

I.R. NO. 2003-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-2003-31

P.B.A. LOCAL 153,

Charging Party.

SYNOPSIS

A Commission Designee denies interim relief on the PBA's charge that the County ordered the PBA to give up its union office at the County Jail. The Commission Designee finds that the PBA has not demonstrated a substantial likelihood of success on the merits. Since the PBA is no longer the majority representative, it is not entitled to the union security benefits of the expired contract.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(James L. Plosia, Jr., of counsel)

For the Charging Party,
Iacullo and Martino, attorneys
(Steven Martino, of counsel)

INTERLOCUTORY DECISION

On August 1, 2002, the Patrolmen's Benevolent Association Local 153 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Essex County (County) violated 5.4a(2) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} by ordering the PBA to surrender its union office in the County Jail.

^{1/} This provision prohibits public employers, their representatives or agents from: "(2) Dominating or interfering with the formation, existence or administration of any employee organization. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

This dispute originated in the New Jersey Superior Court Chancery Division when the PBA filed its Order to Show Cause with temporary restraints. On July 29, 2002, Judge Levy denied restraints and agreed with the County that this Commission had proper jurisdiction over the dispute.

The unfair practice charge filed with the Commission on July 29, 2002 was accompanied by an application for interim relief and temporary restraints pursuant to N.J.A.C. 19:14-9. On August 1, 2002, I signed an Order to Show Cause scheduling the return date on the interim relief application for August 9, 2002. With the consent of the County, I entered a temporary restraining order prohibiting the County from evicting the PBA from its office until this matter could be heard on the Order to Show Cause. The parties submitted briefs and affidavits in accordance with Commission rules and argued orally on the scheduled return date. The following facts are undisputed:

Until December 2001, PBA Local 153 was the exclusive representative of the County's corrections officers at the County Jail. Following a secret ballot election conducted by the Commission on December 6, 2001, the FOP replaced the PBA as the negotiations unit's exclusive representative.

The PBA and the County had a collective negotiations agreement in effect until December 31, 2001. A 1984 interest arbitrator's award, which the parties have treated as incorporated into the collective agreement, includes this provision:

The County of Essex shall provide the Union with a place in the Essex County Jail mutually agreed upon by the parties, in an office large enough to conduct PBA business. This provision to go into effect in 1985.

PBA Local 153 had the use of a large office in the Jail until January 2001. Just after the Commission certified the FOP as the unit's exclusive representative, the County gave the large office formerly used by the PBA to the FOP; the PBA was given a "transitional" office to use in the Jail.

In July 2002, the County notified the PBA Local 153 president that the PBA would be required to surrender its office space, and that the PBA officers would face discipline if they refused to comply with the directive. This charge ensued.

ANALYSIS

The PBA argues, if forced to vacate its union office at the County Jail, it will suffer irreparable harm because it will have "no place to conduct union business" and to represent its members at the Jail. With regard to the merits of the charge, the PBA alleges (a) the contract clearly grants PBA office space; (b) the contract, although expired December 31, 2001, continues in "full force and effect" until a successor is negotiated; (c) the County violated the Act by repudiating a negotiable provision of the contract; (d) the County had no legitimate business justification for its action; (e) the FOP has not negotiated a new agreement providing for its exclusive use of office space; and (f) the FOP has not filed a charge or objected to the PBA's use of its union office in the Jail.

The PBA maintains that the County's actions interfere with its existence and administration of its organization in violation of 5.4a(2). It alleges that enforcement of its contract right would not harm the exclusivity rights of the FOP.

The County maintains that the PBA has no employee organization rights to enforce under the expired contract, since it is no longer the majority representative of the unit employees. In fact, the County asserts that it risks violating the FOP's exclusivity rights under the Act by giving a minority organization office space. The County cites City of Newark, P.E.R.C. No. 96-53, 22 NJPER 64 (¶27030 1996), aff'g H.E. No. 96-4, 21 NJPER 371 (¶26233 1995), in which the employer was found to have violated the Act by continuing to permit the minority organization release time to conduct union business even after it was no longer the majority representative of the employees.

N.J.S.A. 34:13A-5.3 provides,

Representatives designated or selected by public employees for the purposes of collective negotiation . . . shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit.

* * *

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be

negotiated with the majority representative before they are established.

Commission caselaw, although not directly ruling on union office space, generally suggests that once the incumbent is replaced as the majority representative, its organizational rights as the employees' representative come to an end. In FOP (Baran), A.B.D. No. 91-2 16 NJPER 502 (¶21221 1990) the Commission Appeal Board held:

(An incumbent union's) ouster as the majority representative nullified the agency shop clause of the agreement, which had already expired. See Modine Manufacturing Co., 216 F. 2d. 326, 329 (6th Cir. 1954) and Milk Drivers, etc. Local 680 v. Cream-O-Land Dairy, 39 N.J. Super. 163 (App. Div. 1956). Modine holds that after employees change their majority representative, the union security provisions of the existing agreement become inoperative ["(the ousted union) could not insist on compensation, namely the membership dues, for the service which it could not continue to give."] Cream-O-Land considered an ousted union's demand to arbitrate five claims after contract expiration, three of which alleged breaches during the term of the agreement of provisions on wages, pension contributions and holiday compensation and two of which demanded adherence to union security provisions. 39 N.J. Super. at 169. The Appellate Division (which cited Modine at 173) barred arbitration over the union security issues. Id. at 177. Thus the courts have distinguished between terms of an agreement which involve recognition of the majority representative and those setting the working conditions of employees. Those contract terms which depend on the right of the contracting union to continue as the majority representative of employees in the unit are nullified when the majority representative is changed, regardless of whether the contract has expired. (emphasis added)

This case was cited by the Commission in Howell Tp. Bd. of Ed., P.E.R.C. No. 94-19, 19 NJPER 452 (¶24213 1993), aff'g H.E. No. 93-29, 21 NJPER 1 (¶26000 1993), finding that the recently ousted incumbent representative was no longer entitled to agency fees under the terms of the expired contract.

Here, I find that the PBA has not demonstrated that it will likely succeed on the merits of its charge. The Commission's cases, although scant on this area of law, suggest that the former employee representative is not entitled to the union security benefits of the contract. See Newark. While terms and conditions of employment of the employees remain in effect until the new representative negotiates a successor contract (or obtains one through interest arbitration), the PBA retains none of its rights as the former exclusive representative. As the new exclusive representative, the FOP "inherits" the union rights provisions of the contract, such as union release time, bulletin boards, and so forth.^{2/}

Further, it appears that only the exclusive representative has standing to seek enforcement of a collective negotiations agreement. For example, we have previously held that only the majority representative has standing to charge that the employer has unilaterally changed or repudiated the contract. N.J. Dept. of Environmental Protection, D.U.P. No. 98-18, 23 NJPER 534 (¶28260

^{2/} Exceptions to this principle are dues deductions and agency fees, which must be negotiated by the newly certified representative. See Howell Tp. Bd. of Ed.

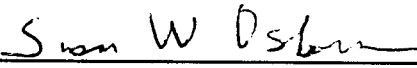
1997). Further, in Bayonne Bd. of Ed., 4 NJPER 160 (14077 1978), the Commission observed,

an employee organization does not retain any rights under a collective negotiations agreement, or otherwise, to administer a contract by presenting and/or processing grievances once that organization is decertified. 4 NJPER at 162.

Based on the foregoing, it appears that the PBA, as the minority organization, is not entitled to the office space under the provisions on the expired contract. Therefore, PBA has not demonstrated that it will likely prevail on the merits of its charge. Accordingly, interim relief must be denied.^{3/}

ORDER

The PBA's application for interim relief is denied.



Susan Wood Osborn
Commission Designee

DATED: August 12, 2002
Trenton, New Jersey

^{3/} Given my findings on the first part of the interim relief test, there is no need to decide whether there is irreparable harm.