

I.R. No. 2020-13

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF SALEM (SHERIFF),

Respondent,

-and-

Docket No. CO-2020-202

POLICEMAN'S BENEVOLENT  
ASSOCIATION, LOCAL 400,

Charging Party.

**SYNOPSIS**

A Commission Designee denies an application for interim relief based on an unfair practice charge alleging that the public employer unlawfully transferred unit work from corrections officers to sheriff's officers. The charge alleged that the employer transferred federal in-state transportation; transportation of inmates to and from medical facilities; and work associated with a "home electronic detention program." The charge also alleges that the transfer of in-state federal inmates transportation was "in retaliation" for the majority representative having recently prevailed in a grievance arbitration award.

The Designee found that the majority representative did not establish its sufferance of irreparable harm because the Commission could prescribe a complete and adequate remedy at the conclusion of regular processing of the unfair practice charge. The Designee also determined that the majority representative did not establish a retaliatory motive for the transfer of unit work, pursuant to the standard set forth in Bridgewater Tp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984).

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Appearances:

For the Respondent,  
DiNicola and DiNicola LLC, attorneys  
(Joseph DiNicola, of counsel)

For the Charging Party,  
Sciarra & Catrambone LLC, attorneys  
(Christopher Gray, of counsel)

**INTERLOCUTORY DECISION**

On February 4, 2020, Policeman's Benevolent Association, Local 400 (PBA) filed an unfair practice charge against Salem County Sheriff's Department and Salem County Freeholder Board (County), together with an application for interim relief, a brief, certification and exhibit. The charge alleges that on January 30 and February 3, 2020, the County unlawfully removed unit work from corrections officers. The charge more specifically alleges that on the latter date, the County, in response to a recent grievance arbitration award sustaining a PBA grievance over transportation of inmates to [and from] municipal and County court appearances, unilaterally removed federal inmate

transportation work from corrections officers and reassigned it to sheriff's officers. The charge alleges that that work had previously and always been assigned to corrections officers and that the County's conduct, ". . . is in retaliation for winning the grievance." The charge also more specifically alleges that on January 30<sup>th</sup>, the County took away unit work from corrections officers regarding the transportation and supervision of inmates to and from medical facilities. Finally, the charge alleges that the County recently informed the PBA that it will transfer work regarding "home electronic detention" from the PBA to civilians, despite it having been ordered returned to PBA unit employees on January 16, 2020, ". . . by virtue of a grievance arbitration decision." The County's conduct allegedly violates section 5.4a(1), (2), (3), (4), (5) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq. (Act).

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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. (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. (7) Violating any of the rules and regulations established by the commission."

The application seeks an order requiring the County to maintain the status quo ante regarding transportations, home electronic detention and medical office (hospital) security.

On February 14, 2020, I issued an Order to Show Cause specifying March 11, 2020 as the return date for argument in a telephone conference call. I also directed the County to file a response by February 26<sup>th</sup> and the PBA to file a reply by March 2, 2020. On the return date, the parties argued their respective cases. The following facts appear.

The PBA represents a unit of corrections officers employed by the County, excluding corrections sergeants, lieutenants and captains. The parties' current collective negotiations agreement extends from January 1, 2017 through December 31, 2020.

In July, 2014, County Sheriff Charles Miller, on behalf of the County, and the FOP President, on behalf of County sheriff's officers and sheriff's superior officers, signed a settlement agreement entitled "Inmate Transports," resolving an unfair practice charge (Dkt. No. CO-2013-362)<sup>2/</sup> filed by the FOP. The agreement sets forth in a pertinent part:

2. Provided that Salem County's sheriff's officers, sergeants, lieutenants and captains shall total at least 29 personnel, those officers shall be

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2/ The charge alleged that on June 17, 2013, Sheriff Miller unilaterally assigned sheriff's officers' unit work - transporting inmates from the jail to the courthouse for court appearances and transporting inmates from the Gloucester County jail to the Salem County jail - to non-unit employees, violating section 5.4a(5) of the Act.

exclusively assigned - in lieu of Salem County's corrections officers - to transport inmates to and from Salem County's incarceration facilities. In the event that the total number of referenced personnel shall fall below 29, Salem County's sheriff's officers, sergeants, lieutenants and captains shall continue its current custom of conducting morning transports of inmates from Salem County's incarceration facilities to the Salem County courthouse.

3. The only exception to the foregoing shall be when ill or injured inmates that are in custody of Salem County's incarceration facilities require emergency medical attention outside those facilities, in which case Salem County's corrections officers may transport inmates between Salem County's correctional facilities and the hospital emergency room.  
[PBA Exhibit 2; County Exhibit 2]

Sheriff Miller certifies that this agreement provides that,

". . . the hospital transportation duty would be shifted to the correctional officers" (Miller cert., para. 5).

On or about July 13, 2016, Sheriff Miller, on behalf of the County and the President of FOP Lodge No. 6, on behalf of sheriff's officers and sheriff's superior officers, signed an agreement entitled, "Inmate Transports," resolving another unfair practice charge filed by that majority representative on February 25, 2016 (Dkt. No. CO-2016-166).<sup>3/</sup> The County agreed, ". . . [to] assign work to sheriff's office personnel and corrections

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<sup>3/</sup> The charge alleged that on dates in December, 2015, and in January and February, 2016, the County unilaterally designated non-unit corrections offices to transport "fresh arrestees," violating the unit work rule and section 5.4a(5) of the Act.

personnel based upon the job descriptions promulgated by the Civil Service Commission for those respective job titles." Also,

3. . . . sheriff's officers [and their superior officers] - and those personnel alone - shall be exclusively assigned to transport any and all 'fresh arrests.' A 'fresh arrest' shall be considered, but is not limited to law enforcement actions such as drug court sanctions, sentencing in any county, warrant arrests, arrests of inmates who are part of the home-detention 'bracelet' program but who cut their bracelets and flee and are subsequently arrested and charged with escape or other similar law enforcement action taken against citizens who have not yet been booked into a correctional facility in any county.
4. Salem County's sheriff's officers, sergeants, lieutenants and captains - and those personnel alone - shall also be exclusively assigned to transport any and all inmates who have either completed the terms of a rehabilitation program or have violated the provisions of a rehabilitation program and are required to be transported back to the Salem County Correctional Facility.  
[PBA Exhibit 2]

Sheriff Miller certifies that this agreement provides that, ". . . all transportation duties would be taken over by the correctional transportation officers except for 'fresh arrest' and Federal inmate transportation" (Miller cert., para. 6). Nothing in the 2016 "Inmate Transports" agreement identifies "federal inmates," nor specifies what County employees shall transport them.

On or about January 15, 2019, County Sheriff Miller issued "SO 2019-1," rescinding the July 16, 2016 "Inmate Transports Settlement Agreement," effective February 1, 2019 (PBA Exhibit 1, County Exhibit 4). The order provides in relevant part:

Effective February 1, 2019 the responsibility of transporting Salem County inmates to and from the Salem County Correctional Facility and various court hearings, including municipal courts will fall under the Sheriff's Office Law Enforcement Division and those officers assigned to the Transportation-Home Detention Squad. In addition, inmates requiring evaluation at various facilities or treatment centers will be transported by the Sheriff Office Transportation-Home Detention Squad. (Inmates committed to the Salem County Correctional Facility requiring emergent hospital treatment will still be handled by SCCF staff).

Also, effective February 1, 2019, all responsibilities and activities involving the Home Detention Program will be administered by Sheriff's Office Law Enforcement Division officers assigned to the Transportation-Home Detention Squad. [PBA Exhibit 1; County Exhibit 4]

Sheriff Miller admits that in January, 2019, he ordered the transference of all transportation duties from corrections officers to Sheriff's officers except for in-state federal transportation (Miller cert., para. 9).

I take administrative notice of the PBA's February 26, 2019 filing of a "request for Submission of a Panel of Arbitrators" regarding the January 15, 2019 Sheriff's Order, ". . . removing the corrections officers from the home electronic detention (HED)

unit and replacing the officers with Sheriff's officers." The PBA also contended that, ". . . the inmate transportation unit had their superior court transportation obligations taken from them and given to sheriff's officers." The grievance contested the transfer of corrections unit work to non-unit members and the "unilateral cancellation" of a 2016 settlement agreement that "resolved" the unit work claim (Dkt. No. AR-2019-437). On May 15, 2019, a grievance arbitrator was appointed to hear and decide the grievance, together with three other grievances.

On April 10, 2019, the County and the United States Marshals Service signed an agreement, ". . . to house and transport federal (ICE) inmates to and from the Camden County Federal Courthouse (County Exhibit 3, PBA cert., para 6). In May, 2019, corrections officers commenced transporting "federal inmates" (Miller cert., para. 10; PBA President Mercky cert., para. 7).

On January 16, 2020, the designated arbitrator issued an opinion and award on the specified grievance (along with other specified, unrelated grievances), finding that the County, ". . . violated the Agreement and the unit work rule when it transferred HED and transportation of all municipal and Superior Court County inmates from corrections officers to Salem County Sheriff's Officers" [PBA Exhibit 4; award at 46]. The arbitrator ordered the County, ". . . to cease and desist from implementing policy SO 2019-1."



On February 3, 2020, the Sheriff, “. . . returned County and municipal [inmate] transport work to corrections officers . . . and has taken away federal inmate in-state transportation duties and assigned them to sheriff’s officers” (PBA President Merck cert., para. 11). Sheriff Miller admits, “. . . giving all transportation duties back to correctional officers except for federal inmate transportation . . .” (Miller cert., para. 14).

Debra Richey has been a civilian County employee since 2013 in the “Home Electronic Detention (HED) program,” an alternative form of incarceration. She certifies, “I have [handled] and continue to handle all the same duties as the correctional officers have that were assigned to the program, except for site visits” (Richey cert., para. 3, 4, 5).

Brian Pio is a County corrections officer and unit employee assigned to work in the “Division of Home Electronic Detention Monitoring” since October, 2016. He certifies that correction officer duties in the program include,

. . . home inspections of inmates, weekly in-office visits, weekly inspections of the equipment, the booking of inmates into the program, performing urinalysis drug screenings, placement and removal of equipment both on the inmate and in their homes, monitoring and reporting violations committed by inmates and removal of inmates from the program.

[Pio cert., para. 3]

He certifies that Richey, “. . . performs administrative/clerical work as it relates to HED monitoring,” but not “law enforcement tasks,” as set forth above.

Captain Alan Nobles has been employed by the County in its correctional facility for 23 years. In 2009, Nobles, as a lieutenant at the facility, founded and supervised the HED program. He certifies that a corrections officer assigned to the HED program performs these tasks: "enrollment in the program; placement of bracelet onto individual; maintenance of bracelet; monitoring tracker software; weekly schedules; urinalysis; site visits and removal from program."

He certifies that when Richey was assigned to the HED program in 2013, ". . . she conducted all tasks except site visits." He also certifies that since 2018, as a corrections captain, he supervises the HED program and that Richey ". . . continues to perform all job tasks that she has done since 2013 as a civilian" (Nobles cert., para 2, 4, 6-9).

Pio certifies that on January 28, 2020, Warden [John Cuzzupe], ". . . indicated that Richey will assume the duties and responsibilities of home electronic detention" (Pio cert., para. 7).

#### **ANALYSIS**

A charging party may obtain interim relief in certain cases. To obtain 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. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmeyer 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).

Under the standard used to review interim relief applications, harm becomes irreparable if the Commission cannot fashion an adequate remedy (returning the parties to terms and conditions that existed before the alleged unfair practice occurred) at the conclusion of regular processing of the unfair practice charge. City of Newark, I.R. No. 2006-3, 31 NJPER 250, 251 (¶97 2005).

In City of Newark, the City proposed a protocol by which a "crime scene unit" would perform all identification work for crime scenes involving City vehicles, commercial burglaries, residential burglaries, pattern burglaries, scenes involving a loss of value of more than \$5000, illegal dumping cases and bias crimes. Charging Party Newark Police Crime Scene Identification Offices Association alleged that that work had traditionally and exclusively been performed by identification officers represented by it.

The Designee determined that, ". . . no unit employee stood to lose his, her [or their] job, nor was any unit employee being demoted." The Designee found that if the City would later be

found to have violated the Act, the Commission could order a complete and adequate remedy by directing it to return work wrongfully removed from the unit. He found that the Association had not established that it would suffer irreparable harm. City of Newark, 31 NJPER at 251. See also, City of Newark, I.R. No. 98-6, 23 NJPER 539 (¶28266 1997).

In this case, PBA has not alleged facts indicating that any unit employee(s), were laid off, demoted or lost unique overtime opportunities as a consequence of losing unit work transporting federal inmates between County facilities and the Camden County Courthouse.<sup>4/</sup> Nor has it alleged facts to the same effect regarding the alleged loss of transporting and supervising inmates to and from medical facilities or of overseeing inmates participating in the HED program. In the absence of such facts, I find that the PBA has not established that it will suffer

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<sup>4/</sup> The PBA has alleged that the County's action was "in retaliation" for it having prevailed in the January, 2020 grievance arbitration award. It hasn't argued however, that the County's conduct violated standards for such a claim set forth in Bridgewater Tp. v. Bridgewater Public Works Ass'n., 95 N.J. 235 (1984) and its progeny. Although the timing of the County's decision to transfer federal inmate in-state transportation duties to sheriff's officers may be suspicious, the PBA has not otherwise demonstrated (to the requisite standard) a nexus between protected conduct and the adverse employment action. Such demonstrations are rare in interim relief cases. See, e.g., Sussex Cty. Sheriff's Office, I.R. No. 2019-21, 45 NJPER 353 (¶93 2019).

irreparable harm. Accordingly, I decline the PBA's application for interim relief.<sup>5/</sup>

This case shall be processed in the normal course.

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Jonathan Roth  
Commission Designee

DATED: March 13, 2020  
Trenton, New Jersey

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<sup>5/</sup> In other interim relief cases involving the improper transfer of unit work where the Commission Designee granted the charging parties' applications for interim relief, irreparable harm in each case was based on the fact that the unit work transfer occurred while the parties were in the midst of collective negotiations for a successor agreement, thereby creating a chilling effect on employee rights that is not adequately remediable by the Commission at the conclusion of the unfair practice charge. See Bergen Cty. Sheriff, I.R. No. 2019-6, 45 NJPER 123 (¶133 2018), req. for recon. den., P.E.R.C. No. 2019-20, 45 NJPER 208 (¶154 2018); Essex Cty. and Essex Cty. Sheriff's Office, I.R. No. 2011-29, 37 NJPER 30 (¶10 2011); County of Union, I.R. No. 2002-2, 28 NJPER 279 (¶33105 2002); Borough of Palisades Park, I.R. No. 98-24, 24 NJPER 239 (¶29113 1998); Borough of Boqota, I.R. No. 97-18, 23 NJPER 322 (¶28149 1997). No facts indicate that the County and PBA have commenced collective negotiations.