

I.R. NO. 2001-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF/COUNTY OF
SOMERSET,

Respondent,

-and-

Docket No. CO-2001-281

SOMERSET COUNTY PBA LOCAL 177,

Charging Party.

SYNOPSIS

Somerset County PBA Local 177 alleged that in contravention of prior related Commission decisions involving these parties, Somerset County wrongfully required a female corrections officer to work overtime in order to maintain a staffing level of two females on a shift. Local 177 also alleged that the County's determination to require a minimum of two female corrections officers on duty each shift pursuant to a memorandum issued on December 13, 2000, constituted a unilateral change in terms and conditions of employment. The County claimed that the prior Commission decisions did not limit it to assigning only one female corrections officer to a shift nor did the memorandum change existing terms and conditions of employment. The Commission Designee found that the prior Commission decisions do not appear to prohibit the County from assigning more than one female corrections officer per shift nor does it appear that the County has changed extant conditions of employment by issuing the memorandum. Accordingly, the Commission Designee found that Local 177 had not established the requisite likelihood of success.

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Appearances:

For the Respondent,
Stanton, Hughes, Diana, Cerra, Mariani & Margello, attorneys
(Mark K. Diana, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On April 5, 2001, the Somerset County PBA Local 177 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Somerset County Sheriff/County of Somerset (County or Sheriff) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A.

34:13A-5.4a(1), (2), (3), (4) and (5).^{1/} The PBA alleges in its charge that the County wrongfully required a female corrections officer to work overtime in order to maintain a staffing level of two females on a shift in contravention of the Commission's decisions in Somerset County Sheriff, P.E.R.C. No. 2000-20, 25 NJPER 419 (¶30182 1999), mot. for recon. den. P.E.R.C. No. 2000-38, 26 NJPER 16 (¶31003 1999). Additionally, during oral argument, the PBA asserted that the County's determination to require a minimum of two female corrections officers on duty during each shift as reflected in a memorandum (No. 134-00) issued on December 13, 2000, constitutes a unilateral change in terms and conditions of employment. The unfair practice charge was accompanied by an application for interim relief. On April 10, 2001, an order to show cause was executed and a return date was initially set for May 8, 2001 and subsequently rescheduled to May 15, 2001. The parties

^{1/} 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."

submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the rescheduled return date. The following facts appear.

On January 16, 1999, the County petitioned the Commission for a scope of negotiations determination. The petition sought a restraint of binding arbitration of grievances filed by the PBA. The grievances asserted that the Sheriff violated the parties collective agreement by denying two female corrections officers their preferred shifts and regular days off and permitted less senior male officers to choose those shifts and days off. On August 27, 1999, the Commission issued its decision (Somerset County Sheriff, P.E.R.C. No. 2000-20) granting in part and denying in part the Sheriff's request to restrain arbitration. The Commission held that:

...the parties have negotiated a clause that recognizes management's right to deviate from the seniority bidding system to ensure that 'appropriate staffing levels' are met. Our jurisdiction does not extend to deciding whether the Sheriff had a contractual right to deny the shift and days off requested by [the employees at issue here]. Ridgefield Park Ed. Ass'n v. Ridgefield Bd. of Ed., 78 N.J. 144, 154 (1978). An arbitrator must make that determination. But the Sheriff's obligation to comply with statutory and regulatory requirements pertinent to shift assignments must be recognized. N.J.S.A. 30:8-12 requires that the Sheriff 'appoint one or more female guard or guards over such female prisoners at all hours during the night.' That requirement applies to two shifts in this case. And, absent an emergency, strip searches must be conducted by a guard of the same sex as the prisoner. N.J.A.C. 10A:3-5.7; N.J.A.C. 10A:31-8.5(e); N.J.A.C. 10A:31-21.2. In light of these requirements, the employer had a right to

determine that it needed to have at least one female correction officer assigned to every shift. But these requirements do not entitle it to have additional female officers on every shift as well. Compare Pequannock Tp. Bd. of Ed., P.E.R.C. No. 91-116, 17 NJPER 339 (¶22151 1991) (employer had prerogative to have one custodian with black seal license on overtime detail, but not two custodians). It is true that the employer will have an occasional need to replace the regularly assigned female officers, but governmental policy making powers would not be substantially limited if it agreed to do so through overtime assignments or temporary shift changes. See Borough of Garwood, P.E.R.C. No. 90-50, 16 NJPER 11 (¶21006 1989). [25 NJPER at 421.]

Thus, the Commission restrained arbitration to the extent the grievances, if sustained, would compromise the employer's statutory right to have at least one female corrections officer on every shift. However, the Commission declined to restrain arbitration to the extent the Sheriff claimed a statutorily preemptive right or non-negotiable prerogative to have two or more female corrections officers on every shift.

On September 24, 1999, the County moved before the Commission for reconsideration. The County asserted that it is obligated by statute and regulation to have at least two female corrections officers on every shift. The Commission found that no statute or regulation requires two female corrections officers on every shift. On November 16, 1999, the Commission issued its decision denying the County's motion for reconsideration (P.E.R.C. No. 2000-38). The issue of whether the County has the right under

the parties collective agreement has been reserved for arbitral review which is currently pending.^{2/}

On December 13, 2000, the County issued Memorandum No. 134-00 which stated, in relevant part, the following:

Effective December 14, 2000, there will be a minimum of two female Correction Officers on duty for each shift, (24 hours a day, no exceptions).

Mandatory overtime is a necessity in corrections when mandatory-staffing requirements cannot be fulfilled on a voluntary basis. All officers will and should prepare for possible mandatory overtime, i.e. child care and any other personal matter.

The PBA contends that the extant term and condition of employment provides for a minimum of one female corrections officer on duty 24 hours per day and that Memorandum No. 134-00 changed that condition of employment on December 13, 2000 by requiring a minimum of two female corrections officers on duty for each shift. In support of its position, the PBA submitted "jail directives" issued on May 7, 1998 and February 3, 1999 which both provide for the scheduling of a minimum of one female corrections officer on duty 24 hours per day. The County contends that the extant condition of employment provides for a minimum of two female corrections officers scheduled per shift. The County relies upon the affidavit of

^{2/} On November 30, 1999, the Sheriff filed an appeal of the Commission's decision with the Appellate Division and requested the Court to restrain binding arbitration. The parties are awaiting the Appellate Division's ruling. Pending that ruling, an arbitration date on the grievances has not been set.

Captain John Niko, at paragraph 3, wherein he states that in preparing the annual shift and regular day off (RDO) schedules for 1999, 2000 and 2001, he has scheduled at least two female corrections officers for each shift. In further support, the County has submitted work schedules for each of those years and represents that those schedules demonstrate that at least two female corrections officers have been scheduled for each shift.

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).

It appears that the PBA reads the Commission's scope determinations as prohibiting the Sheriff from assigning more than one female corrections officer per shift. However, it does not appear that the Commission has issued such an order. The Commission has ruled that the County does not have a managerial prerogative or statutory preemption which would allow it to deviate from seniority in order to assign more than one female corrections officer to work

each shift. The Commission has not reached the issue of whether the County has a right under the terms of the collective agreement to deviate from seniority in order to have more than one female corrections officer assigned to a shift. That issue is currently pending before the arbitrator. Neither of the Commission's Somerset County Sheriff decisions, at this juncture, contained an affirmative order to the County regarding the number of female corrections officers it could assign to work on a particular shift.

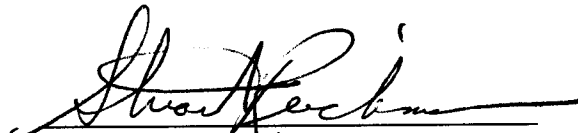
Concerning the PBA's allegation that the County has unilaterally changed terms and conditions of employment when it issued Memorandum 134-00, I find this issue to constitute a material factual dispute. It is unclear from the respective submissions of the parties as to what constitutes the existing term and condition of employment relative to the assignment of female corrections officers per shift. I note that the language contained in the "jail directives" calling for a minimum of one female corrections officer on duty 24 hours a day does not necessarily conflict with the County's position that two female corrections officers have been scheduled for each shift since 1999. While I make no finding with respect to what constitutes the existing terms and conditions of employment, I find that this issue is properly resolved through the conduct of a plenary hearing.

Consequently, for the reasons expressed above, I find that the PBA has not, at this early stage of the dispute, established a substantial likelihood of prevailing in a final Commission decision

on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Accordingly, I decline to grant the PBA's application for interim relief. This case will proceed through the normal unfair practice mechanism.

ORDER

The PBA's application for interim relief is denied.


Stuart Reichman
Commission Designee

DATED: May 17, 2001
Trenton, New Jersey