

I.R. NO. 98-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SOMERSET and SOMERSET
COUNTY SHERIFF,

Respondents,

-and-

Docket No. CO-98-294

SOMERSET COUNTY SHERIFF'S OFFICERS
FOP LODGE NO. 39,

Charging Party.

SYNOPSIS

A Commission Designee entered an interim order in a matter brought by Somerset County Sheriff's Office FOP Lodge No. 39 against the County of Somerset and Somerset County Sheriff.

The Sheriff unilaterally created one additional work shift and work schedule for sheriff officers of 10 p.m. to 8 a.m. four days on, three days off. The Sheriff declined to negotiate compensation for the new shift. The shift was created to provide security for County facilities and property.

The FOP contends the Sheriff could not create a new shift or assign security duties without negotiations and had to negotiate a salary for the new shift.

The Commission Designee held the FOP failed to demonstrate a substantial likelihood of success in proving the security patrols were not incidental to the duties of a sheriff officer. Also, the recently expired contract seems to give the County the right to create a new shift. Accordingly, it did not appear that the Sheriff had the obligation to negotiate over the assignments of new shifts or new duties. However, the contract also gives the right to the FOP to negotiate compensation for any new shift. It was ordered that the Sheriff negotiate compensation for the new shift.

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Appearances:

For the Respondent,
Bivona, Cohen, Kunzman, Coley, Yospin, Bernstein &
DiFrancesco, attorneys
(Patrice M. Rodman, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On February 9, 1998, Somerset County Sheriff's Officers FOP Lodge No. 39 filed an unfair practice charge alleging that the County of Somerset/Somerset County Sheriff engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7).^{1/} It was specifically alleged that the most recent

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

collective negotiations agreement between the parties expired on December 31, 1994 and the parties are currently engaged in interest arbitration for a new contract.

Since 1996, there have been two shifts for all sheriff's officers, 7 a.m. to 3 p.m. and 8:30 a.m. to 4:30 p.m., both are Monday through Friday. On December 19, 1997, Sheriff Robert H. Lund unilaterally created one additional work shift and concomitant work schedules of 10 p.m. to 8 a.m., four days on three days off and then a return to the normal rotation. This new shift will provide security for county-owned buildings. These duties were not previously performed by sheriff officers. It was further alleged that the sheriff has refused to meet and negotiate "impact issues."

The FOP also filed an application for interim relief seeking an interim order with respect to the respondent's unilateral announcement and implementation of changes to the established work schedule made during the interest arbitration process, the unilateral imposition of job duties unrelated to the normal job duties of sheriff's officers and the respondent's failure to

1/ Footnote Continued From Previous Page

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."

negotiate on the impact of such changes pending a final decision and order by the Commission.

The order was executed and made returnable for March 9, 1998 at which time the parties were given an opportunity to present evidence and argue orally.

The County does not dispute that it instituted an over-night shift to provide security for County facilities on nights and weekends. The County argues that it had the right under the contract to institute a midnight shift. Although the most recent contract has expired, its term remains in effect pending the conclusion of interest arbitration.

The contract provides:

Article XVII, Paragraph 17.1 - During such time that the sheriff maintains a 4:30 p.m. to 12:30 a.m. and a 12:30 a.m. to 8:30 a.m. shift, those sheriff's officers working the 4:30 p.m. to 12:30 a.m. shift shall receive a shift differential of \$.38 per hour and those sheriff's officers working the 12:30 a.m. to 8:30 a.m. shift shall receive a shift differential of \$.77 per hour.

Article XXVI provides that two weeks notice is required prior to any change of shift for any employee.

Finally, Article XXVII states that "in the event that shifts over and above those currently worked are required, either party may reopen the agreement to negotiate additional compensation."

Robert Lund, the Sheriff of the County of Somerset, by way of affidavit states that the County has attempted to use private contractors to provide night and weekend security of the County facilities and property. However, he affirms the private security

guards were unsatisfactory and security was compromised. He further states that the County also uses sheriff's cadets to provide security but the cadets are also unacceptable due to their lack of supervision by experienced law enforcement professionals. They are unarmed and not sworn law enforcement officer. The County contends it made a policy decision to continue to use Sheriff's cadets, but now supervised by experienced sheriff's officers to provide security for County facilities on nights and weekends. Accordingly, one additional shift of 10 p.m. to 8 a.m. was instituted.

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).

Although the County argues that it was only implementing a third shift pursuant to Article XVII, Paragraph 17.1 of the contract, the new shift does not appear to be contemplated by that contract provision. The new shift is 10-hours, from 10 p.m. to 8 a.m., not the 12:30 a.m. to 8:30 a.m. 8-hour shift of the contract.

However, Article XXVII seems to give the County the right to create a new shift. Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶1519 1984). However, it also gives the FOP the right to negotiate compensation. The record indicates that a demand to negotiate was made of the County but there is no indication that it agreed to negotiate.

Finally, the FOP contends new job duties were unilaterally implemented. Sheriff officers have not been previously assigned to patrol county property. However, the job description of sheriffs officers includes security at county facilities. In any event, the assignment of duties which are incidental to the duties of a position are not negotiable. Somerset-Raritan Valley Sewerage Authority, P.E.R.C. No. 97-49, 22 NJPER 403 (¶27220 1996). Security of County property would seem to be a traditional law enforcement function incidental to the duties of a sheriff officer.

Here, the FOP has not shown it has a substantial likelihood of success before the Commission in demonstrating the assignment of the building and property security patrols is not incidental to the duties of a sheriff officer.

The FOP has also failed to demonstrate a substantial likelihood of success before the Commission on the issue of creating the 10 p.m. - 8 a.m. shift.

However, I find that the FOP has demonstrated it has a substantial likelihood of success on its allegations that the County refused to negotiate compensation for the creation of a new shift.

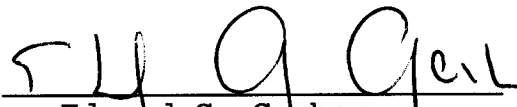
Given that Article XXVII gives the FOP the right to negotiate compensation, the County's refusal to negotiate apparently repudiates the contract. Human Services.

A unilateral change of a term and condition of employment during the pendency of interest arbitration constitutes a violation of N.J.S.A. 34:13A-21.

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

The County's refusal to negotiate appears to violate §21 of the Act. There is no effective remedy for such a harm after the matter is litigated. The harm is immediate and irreparable. Moreover, since the County is only obligated to negotiate in good faith, there is no harm to the public interest in entering an order.

Accordingly, it is hereby **ORDERED** that the County of Somerset and the Somerset County Sheriff negotiate in good faith with FOP Lodge 39 for compensation for the creation of a new 10 p.m. to 8 a.m. shift for sheriff officers. The application for interim relief is otherwise denied. This matter shall be referred to the Director of Unfair Practices for further processing.


Edmund G. Gerber
Commission Designee

DATED: March 19, 1998
Trenton, New Jersey