D.U.P. NO. 2000-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

MONMOUTH COUNTY &
MONMOUTH COUNTY SHERIFF,

Respondent,

-and- Docket No. CO-99-245

MONMOUTH COUNTY CORRECTIONS PBA
LOCAL 240 & MONMOUTH COUNTY SHERIFF'S
OFFICERS PBA LOCAL 314,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Monmouth County PBA Locals 240 and 314 against Monmouth County and the Monmouth County Sheriff. The charge alleges that the County repudiated the parties' collective negotiations agreement and refused to negotiate in good faith when it failed or refused to implement the Attorney General's guidelines for drug testing of law enforcement officers. Although drug testing procedures are negotiable, the Director found that the County had no mid-contract obligation to negotiate over drug testing procedures or to change existing procedures. The parties were in negotiations in the Fall of 1998, just after the Attorney General's guidelines were revised. The Locals do not allege that they sought to negotiate over drug testing procedures, or that the County refused during negotiations to discuss proposed changes to the procedures.

The PBA Locals also allege that the County's failure to conform its drug testing policies to the Attorney General's guidelines repudiates the PBA collective negotiations agreements. However, the Director found that no facts alleged support this repudiation claim as there is no reference to drug testing in the parties' agreements.

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Appearances:

For the Respondent
Robert J. Hrebek, Asst. County Counsel

For the Charging Party
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 27 and March 15, 1999, Monmouth County PBA Locals 240 and 314 filed an unfair practice charge and an amended charge, respectively, with the Public Employment Relations Commission against Monmouth County and the Monmouth County Sheriff. The charge and amended charge allege that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4a(1),

(2), (3), (5) and (7)[1/] and section 13A-21 of the Act[2/] when it failed to conform its employee drug testing policy to those drug testing policies of the State Attorney General and thereby repudiated its collective negotiations agreements with the PBA locals.[3/]

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has

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1/ These provisions prohibit public employers, their representatives and 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; (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; and (7) Violating any of the rules and regulations established by the commission.

2/ This provision provides that: "During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act.

3/ The charge does not identify specifically which parts of the collective negotiations agreements were repudiated.

delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint. N.J.A.C. 19:14-2.3. Based upon the following facts, I find that the Complaint issuance standard has not been met.

Local 240 represents the County's corrections officers and Local 314 represents its sheriffs officers. Prior to July 1996, the County proposed a drug testing policy which would cover these employees. By letter dated July 1, 1996, PBA counsel responded, stating in part:

> Kindly accept this letter as a statement of P.B.A. Local 240's position as it relates to the drug testing policy which Monmouth County intends to implement at the correctional facility.
>
> ...While P.B.A. Local 240 played no role in the decision to implement this policy, both myself [sic] and officers of P.B.A. Local 240 have had the opportunity to review the policy and procedures which will be implemented in the County. Having so reviewed the policy you provided to us, it does appear that the policy complies with applicable legal and public policy considerations.
>
> ...Should any changes or modifications be made to the drug testing policy, P.B.A. 240 reserves the right to meet and discuss any proposed changes or modifications before they are made.[4/]

On August 27, 1997, the County implemented its policy, entitled "General Order #97-12, Substance Abuse Policy." It appears that this policy was revised in November 1997.

4/ We are not aware of any response by Local 314.

The Attorney General's "Law Enforcement Drug Testing Policy" was issued in October 1986, and revised in August 1990 and again in September 1998. As revised, it states, in relevant part:

> A. This policy applies to:
>
> 3. Sworn law enforcement officers who are responsible for the enforcement of the criminal laws of this State, come under the jurisdiction of the Police Training Act and are authorized to carry a firearm under N.J.S.A. 2C:39-6.
>
> B. This policy does not require law enforcement agencies to drug test applicants, nor does it require law enforcement agencies to implement a random drug testing program for sworn officers. However, law enforcement agencies have an independent obligation to undertake the drug testing of individual officers when there is a reasonable suspicion to believe that the officer is illegally using drugs.

The PBA alleges that the County's policy differs from the Attorney General's policy in several provisions. The PBA alleges specifically that the County's drug testing program fails to randomly select employees for testing, fails to inquire into testees' recent ingestion of prescription drugs, and fails to submit samples to the Attorney General's prescribed laboratory.

The County and Locals 240 and 314 are parties to a series of collective negotiations agreements. In Spring 1998, both locals initiated interest arbitration, but withdrew from that process when the parties agreed upon the terms of successor agreements. Local 240 concluded negotiations in December 1998 and Local 314 finished in January 1999. Both contracts were executed by February 1999. The County contends that neither PBA local sought to negotiate over

the impact of the Attorney General's guideline revisions during negotiations for the most recent contracts.5/

ANALYSIS

The issue raised in this case is whether the County failed or refused to negotiate in good faith with the two PBA Locals by failing or refusing to adopt the Attorney General's Law Enforcement Drug Testing Policy after its September 1998 revisions.

Section 5.4a(5) of the Act prohibits public employers from "refusing to negotiate over terms and conditions of employment with the majority representative." Section 5.3 provides that the obligation is on the public employer to negotiate, prior to implementation, a proposed change in a term and condition of employment. An employer violates these sections when it unilaterally changes or implements negotiable terms of employment. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n. of Ed. Sec., 78 N.J. 25 (1978); Hunterdon Cty. and CWA, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986), on review of remand P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd NJPER Supp.2d 189 (¶168 1988), aff'd 116 N.J. 322 (1989).

There is no allegation here that the County unilaterally changed or implemented any negotiable drug testing procedures within

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5/ The PBA locals argue that "at the eleventh hour" the County attempted to include its current drug testing policy into the PBA agreements, but the negotiations resulted in no agreement on the drug testing provisions and they were left out of the agreements. However, this allegation was not pled in the PBA's charges.

the six months prior to the charge. The County has not changed its drug testing policy since November 1997. N.J.S.A. 34:13A-5.4(c) provides that no complaint shall issue based upon any unfair practice occurring more than six months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the six month period shall be computed from the day he was no longer so prevented. The only event which occurred within six months from the filing of the charge is the September 1998 issuance of the revised "Attorney General's Law Enforcement Drug Testing Policy".

The allegation here is not that the County unilaterally changed its existing drug testing policy, but that the County is refusing to change the existing policy. In Bor. of Upper Saddle River, D.U.P. No. 99-9, 25 NJPER 80 (¶30032 1999), I considered an allegation that an employer violated the Act by refusing to change an illegal work schedule and refusing to negotiate mid-contract over an alternate schedule. I fount that, although work schedules are generally negotiable, the employer had no mid-contract obligation to negotiate over existing work schedules. Here, similarly, drug testing procedures are within the scope of negotiations for law enforcement employees.6/ However, the County had no mid-contract

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6/ See FOP Newark Lodge No. 12 v. City of Newark, 216 N.J. Super. 461 (App. Div. 1987); City of Newark and Fraternal Order of Police, Lodge No. 12, P.E.R.C. No. 91-5, 16 NJPER 435 (¶21186 1990), aff'd NJPER Supp.2d 257 (¶212 App. Div. 1991) and Hopatcong Bor., P.E.R.C. No. 91-60, 17 NJPER 62 (¶22028 1990).

obligation to negotiate over drug testing procedures or to change existing procedures. Upper Saddle River. Further, the PBA locals were in negotiations in the Fall of 1998, just after the Attorney General's guidelines were revised. The locals do not allege that they sought to negotiate over drug testing procedures; nor do the PBA locals allege that the County refused during negotiations to discuss proposed changes to the procedures.

The PBA locals also allege that the County's failure to conform its drug testing policies to those of the Attorney General's guidelines repudiates the PBA collective negotiations agreements. However, no facts alleged support this repudiation claim as there is no reference to drug testing in the parties' agreements.

Based on the above, I find that since there is no claim of an impermissible unilateral change in a mandatorily negotiable condition of employment by the employer, PBA Local 240 and 314's allegatons do not constitute a violation of 5.4a(5) of the Act.

Although the PBA has alleged that the County also violated 5.4a(2), (3) and (7) of the Act, it has not proffered facts to support the claims that the County's actions interfered with the administration of either Local 240 or 314; discriminated against their members nor cited any violation of a Commission rule or regulation. Accordingly, I dismiss those allegations.

I also dismiss the allegation that the County violated section 13A-21 of the Act since that provision prohibits an employer from making unilateral changes in negotiable terms and conditions of

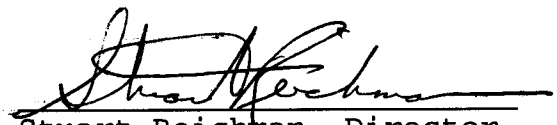
employment during interest arbitration. As noted above, no change was made in the existing drug testing procedures.

For the foregoing reasons, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint on the allegations of this charge.7/

ORDER

The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: June 20, 2000
Trenton, New Jersey

7/ N.J.A.C. 19:14-2.3.