

I.R. NO. 98-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF WEST PATERSON,

Respondent,

-and-

Docket No. CO-98-101

PBA LOCAL 173,

Charging Party.

SYNOPSIS

In an action brought by PBA Local 173, a Commission Designee declines to restrain the Borough of West Paterson from hiring civilian dispatchers for its police department. Although the Borough has exclusively used police officers for dispatching duties in the past, the Borough contends it is reorganizing the police force and is about to eliminate three positions in the department. The PBA has failed to establish it had a substantial likelihood of success before the Commission.

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Appearances:

For the Respondent,
Gerber & Samson, attorneys
(Mary Pat Gallagher, on the brief
Steven Gerber, of counsel)

For the Charging Party,
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder, Montalbano, attorneys
(Kevin P. McGovern, on the brief
Bruce D. Leder, of counsel)

INTERLOCUTORY DECISION

On September 19, 1997, PBA Local 173 filed an unfair practice charge alleging that the Borough of West Paterson engaged in an unfair practice within the meaning of N.J.S.A.

34:13A-5.4(a)(1) and (5)^{1/} of the Act when on or about August 15,

^{1/} 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. (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."

1997 a notice was posted advertising for civilian dispatcher positions for the Borough's police department. The PBA alleges that police officers have served as dispatchers for many years. The PBA requested negotiations concerning the Borough's attempt to use civilian dispatchers to replace police officers. By letter dated September 4, 1997, the Borough council responded that the decision to civilianize dispatchers was a management prerogative.

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for October 9, 1997. Both parties submitted briefs and affidavits and argued orally.

The Borough does not dispute that it intends to reassign police dispatching work to civilian dispatchers. All dispatching functions of the police department are currently performed by superior officers. It states, however, that the chief of police, deputy chief and captain of the police department will all retire on December 31, 1997. The Borough, by ordinance effective January 1, 1998, will eliminate the three positions and create a civilian police director position. It maintains this action constitutes a reorganization and, as a result of this reorganization, it will have reduced its complement of superior officers from nine to six. The Borough argued it must utilize the remaining six supervisory officers to its best advantage and therefore, redeploy these supervisory officers to street patrols in order to maintain the


level of police services previously rendered. It, therefore, is necessary to hire and use civilian dispatchers to continue the dispatch functions.

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).

When an employer engages in a legitimate reorganization to effectively fulfill its managerial mission, such an action constitutes a managerial prerogative and any reassignment of work flowing from such a reorganization is not subject to negotiation. Jersey City and POBA and PSOA, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), partial stay granted P.E.R.C. No. 97-17, 22 NJPER 329 (¶27168 1996), aff'd 23 NJPER 325 (¶28148 5/5/97), pet. for certif. granted [App. Div. Dkt. No. A-6290-95T2 (5/5/97)].

Here, there is a substantial question as to whether the employer has, in fact, engaged in a legitimate reorganization and its actions therefore were not subject to negotiations.

Accordingly, the PBA has not met its heavy burden that it has a substantial likelihood of success on the law in this matter. The application for interim relief is denied.


Edmund G. Gerber
Commission Designee

DATED: October 17, 1997
Trenton, New Jersey