, as the certified employee representative of police recruits appointed to the Newark Police Department on March 30, 1987, (2) ordered police recruits, under threat of discipline, to return information packets distributed to the recruits by the FOP, (3) changed established terms and conditions of employment by refusing to allow the FOP to address the recruits until shortly before they graduate from the Police Academy, and (4) refused to allow the recruits to meet with their certified representative, the FOP, while, at the same time, allowed a minority employee organization to meet with the recruits. The Hearing Examiner also found that the City of Newark did not violate §5.4(a)(3) of the Act when it ordered recruits, under threat of discipline, to return information packets to the FOP because none of the recruits were actually disciplined or otherwise adversely affected. The City did not violate §5.4(a)(2) of the Act when a minority employee organization conducted a luncheon for the police recruits. Finally, the City did not repudiate the collective agreement between it and the FOP, when it refused to allow the FOP to have access to the Police Academy in order to meet with the recruits on the first or second day after their appointment to the Newark Police Department.

The Hearing Examiner, also serving as Commission Designee for the purpose of reconsidering the FOP's application for interim relief, restrained the City, pending final Commission decision, from (1) refusing to recognize the Fraternal Order of Police, Newark

Lodge No. 12, as the certified representative of the police recruits appointed to the Newark Police Department on March 30, 1987, (2) refusing to honor the terms of the current collective agreement, (3) refusing to allow the FOP to address the police recruits, (4) refusing to permit police recruits to sign authorization and designation cards in favor of the FOP and requiring recruits to turn over such cards to City personnel, (5) refusing to process dues authorization cards, and (6) refusing to deduct representation fee payments pursuant to the parties' collective agreement.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 88-3

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

In the Matter of

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-and-

Docket No. CO-H-87-287

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Appearances:

For the Respondent

Glenn A. Grant, Corporation Counsel  
(JoAnne Y. Johnson, First Asst. Corp. Counsel)

For the Charging Party

Markowitz & Richman, Esqs.  
(Joel G. Scharff, of counsel)

DECISION AND ORDER ON MOTION FOR INTERLOCUTORY RELIEF  
and  
HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On April 2, 1987, the Fraternal Order of Police, Newark Lodge No. 12 ("FOP") filed an Unfair Practice Charge against the City of Newark ("City") with the Public Employment Relations Commission ("Commission"). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1), (2),

(3), (4) and (5)<sup>1/</sup> when the City (1) refused to recognize the FOP as the exclusive representative of police recruits ("recruits") assigned for training at the Newark Police Academy, (2) refused to permit FOP representatives to address the recruits at the Police Academy in violation of the terms of the collective negotiations agreement and past practice, (3) ordered the recruits to deliver FOP authorization and designation cards to supervisory personnel, and (4) assisted representatives of a minority employee organization to solicit employee authorization and designation cards from the recruits in violation of the extant collective agreement and the Act.

On April 2, 1987, the FOP appeared before a Commission designee seeking an Order granting temporary restraints against the City for refusing to permit access to representatives of the FOP for the purpose of addressing recruits regarding the provisions of the

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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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act; (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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."

collective agreement and their rights under the Act and, further, restraining the City from refusing to permit recruits from signing authorization and designation cards and requiring the recruits to turn over such cards to City personnel.

The Commission designee restrained the City from "refusing to permit access to representatives of the Fraternal Order of Police to address [recruits] for the purpose of acquainting them with the provisions of the collective bargaining agreement and their rights under the Employer-Employee Relations Act" and from "refusing to permit [the recruits] to sign authorization and designation cards to the Fraternal Order of Police and from demanding a turn over of such cards to any City personnel other than representatives of the Fraternal Order of Police; any such cards heretofore turned in/over to representatives of the police department administration shall be returned to the 'FOP'".

A return date of April 7, 1987, was established for the conduct of a "show cause" hearing to determine whether the preliminary restraints would be made permanent pending the final determination of the unfair practice charge by the Commission. On April 7, 1987, the Commission designee conducted a hearing regarding the preliminary restraints. The Commission designee found that serious factual disputes existed between the parties which required that the application for interim relief be denied and that the temporary restraints granted on April 2, 1987, be dissolved. On April 10, 1987, the Commission designee held in I.R. No. 87-23, that

the language of the recognition clause contained in the agreement was ambiguous as to whether or not recruits at the Police Academy are covered thereby.

On April 24, 1987, the FOP filed with the Commission a motion for reconsideration of the interlocutory Decision and Order issued by the Commission designee. On May 27, 1987, I was appointed Commission designee for the purpose of hearing oral argument on the FOP's motion for reconsideration.<sup>2/</sup> On June 2, 1987, prior to opening the record for the case-in-chief on the unfair practice, I heard oral argument on the motion for reconsideration. I reserved decision on the motion pending the issuance of this Recommended Report and Decision.

On April 21, 1987, the Director of Unfair Practices issued a Complaint and Notice of Hearing in this matter. The City applied for and was granted an extension of time within which to file its answer. On May 27, 1987, the City filed an answer generally denying any wrong doing on its part, and further stating that the City had not committed any unfair practice as alleged in the charge.

A Hearing in this matter was conducted on June 2, 1987, at the Commission's offices in Newark, New Jersey at which time the parties were afforded the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. On June 19,

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<sup>2/</sup> The Commission designee initially appointed to hear this issue was unavailable.

1987, the parties filed post-hearing briefs. On June 29, 1987, the FOP filed its response brief; the City did not file a response brief.

Upon the entire record, I make the following:

FINDINGS OF FACT

The City of Newark is a public employer within the meaning of the Act and is the employer of the employees involved in this matter. The Fraternal Order of Police, Newark Lodge No. 12 is an employee representative within the meaning of the Act.

On January 1, 1985, the New Jersey Department of Personnel (formerly the Department of Civil Service) issued an announcement soliciting applications for an examination to be given at some subsequent time for the position of Police Officer for the City of Newark, and numerous other municipalities throughout New Jersey (CP-12). On or about March 30, 1987, the City appointed approximately 38 newly hired employees ("recruits") to the Newark Police Department and assigned them to attend the Newark Police Academy ("Academy") for its training program. Recruits are required to satisfactorily complete the statutorily mandated training prescribed by the New Jersey Police Training Commission and, pursuant to New Jersey Department of Personnel law, a 12-month working test period thereafter. See, N.J.S.A. 52:17B-66 et seq. and N.J.S.A. 11A:4-15. In an affidavit admitted into evidence as

Exhibit CP-13,<sup>3/</sup> Morris Farinella, Regional Administrator of the Newark Branch Office of the New Jersey Department of Personnel, stated that "The New Jersey Department of Personnel does not prescribe the time frames within which newly appointed police officers are to be sworn in following appointment, nor is such action a factor affecting the classification of their positions." It is anticipated that after the recruit completes the training curriculum at the Academy and the working test period, he/she will become a regular, permanent police officer for the City.

Some weeks prior to March 30, 1987, the FOP contacted Captain Warmington, the Director of the Police Academy, in order to make arrangements to address the recruits attending the Academy. Over the last nine years, the FOP had addressed the recruits usually on their first or second day in the Academy. However, with this class of recruits, the FOP was advised by the City that they would not be allowed to address the recruits while they attended the Academy.

The FOP was initially certified as the employee representative of Newark police officers in 1978 and has continued in that capacity up to and including the present. Since 1978, there have been numerous challenges to the FOP's majority status. Elections involving employees in the Newark Police Department were

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<sup>3/</sup> "CP-1" represents exhibit number 1 offered by the Charging Party and admitted into evidence. "T-1" represents reference to the transcript dated June 2, 1987, page 1.



conducted by the Commission on February 7, 1978, Docket No. RO-78-54 (CP-1); August 3, 1979, Docket No. RO-79-211 (CP-2); March 27, 1981, Docket No. RO-81-166 (CP-3); March 25, 1983, Docket No. RO-83-120 (CP-4) and; November 14, 1986 (in ascertaining this date, I take administrative notice of the file in Commission Docket No. RO-87-49). Each time the FOP's majority status was challenged, the parties involved executed Agreements for Consent Election. The language contained in the 1978 and 1981 Agreements for Consent Election setting forth those employees who were eligible to vote included "...all police officers currently included in the Academy." None of the other Agreements for Consent Election made reference to the Academy. In the years in which there was no reference in the Agreements for Consent Election to the Academy, there was no class of recruits attending the Academy at the time the Agreements for Consent Election were executed.

The recognition article contained in the parties' collective agreement (CP-19) reads as follows:

The City hereby recognizes the Lodge as the exclusive and sole representative for collective negotiations concerning salaries, hours and other terms and conditions of employment for all police officers of the Newark Police Department but excluding managerial executives, craft and professional employees, superior officers, clerical employees, supervisors as defined in the New Jersey Employer-Employee Relations Act, linemen, teletype operators, police property clerks, records and identification officers, and all others.

Unless otherwise indicated, the terms "police officers", "employee" or "employees" when used in this Agreement refer to all persons represented

by the Lodge in the above-defined negotiating unit.

Upon appointment to the Newark Police Department, the recruits attend a State-mandated 20 week training program at the Newark Police Academy. The recruits receive basic police officer training, including physical training, first aide and weapons training. The recruits' normal work schedule is Monday through Friday from 8 a.m. to 4 p.m. They may not leave the Academy building during the lunch period and usually eat in either a classroom or the locker room. While recruits do wear police-type uniforms, the uniforms are different from those worn by police officers not attending the Academy. For example, the recruits wear baseball-type hats that say "Police Academy". Additionally, recruits are not issued badges until they are issued weapons. Weapons are not issued to recruits until they have completed all of their training at the Academy, or, at the earliest, until after they have successfully completed firearms training. Recruits are subject to the established chain of command. During their time in the Academy, the recruits are covered by the police pension system which is available only to designated law enforcement personnel.

The recruits are paid at the "First Step" rate established in the collective agreement (CP-19). The agreement also provides for the payment of a fee in lieu of dues to the majority representative by employees "...as soon as possible after thirty (30) days from the beginning date of employment in a position in this unit." (CP-19, Article 2, §4, ¶5). At least up to May 12,

1987, the City deducted fees in lieu of dues from the current recruits' pay and turned over the money collected to the FOP (T37; CP-16). The City followed the same deductions program for the class of recruits attending the Academy on June 24, 1986 (CP-10).

With the exception of the current recruits who started in the Academy on March 30, 1987, no dispute exists between the parties with regard to whether previous classes of recruits were included in the collective negotiations unit currently represented by the FOP. Louis E. Greenleaf, Director of the Newark Police Department, readily admitted that the City has recognized the FOP as the employee representative of recruits enrolled in the Academy for purposes of collective negotiations prior to March 30, 1987 (T110, T111). However, Director Greenleaf also pointed out that the City perceives a significant difference between the March 30 recruit class and prior classes. In prior classes the recruits were sworn-in on the day they began their training at the Academy; the March 30, 1987 recruit class has not yet been sworn-in and will not be sworn-in until the day they graduate from the Academy.<sup>4/</sup> Director Greenleaf was not aware of the specific language of the oath of office for police officers and, while certain that an oath was required, he was not sure whether the oath was required by State statute or municipal ordinance (T112-T119).

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<sup>4/</sup> Thomas Passumato, President of FOP, Newark Lodge No. 12, testified that in addition to the recruit class that began training in the Academy on March 30, 1987, he was aware of one other class of recruits who were not sworn-in until the day of graduation. This occurred in 1964 (T148, T150).

Some time shortly before March 30, 1987, the FOP asked Captain Warmington to schedule time during the first day of the recruits' attendance at the Academy in order to address the recruits concerning employee benefits, the collective agreement and the FOP in general. Previously, the FOP had addressed recruits concerning these issues, usually, but not always, on the first or second day of their appointment to the police department (T47, T73, T104). The FOP has also made several requests to address the recruits since March 30, 1987. The FOP was advised that it would not be allowed to address the recruits until shortly before their graduation from the Academy. The City took this position because the recruits had not been sworn into office prior to their appointment to the Academy. The City reasons that only after recruits are sworn-in, do they become fully cloaked in the authority of a police officer. Before being sworn-in, the City considers the recruits to be non-police probationary employees rather than police officers possessing the authority to arrest, apprehend or detain (T116). Thus, the City concludes that since the recruits cannot perform police functions, they are not police officers and are neither eligible for inclusion in the unit currently represented by the FOP nor covered by the collective agreement. Consequently, the City has decided to respond to grievances filed by the FOP on behalf of the recruits (CP-14, CP-15), by indicating that the recruits are not covered by the agreement (T59-T60) or by holding the grievance(s) pending the resolution of the instant proceeding (T142-T143).

The recruits were advised to assemble at the Academy between noon and 1 p.m. on March 30, 1987, in order to fill out health and pension forms. FOP President Passumato and Detective Federici met the recruits on a staircase of the Academy and handed out a packet of material containing a welcoming letter, an FOP information booklet, and dues deduction, membership and insurance cards. On April 1, 1987, Captain Warmington directed the recruits, under threat of discipline, to turn over to him all materials distributed to the recruits by the FOP. The recruits returned not only the FOP informational packets but also other information provided to them by the City regarding their benefits and other conditions of employment. Warmington subsequently gave all of the material collected from the recruits to the FOP.

Included among the material given by Warmington to the FOP was a memorandum (CP-21) to the recruits from the President of the Newark local of the Policeman's Benevolent Association ("PBA") inviting them to attend a luncheon on April 1, 1987 at the PBA office located on the third floor of the Police Academy Building. In fact, however, the luncheon was given in the recruits' locker room. In a conversation between Warmington and witness Patrick Meehan, a detective in the Newark Police Department and Secretary of FOP Lodge 12, Warmington admitted knowing that the FOP could not have contact with the recruits, yet allowed the PBA to conduct the luncheon because "[he] just felt they would buy them lunch" (T94-T95). Captain Warmington allowed the lunch to take place until

he received a phone call, possibly from the Chief of Police. At the conclusion of the phone call, Warmington called the PBA President into his office and directed him to "take [his] sandwiches and leave" (T95). Police Director Greenleaf was not aware that the PBA sponsored luncheon had taken place until sometime after it occurred.

The Director of Police possesses the ultimate authority and control over whether an employee in the police department is disciplined. However, superior officers, such as Captain Warmington, can recommend that disciplinary action be taken against a subordinate employee, including a recruit. However, disciplinary action recommended by any superior officer is subject to review by the Director.

#### ANALYSIS

The FOP argues that the City's actions regarding the recruit class appointed March 30, 1987, constitutes unfair practices in four respects: (1) the City had unilaterally refused to continue to recognize the FOP as the certified representative of police recruits, (2) the City has repudiated Article 29 of the parties collective agreement in derogation of the employees' rights by refusing to permit the FOP to address the recruits, (3) the City illegally threatened recruits with disciplinary action for possessing and/or signing FOP dues deduction and membership cards, and (4) the City unlawfully assisted a minority employee

representative so as to encourage recruits to join that organization.

Allegation I: The City Refused to Recognize the FOP as the Certified Representative of Police Recruits.

The primary issue raised by Allegation I is whether police recruits are police officers within the meaning of the recognition article of the collective agreement. Reference to the Police Training Act provides assistance in resolving this question.

The Police Training Act, N.J.S.A. 52:17B-66 et seq. sets forth the following legislative declaration:

The Legislature of New Jersey hereby finds and declares that a serious need for improvement in the administration of local and county law enforcement exists in order to better protect the health, safety and welfare of its citizens; that police work, a basic adjunct of law enforcement administration, is professional in nature, and requires proper educational and clinical training in a State whose population is increasing in relation to its physical area, and in a society where greater reliance on better law enforcement through higher standards of efficiency is of paramount need; that the present need for improvement can be substantially met by the creation of a compulsory educational and training program for persons who seek to become permanent law enforcement officers wherein such persons will be required, while serving in a probationary capacity prior to permanent appointment, to receive efficient training in this profession provided at facilities selected, approved and inspected by a commission created for such purpose; and that by qualifying and becoming proficient in the field of law enforcement such persons shall individually and collectively better insure the health, safety and welfare of the citizens of this State in their respective communities. [N.J.S.A. 52:17B-66].

The Training Act goes on to set forth certain definitions as used in that statute, some of which are as follows:

"Law enforcement unit" shall mean any police force or organization in a municipality or county which has by statute or ordinance, the responsibility of detecting crime and enforcing the general criminal laws of this State.

"Permanent appointment" shall mean an appointment having permanent status as a police officer in a law enforcement unit as prescribed by Title 11, Revised Statutes, Civil Service Rules and Regulations, or of any other law of this State, municipal ordinance, or rules and regulations adopted thereunder.

"Police officer" shall mean any employee of a law enforcement unit, including sheriffs' officers, other than civilian heads thereof, assistant prosecutors and legal assistants, special investigators in the office of the county prosecutor as defined by statute, persons appointed pursuant to the provisions of R.S. 40:47-19, persons whose duties do not include any police function, court attendants and county correction officers. [N.J.S.A. 52:17B-67].

The Training Act further provides:

Every municipality and county shall authorize attendance at an approved school by persons holding a probationary appointment as a police officer, and every municipality and county shall require that no person shall hereafter be given or accept a permanent appointment as a police officer unless such person has successfully completed a police training course at an approved school; provided, however, that the commission may, in its discretion, except from the requirements of this section any person who demonstrates to the commission's satisfaction that he has successfully completed a police training course conducted by any Federal, State or other public or private agency, the requirements of which are substantially equivalent to the requirements of this act. [N.J.S.A. 52:17B-68].



Also relevant is the following language contained in the Training Act:

Notwithstanding the provisions of R.S. 11:22-6, a probationary or temporary appointment as a police officer may be made for a total period not exceeding 1 year for the purpose of enabling a person seeking permanent appointment to take a police training course as prescribed in this act, provided, however, that the time period may exceed 1 year for those persons enrolled prior to the 1-year limit in a police training course scheduled to end subsequent to the 1-year limit, and for those persons who, prior to the 1-year limit, have been scheduled to attend a police training course which commences subsequent to the 1-year limit. In no case shall any extension granted for the reasons herein listed exceed 6 months. No person shall be permitted to take a police training course unless he holds such probationary or temporary appointment, and such appointee shall be entitled to a leave of absence with pay during the period of the police training course. [N.J.S.A. 52:17B-69].

Reading the provisions of the Police Training Act together, it is apparent that all law enforcement personnel must under-go an approved police training program. However, the City goes further and argues that in compliance with the Police Training Act, municipalities do not have the discretion to appoint police officers before the employee completes the prescribed training program. I disagree.

The statute defines a police officer as "...any employee of a law enforcement unit...." A law enforcement unit is defined as "...any police force or organization in a municipality...." While such law enforcement personnel may not become permanent law enforcement officers until after they successfully complete the

approved training program, the Training Act refers to such law enforcement personnel as "police officers", serving in a probationary or temporary capacity pending permanent appointment. The Training Act provides the probationary or temporary police officer with a grace-period of up to 1 1/2 years to complete the required training. Although there is obvious good sense in not putting an untrained police officer "on the streets", and other proscriptions against such actions may apply, the Training Act does not preclude a probationary police officer from performing a full range of law enforcement duties prior to their achieving permanent status. Thus, under the Police Training Act, the recruits would be considered probationary police officers since they are specifically defined and referred to as such in the Training Act and are even potentially eligible to perform regular law enforcement duties.<sup>5/</sup> Moreover, N.J.S.A. 52:17B-69 mandates as a condition precedent to training that the person receiving training pursuant to that statute hold an appointment as a probationary or temporary police officer.

Applying the dictates of the Training Act to this case, I find the recruits' status as probationary police officers does not preclude them from inclusion in the Recognition Article of the

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<sup>5/</sup> In the Findings of Fact section of this decision, I referred to grievances filed by the FOP on behalf of the recruits. I note that CP-15, a grievance pertaining to the assignment of recruits to perform police duties during the Black Heritage Day Parade, is supportive of the finding that the recruits, as probationary police officers, could be assigned police responsibilities.

parties' collective agreement. The City points out that since the Police Training Act, at N.J.S.A. 52:17B-71.3, defines "policeman" as "...any permanent full time active member of a police force" and since a recruit is not a permanent member of the police force, he/she cannot be a "policeman." Citing County of Gloucester v. P.E.R.C., 107 N.J. Super 150 (App. Div. 1969), aff'd per curium 55 N.J. 333 (1970), the City concludes that since recruits are not policemen they cannot be included in a unit containing policemen.

I disagree with the City for the following reasons. First, the definition of policemen used in the Police Training Act is not dispositive of whether an employee is serving as a policeman within the meaning of the New Jersey Employer-Employee Relations Act.<sup>6/</sup> Second, as previously stated, recruits may be eligible to receive assignments involving a full range of law enforcement duties prior to their completion of training at the Academy and, certainly, before they complete their working test period. Thus, the employee serving his/her working test period might still not be considered a "policemen" under the Police Training Act but would clearly be considered a policeman under our Act. In fact, the City concedes that upon graduation from the Academy, the recruit is eligible for inclusion in the unit.

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<sup>6/</sup> This is not to suggest that there is no evidentiary value to the same terms used in different statutes.

The City argues that recruits are not police officers, and, therefore, not eligible for inclusion in the negotiations unit, because they have not been sworn-in as police officers. In the past, the City administered the oath of office to recruits on the first day of their appointment to the Police Department. However, the recruits appointed on March 30, 1987, will not be sworn in until the day they graduate from the Academy. While there was testimony brought forth by the City during the hearing which asserted that pursuant to municipal ordinance or state statute, the recruits are not imbued with police authority until after they are formally sworn in, the City has not cited, nor have I found, any authority which supports this contention. Moreover, Morris Farinella, Regional Administrator of the Newark Branch Office of the New Jersey Department of Personnel, stated that "The New Jersey Department of Personnel does not prescribe the time frames within which newly appointed police officers are to be sworn in following appointment, nor is such action a factor affecting the classification of their positions" (CP-13).

The Commission has long held that since probationary employees have a reasonable expectation of permanent employment, they should be included in negotiations units with other regular employees. Cherry Hill Township, P.E.R.C. No. 30 (1970). See also, City of Bordentown, D.R. No. 81-27, 7 NJPER 120 (¶12049 1981); Monmouth County Board of Chosen Freeholders, E.D. No. 11 (1970). In the instant case, it is undisputed that upon their successful

completion of the training program given at the Academy and their working test period, recruits will become regular permanent police officers in the Newark Police Department. Accordingly, I find that recruits are police officers as referred to in the Recognition Article contained in the parties' collective agreement and are appropriately included therein.

In Passaic Cty. Reg. H.S. Dist. No. 1 Bd. of Ed., P.E.R.C. No. 77-19, 3 NJPER 34 (1976) ("Passaic County"), the Commission established the standard by which a public employer may unilaterally act to remove an employee or position from the collective negotiations unit. The Commission stated:

It should also be noted that a public employer's refusal to negotiate with the majority representative of a public employee in a collective negotiations unit is an act that a public employer takes at [its] peril. The legality of this action is wholly dependent upon the propriety of the public employer's judgment that the employee in question is not entitled to the protections of the Act. In the event that the public employer's judgment proves faulty in this regard, [it] will have committed a violation of the Act, regardless of any good faith belief that the action was justifiable. [Passaic County, 3 NJPER at 35].

In the instant matter, it is undisputed that since 1978, the City recognized the FOP as the certified representative of police recruits immediately upon the recruits' appointment to the police department, including the time during which they were assigned to the Academy for training. The City produced no evidence with regard to any previous intent or agreement of the parties to exclude recruits from the negotiations unit. I have also found the

recruits to be police officers, albeit probationary, within the meaning of the Recognition Article of the parties' agreement and covered thereby. On March 30, 1987, the City unilaterally withdrew its recognition of the FOP as representative of the recruits. The City's withdrawal of recognition from the FOP is in contravention of its collective agreement with the FOP and clearly established past practice. Moreover, the City's action cannot be justified by the dictates of the Police Training Act. Under Passaic County, the City acts at its peril of committing an unfair practice if its assessment concerning the eligibility of affected employees to be included in the negotiations unit proves to be incorrect. The City's judgment in this instance has been exercised incorrectly and, consequently, its withdrawal of recognition from the FOP as the representative of police recruits constitutes a violation of §§ 5.4(a)(5) and, derivatively, (a)(1).

Allegation II: The City has Repudiated Article 29 of the Collective Agreement in Derrogation of the Employees' Rights by Refusing to Permit the FOP to Address the Recruits.

The FOP contends that the City violated Article 29, Section 4 of the current collective agreement. This provision reads as follows:

The Lodge and the City shall be responsible for acquainting members and managerial personnel respectively with the provisions of this Agreement, and shall be responsible for the adherence of the terms of this Agreement by its members and managerial personnel during the life of this Agreement.

The FOP argues that the language set forth in Article 29, Section 4, has "established a procedure whereby the FOP would be permitted access to the police academy to address new recruits as to their terms and conditions of employment." FOP brief, p. 21. The FOP contends that the City repudiated the agreement when it withdrew permission for the FOP to address recruits on their first day of appointment to the police department.

The City asserts that the FOP possesses no absolute right to address recruits on the first day of their appointment. The City contends that the agreement does not preclude it from making arrangements for the FOP to address recruits at some later point during their training at the Academy.

The facts demonstrate that while the FOP may have usually addressed the recruits in the Academy on the first or second day, this practice was not without exception. Additionally, Article 29, Section 4, does not expressly state that the FOP has the right to meet with newly hired police recruits on the first or second day of their appointment to the police department.

In New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission stated that where the gravamen of the dispute centers on the parties' competing interpretation of a provision in the collective agreement, the resolution of such dispute is best left to the procedural mechanism set forth in the grievance procedure, rather than resolved as an unfair practice. The facts pertaining to the instant allegation do

not demonstrate that the City has blatantly repudiated the agreement, nor do they show the clause to be so clear that the City's actions raise an inference of bad faith. Furthermore, there has not been a demonstration of a clear and consistent past practice in administering the disputed clause so as to couch the City's actions as an unfair practice. Consequently, I find that the issue of whether the City violated Article 29, Section 4 of the parties' agreement is properly resolved through the grievance procedure of the parties' agreement and does not constitute a violation of § 5.4(a)(5) of the Act.

However, the analysis with respect to this allegation does not stop here. While it is not clear whether Article 29, Section 4, conveys the right to the FOP to address the recruits on the first or second day, the evidence clearly establishes that the FOP has always had the opportunity to address recruits at some time during their assignment at the academy. Nevertheless, the City has denied the FOP's requests to address the recruits until shortly before they graduate from the Academy. Refusing to allow the FOP any access to recruits until just before graduation is a significant change in the established terms and conditions of employment. This unilateral change on the part of the City violates subsection (a)(5) and, derivatively, (a)(1).

Allegation III: The City Interfered with, Restrained or Coerced the Recruits in the Exercise of the Rights Guaranteed to them by the Act when, under Threat of Discipline, it Ordered the Recruits to Turn Over Informational Packets Distributed by the FOP.



In New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979), the Commission stated the standard by which the determination of whether an independent § 5.4(a)(1) violation of the Act would be found. The Commission said:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or to coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification. [5 NJPER at 551, fn. 1].

Moreover, the Commission has held that even the threat of discipline in response to an employee's exercise of activity protected by the Act constitutes a violation of § 5.4(a)(1). See Township of Mine Hill, P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979).

The Act guarantees employees "...the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...." N.J.S.A. 34:13A-5.3. This statutory right obtains whether the recruits are includable in the unit currently represented by the FOP or not. In the instant case, recruits, hired merely a day or two earlier, and serving in a paramilitary organizational structure, were ordered, under threat of discipline, to return the informational packets distributed to them by the FOP. As a consequence of this order, the recruits not only returned the materials distributed by the FOP but other informational materials provided to them by the City. This overreaction on the part of the

recruits shows the impact such order had on recruits. Thus, it is clear from the facts that the City's order, buttressed by the threat to discipline those who disobeyed, tended to interfere with, restrain or coerce the recruits in the exercise of the rights guaranteed to them by § 5.4 of the Act. Even assuming arguendo that the recruits are not included in the negotiations unit currently represented by the FOP, I find, and the City offers, no legitimate and substantial business justification that would justify the City's refusal to allow the recruits to accept and keep the FOP's informational packet and act on its contents. Accordingly, I find that the City violated § 5.4(a)(1) when it ordered the recruits, under threat of discipline, to return the informational packet distributed by the FOP to the Captain of the Academy.

The FOP also contends that the City violated § 5.4(a)(3) of the Act. The FOP argues that "[t]he Commission has found in numerous instances that disciplining an employee for the exercise of union association activities constitutes a violation of Subsection 5.4(a)(1) as well as 5.4(a)(3) [cites omitted from original]." FOP brief at pp. 22-23. While the general proposition of law expressed by the FOP is correct, I find that the facts present in this case do not support the finding of an a(3) violation. Although I have found that the City threatened the recruits with disciplinary action for exercising rights protected by the Act, no recruits were actually disciplined or otherwise adversely affected in regard to hire or tenure of employment or any term and condition of employment.

Consequently, I find no violation of § 5.4(a)(3). See, Township of Mine Hill, supra.

Allegation IV: The City Interfered with the Formation, Existence or Administration of the FOP, in Violation of Section 5.4(a)(2) of the Act, When it Encouraged a Minority Employee Representative to Provide a Luncheon for Recruits in the Academy.

The facts show that PBA Local 3 was allowed to conduct a luncheon for the recruits in the locker room at the Academy. It is also clear that Captain Warmington, knowing that the FOP could not meet with the recruits, permitted the PBA luncheon to take place. However, the record further demonstrates that Director Greenleaf was unaware of the occurrence of the luncheon until after-the-fact, and the record is unclear with respect to whether any other high-ranking police official, with the exception of Warmington, approved the luncheon. In fact, the testimony offered by an FOP witness establishes that when Warmington received a phone call from a superior, possibly the Chief of Police, the lunch was immediately terminated. I find Patrick Meehan's testimony concerning his conversation with Warmington to be significant. When Meehan asked Warmington why he allowed the PBA to provide lunch for the recruits, Warmington simply responded that he "...just felt they [the PBA] would buy them lunch." (T94-T95). While Warmington's actions may not have been well thought through in light of the City's general position regarding employee representatives' access to the recruits, his response does not demonstrate the existence of a plan on the

part of the City to provide preferential treatment to the PBA. The City did not encourage the recruits to attend the luncheon given by the PBA. Indeed, when a City official found out about the lunch, he/she took steps to immediately terminate it. Thus, I find that the City did not interfere with the formation, existence or administration of the FOP. Accordingly, under the particular circumstances present in this case, I hold that the FOP did not prove that the City violated § 5.4(a)(2) and decline to find the City in violation of that section of the Act.

However, I find that the City committed an independent violation of § 5.4(a)(1) of the Act. Warmington is the Director of the Newark Police Academy and holds the high rank of captain. In such capacity, Warmington acts as agent for the City, and the City bears the responsibility for its agents' actions. Warmington knew that the FOP was being denied the right to meet with recruits, yet allowed the PBA to enter the Academy, serve lunch and meet with the recruits. While I do not believe that Warmington was necessarily acting in bad faith in order to undermine the FOP or bolster the viability of the PBA, it is also clear that Warmington's biases and motivations are not at issue. The issue here is whether the City, or its agent, acted in a manner that would tend to interfere with employee rights guaranteed by the Act. New Jersey Sports and Exposition Authority, supra. In this case, I found the City to have illegally withdrawn its recognition from the certified employee representative of the recruits. When the City's agent, nearly immediately thereafter grants a minority employee organization

access to meet with the same employees who had just been denied the right to meet with their certified representative, such action tends to interfere with the exercise of rights granted to the recruits by § 5.3 of the Act and violates § 5.4(a)(1).

The FOP also alleges that the City violated § 5.4(a)(4) of the Act. However, the FOP introduced no evidence showing that the City discharged or otherwise discriminated against any employee because he/she has signed or filed an affidavit, petition or complaint or given any information or testimony under the Act.

Accordingly, on the basis of the entire record and the analysis set forth above, I make the following:

#### CONCLUSIONS OF LAW

1. The City of Newark violated N.J.S.A. 34:13A-5.4(a)(5) and, derivatively, (a)(1) when it refused to recognize the Fraternal Order of Police, Newark Lodge No. 12 as the certified employee representative of the recruits appointed on March 30, 1987, to the Newark Police Department and currently assigned to the Newark Police Academy for training.

2. The City of Newark violated N.J.S.A. 34:13A-5.4(a)(5) and, derivatively (a)(1) when it unilaterally changed terms and conditions of employment by refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address recruits in the Newark Police Academy until shortly before they graduate rather than at some earlier time as had been the established practice.

3. The City of Newark violated N.J.S.A. 34:13A-5.4(a)(1), independently, when it ordered the recruits, under threat of discipline, to return the information packets distributed to them by the Fraternal Order of Police, Newark Lodge No. 12.

4. The City of Newark violated N.J.S.A. 34:13A-5.4(a)(1), independently, when it, through its agent, allowed the police recruits to meet with a minority employee organization while at the same time it refused the recruits the right to meet with their certified representative.

5. The City of Newark did not violate N.J.S.A. 34:13A-5.4(a)(3) when it ordered the recruits, under threat of discipline, to return the informational packets distributed by the Fraternal Order of Police, Newark Lodge No. 12. Accordingly, I recommend that the unfair practice charge concerning this allegation be dismissed.

6. The City of Newark did not repudiate Article 29, Section 4, of the parties' collective agreement, and, consequently, did not violate N.J.S.A. 34:13A-5.4(a)(5). Accordingly, I recommend that the unfair practice charge concerning this allegation be dismissed.

7. The City of Newark did not violate N.J.S.A. 34:13A-5.4(a)(2) when PBA Local 3 conducted a luncheon for recruits in the Police Academy. Accordingly, I recommend that the unfair practice charge concerning this allegation be dismissed.

8. The Fraternal Order of Police, Newark Lodge No. 12, did not prove, by a preponderance of the evidence, that the City of Newark violated any other section of the New Jersey Employer-Employee Relations Act as alleged in its unfair practice charge. Accordingly, I recommend that the unfair practice charge concerning any such allegation be dismissed.

RECOMMENDED ORDER

I recommend that the Commission ORDER the following:

A. Respondent City of Newark cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, specifically by (1) ordering police recruits, under threat of discipline, to return information packets distributed by the Fraternal Order of Police, Newark Lodge No. 12, (2) refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits appointed March 30, 1987, to the Newark Police Department, (3) refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address police recruits in the Newark Police Academy until shortly before they graduate, and (4) refusing to allow police recruits to meet with the Fraternal Order of Police, Newark Lodge No. 12, while allowing a minority employee organization to meet with the recruits.

2. 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, specifically by refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of the police recruits appointed on March 30, 1987, to the Newark Police Department, and by unilaterally changing terms and conditions of employment by refusing to allow the Fraternal Order of Police, Newark Lodge No. 12, to address recruits while attending the Newark Police Academy.

B. That Respondent City of Newark take the following affirmative action:

1. Continue to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the employee representative of the police recruits appointed on March 30, 1987, and apply the terms of the collective agreement now in effect between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12, to the police recruits.
2. Allow the Fraternal Order of Police, Newark Lodge No. 12, to address the recruits in the Police Academy.
3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be 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.



4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

DECISION AND ORDER ON MOTION FOR INTERLOCUTORY RELIEF

As indicated previously in this decision, I was appointed Commission Designee for the purpose of reconsidering the FOP's application for interim relief filed in association with the instant unfair practice.

The Commission's standards applicable for granting interim relief are well established. City of North Wildwood, I.R. No. 87-26, 13 NJPER 376 (¶18152 1987); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975). The test provides that there must be (1) a substantial likelihood of success on the merits both as to the facts and the law, and (2) irreparable harm if the requested relief is not granted. Additionally, in granting interim relief, I must consider the relative hardship to the parties if the requested relief is granted or denied. Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975).

Applying the standards to the instant matter, it is clear, for all of the reasons set forth in the body of the decision above, that the FOP has established a substantial likelihood of success on the merits both as to the facts and the law.

Moreover, I find that irreparable harm would occur if the requested relief is not granted. The FOP has sought to represent the recruits during their time at the Police Academy. The City's position is that the FOP may not represent recruits until they leave

the Police Academy. The right to representation is fundamental under our Act and the employee loses forever his/her right to be represented by the certified representative as each day passes. Additionally, the FOP has filed grievances on behalf of the recruits concerning disputes which have arisen that affect the recruits' terms and conditions of employment during the time they are assigned to the Police Academy. The City has refused to respond to such grievances. In the event that the FOP prevails on the grievances, the vindication of the recruits' rights will certainly be made more difficult, if not impossible, as time passes.

In weighing the relative hardship to the parties, I find that such hardship falls more upon the FOP if relief is denied than upon the City if relief is granted. As stated above, the recruits are being denied their representational rights and their right to enjoy the benefits contained in the collective agreement negotiated between the City and the FOP. These are rights and benefits which the City has extended to other classes of recruits since at least 1978. Clearly, the hardship experienced by the FOP, as representative of the recruits, outweighs any potential hardship which the City may experience as the result of the extension of such rights and benefits to this group of employees. Consequently, IT IS HEREBY ORDERED that Respondent, City of Newark, is immediately ENJOINED AND RESTRAINED, pending a final Commission decision in this matter, from:

1. Continuing to refuse to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the exclusive representative of the police recruits appointed on March 30, 1987, now undergoing training at the Newark Police Academy;

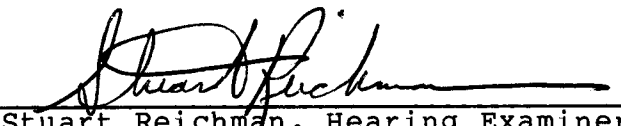
2. Continuing to refuse to honor the terms of the current collective agreement between the Fraternal Order of Police, Newark Lodge No. 12, and the City of Newark as applied to police recruits;

3. Continuing to refuse to allow the Fraternal Order of Police, Newark Lodge No. 12, to address the police recruits in the Newark Police Academy until shortly before the graduate;

4. Continuing to refuse to permit police recruits to sign authorization and designation cards in favor of the Fraternal Order of Police, Newark Lodge No. 12, and from requiring the recruits to turn over such cards and other informational documents to City personnel;

5. Continuing to refuse to process dues authorization cards executed by the police recruits in favor of the Fraternal Order of Police, Newark Lodge No. 12, and deducting and paying over such dues to the Fraternal Order of Police; and

6. Refusing to deduct representation fee payments pursuant to the parties' collective agreement as to police recruits; and threatening the institution of disciplinary charges against police recruits arising out of the exercise of the rights guaranteed under the Act.

  
Stuart Reichman, Hearing Examiner  
and Commission Designee

DATED: July 7, 1987  
Trenton, New Jersey

# NOTICE TO ALL 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 NOT continue to interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, specifically by (1) ordering police recruits, under threat of discipline, to return information packets distributed by the Fraternal Order of Police, Newark Lodge No. 12, and (2) by refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of police recruits appointed March 30, 1987, to the Newark Police Department.

WE WILL NOT continue to refuse 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 refuse to process grievances presented by the majority representative, specifically by refusing to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the certified employee representative of the police recruits appointed on March 30, 1987, to the Newark Police Department.

WE WILL immediately continue to recognize the Fraternal Order of Police, Newark Lodge No. 12, as the employee representative of the police recruits appointed on March 30, 1987, and apply the terms of the collective agreement now in effect between the City of Newark and the Fraternal Order of Police, Newark Lodge No. 12, to the police recruits and process grievances submitted by the Fraternal Order of Police, Newark Lodge No. 12, on behalf of the police recruits.

WE WILL allow the Fraternal Order of Police, Newark Lodge No. 12, to address police recruits while attending the Police Academy.

Docket No. CO-H-87-287

CITY OF NEWARK

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

(Title)

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