

P.E.R.C. NO. 98-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-H-97-220

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 249,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Burlington violated the New Jersey Employer-Employee Relations Act by unilaterally transferring work historically performed by correction officers represented by the PBA in the ID section to non-unit employees. The Commission concludes, on this record, that the County had an obligation to negotiate before transferring the disputed duties to non-unit personnel. The Commission orders the County to restore all ID Section duties to employees represented by the PBA pending negotiations over any transfer of those duties to County employees outside that negotiations unit.

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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BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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COUNTY OF BURLINGTON,

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Docket No. CO-H-97-220

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 249,

Charging Party.

Appearances:

For the Respondent, Office of the County Solicitor, Evan H.C. Crook, County Solicitor (Charles B. Castillo, Assistant County Solicitor, on the exceptions)

For the Charging Party, Schneider, Goldberger, Cohen, Finn, Solomon, Leder & Montalbano, P.C. (Kevin P. McGovern, of counsel)

DECISION

On January 8, 1997, Policemen's Benevolent Association, Local 249 filed an unfair practice charge against the County of Burlington. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} by unilaterally transferring

^{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. (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."

work historically performed by correction officers represented by the PBA in the ID section to non-unit employees.

On April 14, 1997, a Complaint and Notice of Hearing issued. On October 24, Hearing Examiner Arnold H. Zudick denied the PBA's motion for summary judgment. He found that there was a material factual dispute over whether the County had reorganized the ID section.

On October 28, 1997, the parties stipulated the facts. They relied on the legal arguments in their motion briefs.

On December 22, 1997, the Hearing Examiner issued his report. H.E. No. 98-17, 24 NJPER 84 (¶29046 1997). Based on the stipulated facts, he concluded that the County had violated the Act by failing to negotiate with the PBA before transferring duties traditionally performed by negotiations unit members to non-unit County employees. He found that the County had not reorganized the ID section, but had shifted work for predominantly economic reasons. He recommended an order requiring the County to restore the status quo and negotiate before shifting unit work.

On January 7, 1998, the County filed exceptions. It argues that the transfer of work was part of a reorganization; the reorganization stemmed from staffing concerns raised by corrections officers; the New Jersey Department of Personnel (DOP) has determined that data control duties should be performed by data control clerks and not corrections officers; and any order to return to the status quo should be stayed pending the Supreme

Court's review in Jersey City and POBA and PSOA, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), aff'd 23 NJPER 325 (¶28148 App. Div. 1997), certif. granted S. Ct. Dkt. No. 44268 (10/6/97).

On January 12, 1998, the PBA filed an answering brief. It argues that the County's exceptions repeat its post-hearing brief verbatim and should not be considered; the County cannot introduce a DOP letter outside the record; the County can comply with the DOP decision after required negotiations; and the unilateral submission of the issue to DOP was an "end-run" around the Commission that violates the PBA's due process rights and makes a mockery of the unfair practice proceedings.

We have reviewed the record. We incorporate the stipulated facts.

The Hearing Examiner correctly cited the applicable case law. Under that case law, an employer is generally obligated to negotiate with the majority representative before shifting work historically performed by one group of employees within a negotiations unit to other employees outside the unit. See, e.g., North Arlington Bd. of Ed., P.E.R.C. No. 98-10, 23 NJPER 469 (¶28210 1997) and cases cited by Hearing Examiner at 7. However, where an employer has exercised its managerial right to reorganize the way it delivers government services it may, by necessity, be able to transfer job duties to non-unit employees without incurring a negotiations obligation. See, e.g., Maplewood Tp.,

P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (employer consolidating police and fire dispatching functions had managerial prerogative to employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed, P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (board had prerogative to reorganize supervisory structure for custodial employees with consequence that some unit work was shifted outside negotiations unit). The employer argues that this case fits within that reorganization exception to the unit work doctrine.

The facts are stipulated and limited. The employer transferred money card holder, bail officer, and desk officer duties that had been exclusively performed by corrections officers to non-unit employees. The employer also reduced the number of people performing the duties of money card officer and bail officer on the day shift; eliminated those duties on the overnight shift; split the duties of desk/classification officer into two positions; and limited classification officer duties to the day shift.

The Hearing Examiner found that the employer had to negotiate before shifting the duties to non-unit personnel. We agree. Although the employer eliminated some of these duties on certain shifts and split one position into two, those changes did not give the employer the right to implement unilaterally the severable decision that non-unit personnel would perform the remaining duties. Our reorganization cases involve situations where a change in how services will be delivered or how work is

organized necessitates a shift in work to non-unit personnel. For example, in Maplewood, police and fire dispatching had been performed separately by police and fire personnel. The employer consolidated dispatching services. Neither unit could then claim the consolidated work. Here, nothing in the stipulated record suggests that the shift in unit work was necessitated by the coverage changes and the split in the desk/classification officer duties.^{2/}

Thus, on this record, we conclude that the County had an obligation to negotiate before transferring the disputed duties to non-unit personnel. We will order the County to restore the status quo.

In its exceptions, the County has submitted a letter from a Human Resource Consultant at DOP indicating that employees in the title of Data Control Clerk, Typing are appropriately classified and that "these peripheral support duties" should continue to be removed from the responsibilities of the Correction Officer title. The PBA opposes our consideration of this document. We will not consider this document at this time. It was not submitted into the record before us. Even if we did, that limited record does not indicate what duties performed by employees in the title of Data Control Clerk, Typist had been

^{2/} Although the stipulated record recites that the salary range for correction officers was \$23,500 to \$39,250 and that the salary range for the employees who replaced them was \$14,000 to \$16,000, we cannot conclude, as the Hearing Examiner did in supporting his decision, that the motivation was economic based on that limited information.

performed by Correction Officers or whether that work is in dispute in this case. If the County is legally barred by DOP from complying with our Order, it may raise that issue as part of section B(4) of our Order. It may also seek reconsideration and a stay of our Order after issuance.

ORDER

The County of Burlington is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally transferring certain ID Section duties traditionally performed by employees in the negotiations unit represented by PBA, Local 249 to County employees outside that negotiations unit.

2. Refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to negotiate with the PBA before transferring ID Section duties performed by negotiations unit members to County employees outside that negotiations unit.

B. Take this action:


1. Restore all ID Section duties to employees represented by the PBA pending negotiations over any transfer of those duties to County employees outside that negotiations unit.

2. Negotiate in good faith with the PBA before transferring ID Section duties to employees outside the PBA's negotiations unit.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Within twenty (20) days of receipt of this decision, notify the Chair of the Commission of the steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: March 26, 1998
Trenton, New Jersey
ISSUED: March 27, 1998



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally transferring certain ID Section duties traditionally performed by employees in the negotiations unit represented by PBA, Local 249 to County employees outside that negotiations unit.

WE WILL cease and desist from refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to negotiate with the PBA before transferring ID Section duties performed by negotiations unit members to County employees outside that negotiations unit.

WE WILL restore all ID Section duties to employees represented by the PBA pending negotiations over any transfer of those duties to County employees outside that negotiations unit.

WE WILL negotiate in good faith with the PBA before transferring ID Section duties to employees outside the PBA's negotiations unit.

Docket No. CO-H-97-220

COUNTY OF BURLINGTON

(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 98-17

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-H-97-220

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 249,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the County of Burlington violated the New Jersey Employer-Employee Relations Act by failing to negotiate in good faith with PBA Local 249 prior to transferring duties traditionally performed by its unit members to non-unit County employees. The Hearing Examiner found that the County had not reorganized the ID Section, but shifted the work predominantly for economic reasons.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-H-97-220

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 249,

Charging Party.

Appearances:

For the Respondent, Office of the County Solicitor,
Evan H.C. Crook, County Solicitor
(Wayne A. Hamilton, Assistant County Solicitor, of
counsel)

For the Charging Party, Schneider, Goldberger, Cohen,
Finn, Solomon, Leder & Montalbano, P.C.
(Kevin P. McGovern, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On January 8, 1997, the Policemen's Benevolent Association, Local 249 ("PBA") filed an unfair practice charge with the Public Employment Relations Commission alleging that the County of Burlington violated paragraphs 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A et seq.^{1/} The PBA specifically alleged that the County

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,

unilaterally transferred work historically performed in the ID Section of the Burlington County Correctional Facility, by corrections officers represented by the PBA, to non-unit civilian employees. The PBA seeks a cease and desist order, and an order compelling the County to negotiate with it prior to transferring unit work.

A Complaint and Notice of Hearing issued on April 14, 1997 (C-1), originally scheduling a hearing for August 26, 1997. The hearing was subsequently rescheduled for October 28 and 29, 1997.

On October 9, 1997, the PBA filed a Motion for Summary Judgment (C-2) with the Commission. By letter of October 14, 1997 (C-3), the Special Assistant to the Chair assigned the Motion to me for consideration. N.J.S.A. 19:14-4.8. In its supporting brief (C-4), the PBA argued there were no material facts in dispute, and relying primarily on Jersey City and POBA and PSOA, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 199), partial stay granted P.E.R.C. No. 97-17, 22 NJPER 329 (¶27168 1996), aff'd 23 NJPER 325 (¶28148 App. Div. 5/5/97), certif. granted, S. Ct. Dkt.

1/ Footnote Continued From Previous Page

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."

No. 44268 (10/6/97), further argued that it is entitled to a decision in its favor as a matter of law.

In its brief in opposition to the Motion (C-5), the County argued it did more than just substitute civilians for corrections officers, it argued it had reorganized its ID Section which resulted in the consolidation of functions. The County further argued that Jersey City was distinguishable from this case.

On October 24, 1997, I issued a letter in lieu of a formal decision (C-7), denying the Motion. I found there was a material factual dispute over whether the County reorganized the Section.

The hearing commenced on October 28, 1997, at which time the parties stipulated facts. The transcript was received on November 7, 1997.^{2/} The parties were given until December 19, 1997 to file additional briefs. Neither party did so, instead they relied on the legal arguments they raised in their Motion briefs.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The County and PBA are parties to a collective agreement (J-1) which includes Correction Officers and ID Officers.

2. The parties stipulated the following facts:

^{2/} The transcript will be referred to as "T".

1. PBA Local 249 represents a group of corrections officers below the range of sergeant employed by the County of Burlington at the Burlington County Correctional Facility.

2. Corrections officers represented by PBA Local 249 have historically been employed in the ID section of the correctional facility in a variety of titles.

2A. Corrections officers have historically been employed in the title of money card officer. A money card officer is responsible for maintaining accountability of all inmate funds.

2B. Corrections officers have historically been employed in the title of bail officer. A bail officer handles all bails from start to finish and performs victim witness notification.

2C. Corrections officers have historically been employed in the title of booking officer. A booking officer handles the physical processing of new inmates.

2D. Corrections officers have historically been employed in the title of desk slash classification officer. A classification officer decides where inmates are placed in the jail. A desk officer is responsible for processing paperwork for new inmates.

3. At no time were the duties performed by corrections officers in the ID section shared with members of any other bargaining unit.

4. At no time were the duties performed by corrections officers in the ID section shared with civilians.

5. As of January 1997 there were 15 corrections officers performing the above reference duties in the ID section of the facility, 6 corrections officers during the 7 to 3 shift, 5 corrections officers during the 3 to 11 shift and 4 corrections officers during the 11 p.m. to 7 a.m. shift.

6. In or about January 1997 the County of Burlington transferred 11 corrections officers out of the ID section and placed them in other units of the correctional facility.

7. Three corrections officers bid into the ID section of the prison after January 1997.

8. The County of Burlington hired civilians to replace corrections officers transferred out of the ID section. The civilians hired by the County were assigned the duties of money card officer, bail officer and desk officer. Four civilians were hired to work the 7 a.m. to 3 p.m. shift, four civilians were hired to work the 3 p.m. to 11 p.m. shift and two civilians were hired to work the 11 p.m. to 7 a.m. shift.

9. After January 1997, seven corrections officers continued to work in the ID section in the positions of booking officer and classification officer. Three corrections officers work the 7 a.m. to 3 p.m. shift, two corrections officers work the 3 p.m. to 11 p.m. shift and two corrections officers work the 11 p.m. to 7 a.m. shift.

10. Concurrent with or shortly after the partial transfer of ID section duties to civilians Burlington County reduced the number of people performing the duties of money card officer and bail officer from two to one during the day shift. That is the 7 a.m. to 3 p.m. shift.

11. Concurrent with or shortly after the partial transfer of ID section duties to civilians Burlington County eliminated the duties of money card officer and bail officer during the overnight shift, that is the 11 p.m. to 7 a.m. shift.

12. Concurrent with or shortly after the partial transfer of ID section duties to civilians Burlington County split the duties of the desk slash classification officer into two positions.

13. The functions of desk officer were assigned to civilians. These duties were further divided between two civilians per shift.

14. The functions of classification officer remain with members of PBA Local 249.

15. Concurrent with or shortly after the partial transfer of ID section duties to civilians Burlington County limited classification officer work to the day shift, that is the 7 a.m. to 3 p.m. shift.

16. The County of Burlington maintains a minimum security facility in Pemberton, New Jersey, which also has an ID section.

17. Corrections officers continue to perform all ID section duties at the minimum security facility located in Pemberton, New Jersey.

18. The salary range for corrections officers as of January 1997 is between \$23,500 and \$39,250.

19. The civilians who replaced corrections officers in the ID section were hired an approximate salary range of between \$14,000 to \$16,000.

3. The parties also stipulated the following procedure with respect to the facts.

In so stipulating the parties recognize that the facts as stipulated constitute the complete record to be submitted to the Commission. The Charging Party is placed on notice that to the extent that the stipulated facts are insufficient to sustain the Charging Party's proof by a preponderance of the evidence the complaint may be dismissed by the Commission.

Similarly the Respondent is advised that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of the prima facia case established by the Charging Party.

ANALYSIS

The issue in this case is whether the County's unilateral shifting of work from its Corrections/ID Officers to its civilian employees was predominantly for economic reasons, or was predominantly based upon governmental policy considerations. The former reasons render the change mandatorily negotiable, the latter reasons render it non-negotiable. See

Paterson Police PBA, Local No. 1 v. City of Paterson, 87 N.J. 78, 92-93 (1981); Local 195, IFPTE v. State, 88 N.J. 393 (1982).

The law is well-settled that, generally, an employer is obligated to negotiate with the majority representative of a unit of its employees exclusively performing particular work before shifting that work to its employees outside that unit. North Arlington Bd. Ed., P.E.R.C. No. 98-10, 23 NJPER 469 (¶28219 1997); Jersey City; Bergen County, P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991); City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988); Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1980), aff'd in part 88 N.J. 393 (1982); Rutgers, The State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980).

Where, however, an employer reorganizes its work force predominantly to implement managerial policy determinations, it is not required to negotiate over related shifting of work. Jersey City; Maplewood, P.E.R.C. No. 86-22, 11 NJPER 521 (¶16180 1985); Freehold Reg. H.S. School Dist., P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984); Compare, Twp. of Montclair, P.E.R.C. No. 84-55, 9 NJPER 706 (¶14307 1983); City of Jersey City, P.E.R.C. No. 83-160, 9 NJPER 390 (¶14177 1983).

There were several changes in this case. A broad change occurred when the County initially transferred eleven Corrections

Officers to other sections of the correctional facility and hired ten civilians to do their previous work. Several specific changes occurred when the County: 1) reduced the number of Money Card Officer and Bail Officer positions on the day shift, 2) eliminated the Money Card Officer and Bail Officer positions on the overnight shift, 3) split the Desk/Classification Officer position into two positions, and 4) limited the Classification Officer to the day shift.

The County argued that by implementing the four specific changes it had reorganized the ID Section sufficient to avoid any requirement to negotiate over shifting unit work. It primarily relied upon Twp. of Maplewood and Freehold Reg. to support its contention.

The PBA argued that Maplewood and Freehold are distinguishable, and it relied on Jersey City; Borough of Bogota, I.R. No. 97-18, 23 NJPER 352 (¶28165 1997); and other cases to support its argument that the County did not reorganize the ID Section based on policy determinations, but did so predominantly for economic reasons. I agree with the PBA's analysis and find that Jersey City is the controlling case.

Nearly any change that an employer makes in its staffing, shifts, and hours of work can be labeled a "reorganization." But not all changes reach the level of reorganization in Maplewood. Certain changes made for economic reasons raise the requirement to negotiate.

The four specific changes the County made as enumerated above were managerial prerogatives. But that does not automatically mean the County was entitled to unilaterally shift the PBA's unit work. One was not a direct consequence of the other.

A public employer is not required to negotiate about overall staffing levels or about how many officers will be assigned to be on duty at a particular time, in a particular section, or deployed on a particular duty. Paterson; Local 195; Borough of Maywood, P.E.R.C. No. 87-133, 13 NJPER 354 (¶18144 1987); Bergen Cty, P.E.R.C. No. 83-110, 9 NJPER 150 (¶14071 1983); Town of Kearny, P.E.R.C. No. 81-70, 7 NJPER 14 (¶12006 1980); City of E. Orange, P.E.R.C. No. 81-11, 6 NJPER 378 (¶11195 1980), aff'd NJPER Supp.2d 100 (¶82 App. Div. 1981), certif. den. 88 N.J. 476 (1981).

Similarly, it is a managerial prerogative to implement a reduction in force, i.e. the elimination of specific positions/duties on specific shifts. Maywood Bd. Ed. v. Maywood Ed. Ass'n., 168 N.J.Super. 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979).

Thus, the County had the right to unilaterally reduce the number of Money Card and Bail Officers on the day shift and eliminate them from the overnight shift, split the Desk/Classification position in two positions, and limit the Classification duties to the day shift. Those changes were

managerial prerogatives and the County could have made them without shifting any PBA unit work. Consequently, negotiations over shifting the PBA's unit work would not have significantly interfered with the County's inherent prerogative to implement those four specific changes. Paterson, 87 N.J. at 93.

The County's decision to shift unit work was separate from its decision to implement the four specific changes, but all were economically motivated. The County could have hired additional Correction Officers to staff the ID Section positions made vacant when some officers were assigned elsewhere, but hired civilians for those ID positions to save money. The amount it saved was significant.

The County saved \$9,500 per civilian employee per year at the entry level compared to the Correction Officer entry level, up to a savings of \$23,250 per civilian employee per year hired at the top level compared to the Correction Officer at the top of the guide. Even the top of the range civilian employee saved the County \$7,500 per year as compared to an entry level Corrections Officer.

The County's economic motivation was the reason for shifting some of the PBA's unit work which is all the more apparent by the County's decision to shift only some of that work outside the unit. The County shifted enough work to realize the cost savings it desired.

The County did not "reorganize" the ID Section so as to eliminate the need for Correction Officers to perform Section duties. Rather, Correction Officers still perform many of the Section duties they always performed, three Correction Officers were able to bid back into the Section after the initial shift of unit work in January 1997, and the Correction Officers continue to perform all of the ID Section duties at the County's minimum security facility.

The County's reliance on Maplewood and Freehold is misplaced. In Maplewood the Township eliminated separate police and fire dispatching systems staffed separately by police and fire employees respectively, and created one new dispatching system to cover both departments staffed by civilian employees. The Commission found that dispute predominantly concerned the Township's prerogative to consolidate functions and it restrained arbitration of related grievances.

In Freehold, the Board abolished two rank and file custodial positions, created two new custodial supervisory titles outside the unit, and shifted the work of the former to the latter. The Commission held that case predominantly involved the Board's decision to create supervisory positions and that pursuant to the Local 195 balancing test, the shifting of work was a non-severable consequence of the reorganized supervisory structure.

Both Maplewood and Freehold are distinguishable from the instant facts. Here the County did not reorganize the ID Section

by changing the structure or nature of the ID duties. It merely reduced the number of officers needed to perform those duties. In comparison to Maplewood and Freehold, the County did not eliminate or abolish the ID Section or merge or consolidate its functions with another section, or recreate it into a significantly different function. As in Jersey City, I find here that the County reorganized only in the limited sense that it wanted to maximize the number of Correctional Officers in operational positions. While it had the right to move officers to operational positions, it could have replaced them with new officers. In order to save money, however, it merely substituted less costly civilian employees for Corrections Officers without making significant changes to the operation of the ID Section, and without first negotiating with the PBA over shifting of unit work.

Having considered the facts and legal arguments, I find that negotiations between the parties over the shifting of unit work would not have significantly interfered with the County's determination of governmental policy. Paterson.

Remedy

This decision does not mean the County cannot take action to save money, or that it can't shift unit work to achieve that purpose. It does mean, however, that where an employer has acted predominantly for economic reasons, it must first negotiate in good faith with a majority representative before shifting work

exclusively performed by employees in one unit, to employees outside that unit.

To make the remedy effective, the County must restore all ID Section duties to employees in the PBA's unit, and then negotiate with the PBA before shifting any of those duties to employees outside the unit. The County need not, however, undo the specifically enumerated changes it made regarding the Money Card, Bail Officer and Classification Officer positions. The County may either combine--or maintain the split in--the Desk/Classification duties, recognizing, of course, that it must negotiate with the PBA prior to shifting any of those duties to employees outside the PBA unit.

Accordingly, based upon the above findings/stipulations and analysis, I make the following:

Conclusions of Law

The County violated the Act by unilaterally shifting the PBA's unit work to non-unit employees.

Recommended Order

I recommend the Commission ORDER;

A. That the County cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally transferring certain ID Section

duties traditionally performed by employees in the negotiations unit represented by PBA, Local 249 to non-unit County employees.

2. Refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to negotiate with the PBA before transferring ID Section duties performed by unit members to non-unit County employees.

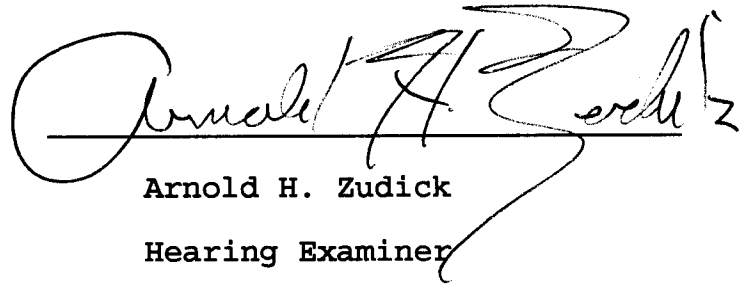
B. That the County take the following action:

1. Restore all ID Section duties to employees represented by the PBA pending negotiations over any transfer of those duties to non-unit County employees.

2. Negotiate in good faith with the PBA before transferring ID Section duties to employees outside the PBA's unit.

3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

4. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.



Arnold H. Zudick
Hearing Examiner

Dated: December 22, 1997
Trenton, New Jersey



RECOMMENDED



NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

H.E. NO. 98-17

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally transferring certain ID Section duties traditionally performed by employees in the negotiations unit represented by PBA, Local 249 to non-unit County employees.

WE WILL cease and desist from refusing to negotiate in good faith with the PBA concerning terms and conditions of employment of unit employees, particularly by failing to negotiate with the PBA before transferring ID Section duties performed by unit members to non-unit County employees.

WE WILL restore all ID Section duties to employees represented by the PBA pending negotiations over any transfer of those duties to non-unit County employees.

WE WILL negotiate in good faith with the PBA before transferring ID Section duties to employees outside the PBA's unit.

Docket No. CO-H-97-220

Burlington County
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"