

I.R. NO. 2001-16

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-2001-314

UNION COUNTY CORRECTION OFFICERS  
PBA LOCAL NO. 199,

Charging Party.

**SYNOPSIS**

The PBA sought to restrain Union County from excluding employees assigned to certain job posts from the contractually based seniority bidding process. The County contends that these posts are either "administrative" or temporary, which in either case results in their exclusion from seniority bidding and allows the County to designate which employees to assign to the position. The Commission Designee found the issue of whether the title is "administrative" constitutes a dispute of material fact between the parties and such dispute undermines the PBA's establishment of the likelihood of success element of the test to obtain interim relief. The Designee also found that the issue of whether the employees were temporarily assigned and thus, under the collective agreement, excluded from the seniority bidding process, constitutes a dispute over the application or interpretation of the collective agreement and, therefore, under State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), also undermines the PBA's establishment of likelihood of success. Accordingly, the Commission Designee denied the PBA's application for interim relief.

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Appearances:

For the Respondent,  
Schenck, Price, Smith & King, attorneys  
(Kathryn V. Hatfield, of counsel)

For the Charging Party,  
Loccke and Correia, attorneys  
(Michael A. Bukosky, of counsel)

**INTERLOCUTORY DECISION**

On May 4, 2001, the Union County Correction Officers, PBA Local No. 199 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Union (County) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3),

(5) and (7).<sup>1/</sup> The PBA alleges that the County unilaterally altered terms and conditions of employment by improperly excluding certain unit employees from the seniority bidding procedure for certain job posts mandated under the collective agreement.<sup>2/</sup> The unfair practice charge was accompanied by an application for interim relief. On May 7, 2001, I executed an order to show cause and set a return date for June 12, 2001. At the request of the County, and with the PBA's agreement, the return date was rescheduled to June 15, 2001. The PBA seeks to restrain the County from excluding employees serving in a transportation post, clothing room post, a 12th floor escort post related to female inmates, and a recreation

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<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 rights guaranteed to them by this act. (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. (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. (7) Violating any of the rules and regulations established by the commission."

<sup>2/</sup> The PBA did not seek interim relief on the basis that the County's actions violated a(1), independently, (3) or (7) of the Act. The theory asserted by the PBA to warrant a grant of interim relief related only to the County's alleged violation of a(5).

post<sup>3/</sup> from the contractually based seniority bidding provision. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the rescheduled return date. The following facts appear.

The County and the PBA are parties to a collective negotiations agreement covering the period January 1, 1998 through December 31, 2000. The parties have engaged in successor negotiations and are currently involved in interest arbitration. Prior to April 1, 2001, the County operated two correctional facilities. On or about April 1, 2000, the County closed the "Old Jail," except for the third and fourth floors, and transferred most of the correctional officers assigned to the "Old Jail" to the correctional facility which remained open. As the result of the consolidation, all posts had to be re-bid in accordance with the terms of the parties collective agreement. Generally, the picking of posts is determined on the basis of the most senior employee having priority in his/her pick.

Article 14, Seniority, provides, in relevant part, as follows:

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<sup>3/</sup> The recreation post dispute was resolved before the return date. The 12th floor escort and clothing room posts were resolved during oral argument on the return date. The County agreed to immediately subject the escort and clothing room positions to the mini pick process, if they had not already done so.

Section 1.

For the purposes of this Article, seniority shall be defined as the length of the employee's uninterrupted service in the Union County Jail facilities, including sick leave, military leave and other leaves of absence which do not exceed one year.

Section 3.

Seniority shall be the basis upon which employees shall select vacation schedules, shifts, posts, days off and overtime except in circumstances where the granting of the above will interfere with the efficient operation of the Union County Jail facilities.

Section 5. Shift Selections and Schedule

The general procedures applicable to shift selections and schedules, subject to modifications that may be required due to operational needs of the institution, and the legal obligation to negotiate with respect to making new rules or modification of existing rules that affect terms and conditions of employment, are as follows:

(a) All positions or posts that are eligible for bidding shall be offered to all officers starting from the top of the seniority list and going to the bottom of the seniority list consistent with the established criteria where designated for specified positions or post.

(b) Male and female officers will pick their posts by seniority. The only exceptions will be those designated gender specific posts where strip searching will be routinely conducted.

(c) All picks will be scheduled on a yearly basis, starting the third full week of November. The new schedule will take effect the second Monday in January.

(d) [Mini Pick] When an opening occurs for any reason except for renovations of posts, the next officer in seniority will be offered the opening and so forth down the seniority list. Management can also fill such temporary opening with overtime or the pool officer if the opening is

for a short period of time, herein defined as not to exceed 3 months unless such time is extended by mutual agreement of the parties.

(e) Administrative Assignment to temporary posts shall not exceed 6 months. If the post remains permanent after 6 months, or regularly recurs for periods of less than a full year, it shall become subject to bid under the bidding procedures set forth herein.

(f) When an opening occurs on a temporary basis due to vacation, work related injury, training, suspension and sick leave, the pool officers will be utilized.

Section 7. Shift Picks, Days off and Posts

Posts and positions will be filled in the following manner, subject to modifications that may be required due to operational needs of the institution and legal obligation to negotiate with respect to making new rules and modification of existing rules and affect terms and conditions of employment. The President of the P.B.A. or a designee of the President shall be permitted to monitor the shift selection process that is conducted by management through its designees in accordance with current practice.

A. Administrative Positions

(1) Management shall assign administrative positions and the assignment shall include predetermined days off. Administrative positions include:

- Training (2)
- Classification/Parole (1)
- Classification/State/Fed Liaison (1)
- P/P (1)
- Grievance Coordinator (1)
- I.A. (4)
- Community Service (2)
- Utility (2)
- Fire/Security
- Key/Tool Control (2)

(2) An officer assigned to an administrative position will not pick during shift picks. If

officers are taken out of administrative positions, they will have the opportunity to get the position from the officer replacing them or may take the pool officer's position according to their seniority.

On or about April 17, 2001, the PBA requested by letter that the County engage in negotiations concerning any change in benefits. Additionally, the PBA demanded that the County reinstate the contractual terms and conditions of employment concerning post and shift bidding and the procedural aspects incident thereto. It appears that the County never responded to the PBA's April 17, 2001 letter.

The County contends that the transportation posts have traditionally been considered administrative posts which are excluded from the seniority pick system. The County cites Article 14, Seniority, Section 7, A.(1) for the proposition that the two transportation posts were filled by two employees designated in the Community Service Administrative position.

On or about April 1, 2001, in conjunction with the consolidation of the County's jails, the County entered into an agreement with the Delaney House concerning provision of drug offender rehabilitation services. Delaney House is located in Newark. In light of the need to transport prisoners to and from the Delaney House, the Court and the jail, the County decided to increase the number of corrections officers assigned to perform transportation duties. The County assigned an additional two corrections officers to the newly created transportation posts. The

County asserts that the transportation posts were served by two additional community service positions listed in the collective agreement as administrative positions and excluded from the seniority pick process. Additionally, in the alternative, the County contends that the two additional transportation positions are temporary in nature and are thus excluded from the seniority pick process in accordance with Article 14, Section 5(e) of the collective agreement.

The PBA contends that the newly created transportation posts are just that, regular transportation posts subject to seniority bidding, and are not administrative community service positions which are exempt from the seniority post bidding process. The PBA argues that transporting prisoners to and from the Delaney House is common, everyday work which requires no special skills, special credentials, additional training or administrative expertise. The PBA argues that the transportation posts at issue are "...unexceptional, garden variety posts basically indistinguishable from any other post within the facility" (PBA responsive letter dated June 6, 2001). The PBA argues that the collective agreement is clear in its intention to cover all posts and positions by the seniority pick system, unless otherwise specifically excluded. The PBA claims that there is no specific exception for the transportation posts at issue nor can such positions be arguably defined as an "administrative post."



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).

Here, a dispute exists between the parties concerning whether the employee's who are assigned to transport prisoners to and from the Delaney House are serving in the community service administrative position. If, in fact, the employees are serving in the community service administrative position, it is then likely that an arbitrator could find that such employees are excluded from the seniority bid system pursuant to the specific terms of Article 14, Section 7, A(1) and (2). Conversely, if the PBA's position that the employees performing transport services are not included in the community service administrative positions, it is likely that an ultimate determination could be made holding that such positions must be subject to the seniority bid system and the County's exclusion of the positions from seniority bidding violates the terms of the collective agreement. However, this dispute of material fact

(whether these are administrative positions), the resolution of which may be determinative as to whether or not the County acted properly, serves to undermine the PBA's ability to establish the requisite likelihood of success with respect to whether the positions at issue are subject to the seniority bidding system. Interim relief is denied in circumstances where disputes of material fact exist. See City of Trenton, I.R. No. 2001-8, 27 NJPER 206 (¶32070 2001); Borough of Franklin, I.R. No. 2001-1, 26 NJPER 346 (¶31136 2000); Township of Dover, I.R. No. 94-4, 20 NJPER 6 (¶25004 1993); City of Trenton, I.R. No. 91-8, 16 NJPER 568 (¶21248 1990).

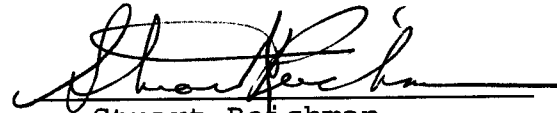
The County also argues that, notwithstanding whether the transport positions are administrative under Section 7, A(1) of the collective agreement, it has the right under Article 14, Section 5(e) to assign employees to posts outside of the seniority bidding system on a temporary basis. The County contends that it may make administrative assignments on a temporary basis (not to exceed six months) to posts which will not be subject to the seniority bidding procedures. The County claims that the transport posts at issue in this matter are only temporarily established, consequently, pursuant to Section 5(e), it may assign employees outside of the seniority bidding system. The PBA contends that Section 5(e) does not give the County the right to exclude the transportation posts at issue from the seniority bidding process. It argues that the transportation posts are subject to the seniority bidding procedures on the grounds that these positions "...regularly [recur] for

periods of less than a full year..." as provided in Section 5(e). While I do not rule upon the interpretation or application of Section 5(e), I find that it does appear that both parties rely upon the same language contained in the collective agreement to arrive at differing conclusions. The Commission has refused to issue a complaint on unfair practice charges where the alleged violation is dependent upon an underlying contractual dispute. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). It appears that the parties' differing construction of Section 5(e) of the collective agreement should be resolved through resort to the negotiated grievance procedure. Consequently, I find that under Human Services, the underlying contractual dispute may not result in the issuance of a complaint, and therefore, cannot meet the interim relief standards.

Thus, under these circumstances, the PBA has not, at this early stage of the dispute, established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations. Consequently, I decline to grant the PBA's application for interim relief. This case will proceed through the normal unfair practice processing mechanism.

ORDER

The PBA's application for interim relief is denied.

A handwritten signature in cursive script, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman  
Commission Designee

DATED: June 22, 2001  
Trenton, New Jersey