

P.E.R.C. NO. 2013-8

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCAL 134,

Respondent,

-and-

Docket No. CE-2011-015

COUNTY OF BERGEN,

Charging Party,

-and-

BERGEN COUNTY SHERIFF'S OFFICE,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission grants the request of the County of Bergen and the Bergen County Sheriff for reconsideration of I.R. 2012-4. In that decision, a Commission designee denied the County's request for interim relief filed in conjunction with an unfair practice charge filed against PBA Local 134. The charge alleges that PBA Local 134 violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4b(3) and (5), when it refused to negotiate economic terms of a successor agreement with the County Executive. The Commission grants reconsideration holding that the County has a likelihood of success on the merits of its unfair practice charge as the County and the Sheriff's Office are joint employers.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Detzky and Hunter, LLC, attorneys
(Stephen B. Hunter, of counsel)

For the Charging Party, Cleary, Giacobbe, Alfieri and
Jacobs, LLC, attorneys (Matthew J. Giacobbe, of
counsel)

DECISION

The County of Bergen seeks a reconsideration of I.R. No. 2012-4. In that decision a Commission Designee denied an application for interim relief submitted by the County with an unfair practice charge alleging that P.B.A. Local 34 refuses to negotiate with the County as a "joint employer" with the Sheriff of corrections and sheriff's officers. The joint employer designation was ordered by the Commission in Bergen County Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984). The

charge alleges that P.B.A. Local 34 has violated 5.4b(3) and (5) of the New Jersey Public Employment Relations Act.

The application sought an interim restraint enjoining the PBA from negotiating "economic terms" of a successor agreement without the County Executive and directing the PBA to immediately commence negotiations over economic terms with the County Executive. The charge and application for interim relief were filed on May 24, 2011.

By letter dated June 15, 2011 the Sheriff of Bergen County sought to intervene, and such intervention was approved on June 20, 2011. After submissions of briefs and certifications from all parties, the matter was argued by the County, the PBA on July 11, 2011 and the Commission Designee issued a written decision on July 18, 2011.

The Commission designee declined to restrain the PBA from refusing to negotiate with the County Executive over "economic issues" as a joint employer with the Sheriff because N.J.S.A. 40A:9-117 was amended shortly after the Commission decision in Bergen County Sheriff was issued to modify the authority of the Sheriff from "The sheriff shall select and employ the necessary deputies, chief clerks and other personnel. They shall receive such compensation as shall be recommended by the sheriff and approved by the governing body." to read " the sheriff shall select and employ the necessary deputies, chief clerks and other

personnel. The sheriff shall "fix the compensation they shall receive in accordance with the generally accepted county salary ranges, and within the confines of the sheriff's budget allocation set by the governing body."

Based upon this legislative change the Commission designee reasoned that there was not a substantial likelihood of success of the County's position that Bergen County Sheriff was still the law of the case and mandated that the County and the Sheriff continued to be joint employers.

The County argues that reconsideration is appropriate because the Commission Designee improperly disregarded the finding of the Superior Court in its decision in Prunetti v. Mercer County Board of Freeholders 350 N.J. Super. 72 (2001) wherein Judge Feinberg, some seventeen years after the amendment to N.J.S.A. 40A:9-117 found that a bifurcated joint employer approach to negotiations with employees of the Mercer County Sheriff was proper, and ordered that the County there modify its proposed Administrative Code to reflect that determination.

Further the County points to a number of decisions of the Commission, rendered well after the amendments to N.J.S.A. 40A:9-117 which maintained its view that the Sheriff and the County remain joint employers. In County of Hudson and PBA Locals 51 & 51A, P.E.R.C. No. 2008-43, 34 NJPER 6 (2008) wherein in the context of a challenge to the County's authority to transfer

patrol functions from its County Police Department to the Sheriff's Department, the Commission maintained the joint employer status over employees of the Sheriff stating, that under the amended statute, N.J.S.A. 40A:9-117, "...the sheriff now has enhanced statutory power over economic matters as well as complete control over non-economic matters." In yet a more recent decision, the Commission accepted the status of the Sheriff and the County as joint employers of employees of the Sheriff's department in a petition which sought to sever the sheriff's officers from the corrections officers where they had been represented in a combined unit for many years.

While the case turned upon the multi-employer status of the County and the Sheriff dealing with reference to the statutory authority regarding the corrections officers, nonetheless the Commission recognized the joint employer status of the County and the Sheriff vis a vis the Sheriff's officers. Ocean County Sheriff, 25 NJPER 116 (1999), aff'd , App. Div. 26 NJPER 170 (2000).

In addition to what has been set forth above, the County also points to N.J.S.A. 40:41A-36(I) which provides that the County Executive shall negotiate contracts for the County, subject to Board approval. The Commission designee made no effort in his decision to harmonize this express grant of authority to the County Executive with the language of N.J.S.A.

40A:9-117. Our Supreme Court has found, however, that "we conclude that the weight of reason and authority support the view that the sheriff and his office are part of county government."

IN RE APPLICATION OF THE BURLINGTON COUNTY BOARD OF CHOSEN FREEHOLDERS FOR AN INVESTIGATION OF THE OFFICE OF SHERIFF, 99 N.J. 90, 491 A.2d 631 1985 N.J. LEXIS 232.

This determination leads to the inescapable conclusion that the County Executive is authorized, subject to Board approval, to negotiate contracts for the County, of which the Sheriff is but one part. This is in contradistinction with the County Prosecutor, who has been found to be a public employer separate and apart from the County, based at least in part on N.J.S.A. 2A:158-7, which provides that the County Prosecutor may petition the Assignment Judge of the County to seek additional funds beyond that allocated by the County in its budget, Bruce M. Schragger v. Board of Chosen Freeholders of Mercer County, 58 N.J. 274 (1971). There is no such authority under any statute or citation to which we have been referred which grants the Sheriff authority to exceed his budgetary allotment from the County.

Further, in light of the determination cited above that the Sheriff and his office are part of County government, then it follows that any agreement, even if negotiated by the Sheriff must require ratification by the County. In County of Essex and OPEIU, P.E.R.C. No. 89-135 (1989) the Commission dismissed an

unfair practice charge against the County predicated on the allegation that a memorandum of understanding was never sent to the Board of Freeholders for ratification. In dismissing the charge the Commission found that the memorandum was not a final version indicating the consummation of negotiations, but found no fault with charging party's premise that a proper memo would require approval of the Board of Freeholders before a binding contract was reached.

In the light of all that has been said above, the Commission finds that the County's request for reconsideration should be granted, and the restraint of interim relief should be vacated. Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we grant such a motion. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), N.J.A.C. 19:4-8.4. This is such a case.

Firstly, this is clearly a case of exceptional importance. In the context of an interim relief proceeding that decision reversed over 25 years of consistent precedent regarding the joint employer status of the Sheriff and the County government, affecting every one of the twenty one counties in which the issue has been raised. Thus the far-reaching consequence of this decision certainly qualifies it as having exceptional importance to the stability of labor relations throughout the State of New Jersey.

Secondly, this is a case of first impression regarding the amendment to N.J.S.A. 40A:9-117, and based upon the Commission Designee having not given appropriate consideration to Prunetti, supra, and only minimal attention to N.J.S.A. 40:41A-36(I), it cannot be said that the County does not have a substantial likelihood of success in its position.

Additionally, the relative hardship to the parties also mitigates in favor of permitting the County to participate in the ongoing collective negotiations. Even read most favorable to the Respondent, the County not only retains control over the budget for the Sheriff, but any agreement reached must comport with the generally accepted salary ranges established by the County.

ORDER

For all of the reasons set forth above, reconsideration is hereby granted, and the Order of the Commission designee is vacated. This case is transferred to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Voos voted in favor of this decision. None opposed. Commissioner Wall recused himself.

ISSUED: September 6, 2012

Trenton, New Jersey