

I.R. NO. 97-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Respondent,

-and-

Docket Nos. CO-97-58 & CO-97-59

PATROLMAN'S BENEVOLENT ASSOCIATION
LOCAL 51 and LOCAL 51A,

Charging Parties.

SYNOPSIS

A Commission Designee declines to restrain the County of Hudson from disbanding its County police force and laying off all members of that police force. There is a factual dispute as to motivation of the lay offs. Further, the Commission Designee found there was sufficient evidence to show the County's action may have constituted a reorganization. Accordingly, the Association failed to demonstrate it has a substantial likelihood of proving the transfer of unit work to other County employees was negotiable.

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Charging Parties.

Appearances:

For the Respondent,
Genova, Burns, Trimboli & Vernioia, attorneys
(Stephen E. Trimboli, of counsel)

For the Charging Party,
Schneider, Goldberger, Cohen, Finn, Solomon,
Leder & Montalbano, attorneys
(Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On August 16, 1996, Policeman's Benevolent Association Local 51 and Local 51A filed unfair practice charges against the County of Hudson alleging that on or about July 11, 1996, the County illegally abolished the Hudson County Police Department, scheduled to lay off all police officers represented by PBA Local 51A and Local 51 and unilaterally transferred the bargaining unit work to non-unit personnel employed by the Hudson County Sheriff. It was

alleged that this conduct violated N.J.S.A. 34:13A-5.4(a)(5).^{1/}

The Associations also filed requests for interim relief seeking a restraint of the lay offs pending a final Commission decision.

The order to show cause was executed and a hearing was conducted on September 12, 1996. The County opposed the application arguing that it has a managerial prerogative to eliminate the police force.

It is not disputed that on July 11, 1996, the County government passed an ordinance effectively abolishing the Hudson County Police Department and lay offs are to take place October 1, 1996.

The Hudson County Police patrol state and county roads, enforce traffic laws, assist at motor vehicle accidents, establish DWI roadblocks, respond to calls for assistance including backup to other police departments in the County, supervise school crossing guards, patrol County buildings, oversee the County's emergency dispatch system (911) and patrol eight public parks in the County.

The PBA claims that the County's decision to eliminate the police force is in retaliation for Local 51's position in negotiations for a successor contract to the 1992-1993 collective negotiations agreement. The PBA refused to concede to the demands

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

of the County to delete increments from the contract. The parties did not reach an agreement and the dispute went to interest arbitration. In March 1996, the interest arbitrator issued an award in favor of the PBA. The award granted a salary increment system.

The Association further argues that the elimination of the police force will result in shifting of unit work to sheriff officers who it claims are also County employees. Such a shift of work violates the Commission's preservation of unit work policy.

The County disputes that this action was taken in retaliation for the arbitration award and/or anti-union animus. The County points out that superior officers represented by PBA Local 51A are currently living under a two-year agreement that was successfully negotiated between the parties. It introduced evidence by way of affidavit that the County was forced to take this action because of its severe financial difficulties. According to the affiants, most of the police work done by the County Police will now be performed by local police departments which currently also perform much of this work. The affiants maintain that the only work to be transferred to the sheriff's department will be 1) the patrolling of administration buildings and the court house (This work has been historically shared with the Hudson County Sheriff.); 2) patrol Lincoln Park in Jersey City and Braddock Park in North Brunswick (which is work currently shared with local police) and 3) oversee the County 911 system.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Association did not introduce any direct evidence of hostility or anti-union animus. The Association seeks to have us infer animus on the basis of the negotiations history. The County introduced evidence that the elimination of the Police Department is for economic reasons. The motivations of the County are in dispute and can only be resolved after a full hearing.

The Association has not established that it has a substantial likelihood of success of proving a violation of 5.4(a)(3) before the Commission.

In City of Jersey City and Jersey City POBA and Jersey City PSOA, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), the Commission analyzed the state of the law regarding preservation of unit work. This issue involves questions of negotiability that have been carefully analyzed under the balancing test set forth by the Supreme

Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982). When the employer is merely revamping personnel assignments and the same amount of work is being performed, negotiations over preserving unit work would not, in general, significantly interfere with any governmental policy determinations.

There have been situations, however, where an employer has exercised its managerial right to reorganize the way it delivers government services and, as a consequence, could transfer job duties to non-unit employees without incurring a negotiations obligation. See, e.g., Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (employer had managerial prerogative to consolidate police and fire dispatching functions and employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (board had prerogative to reorganize supervisory structure for custodial employees with consequence that some unit work was shifted outside negotiations unit); see also Nutley Tp., P.E.R.C. No. 86-26, 11 NJPER 560 (¶16195 1985) (under particular circumstances and in absence of exceptions, assignment of school crossing guard rather than police officer to traffic safety unit did not constitute an unfair practice).

Also, there have been situations where the employer did not have a negotiations obligation because the disputed duties were historically performed by non-unit personnel exclusively or in conjunction with unit employees. See State of New Jersey (Div. of State Police), P.E.R.C. No. 94-78, 20 NJPER 74 (¶25032 1994)


(troopers historically performed communications duties alone or with civilians); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989), recon. den. P.E.R.C. No. 89-119, 15 NJPER 288 (¶20128 1989) (police had historically performed dispatching duties alone or with civilians).

Here, the total elimination of the police department dramatically reduces the number of County employees. The charging parties have not demonstrated a substantial likelihood of proving the County's action does not constitute a reorganization. Moreover, most of the duties to be transferred to the sheriff's office have not been historically done exclusively by the County Police. The sheriff's officers already do some patrolling of County buildings and local police departments apparently currently patrol County parks. It is not clear on the record before me whether maintenance and operation of the emergency dispatch system (911) was done exclusively by the Hudson County Police. On balance, the Association has not shown it has a substantial likelihood of proving that the elimination of the police department is negotiable.^{2/}

2/ Bergen Pines Hospital, 17 NJPER 236 (¶22102 1991) is not controlling. In Bergen Pines, the County sought to eliminate one title and assign all the duties of that title to a newly created title. The number of employees was not going to significantly change.

Similarly, the Association's reliance upon Fairfield Police Department and Cumberland County Local Policemen's Benevolent Association 94, I.R. No. 87-22, 13 NJPER 324 (¶18134 1987) is

Accordingly, the application for interim relief is denied. This matter will go forward to a full plenary hearing.


Edmund G. Gerber
Commission Designee

DATED: September 20, 1996
Trenton, New Jersey

2/ Footnote Continued From Previous Page

not persuasive. In Fairfield, the Township laid off all but one of its police officers in the midst of negotiations while giving three weeks notice of the lay offs. The lay offs were restrained for a period of 45 days. The moving party there sought the restraint in order to give it an opportunity to possibly negotiate downwards with the Town in order to preserve the police positions. The restraint by its terms, lasted 45 days. The parties here were not engaged in negotiations when the Town decided to lay off these employees. The employees were given almost three months notice and there has been no request for time to negotiate any concessions in order to preserve these jobs.