

I.R. NO. 2013-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON (CORRECTIONS),

Respondent,

-and-

Docket No. CO-2013-039

POLICE BENEVOLENT ASSOCIATION
LOCAL 109,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Charging Party alleging that the Respondent violated the parties collective negotiations agreement ("CNA") when it abolished full time release time to attend to union business, reassigned the PBA President to a different tour and required 48 hours notice for him to be authorized union release time.

The Designee found that the CNA language was clear as to whether the full time union release could be abolished and whether the PBA President's tour could be changed. The Designee further found that the issue of the 48 hour notice requirement was an issue of contract interpretation and such disputes must be resolved through negotiated grievance procedures and do not warrant the exercise of the Commission's unfair practice jurisdiction.

The Designee found that the Charging Party had not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.

I.R. NO. 2013-4

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON (CORRECTIONS),

Respondent,

-and-

Docket No. CO-2013-039

POLICE BENEVOLENT ASSOCIATION
LOCAL 109,

Charging Party.

Appearances:

For the Respondent,
Scarinci Hollenbeck, attorneys
(Sean Dias, of counsel)

For the Charging Party,
Mets, Schiro and McGovern, LLP attorneys
(Steven Katz, of counsel)

INTERLOCUTORY DECISION

On August 13, 2012, Police Benevolent Association Local 109 ("PBA") filed an unfair practice charge against the Hudson County Department of Corrections ("County"), which was accompanied by an application for interim relief seeking temporary restraints, an affidavit, a brief and documents. The charge alleges that the County violated the parties collective negotiations agreement ("CNA") when it abolished full time release time to attend to union business, reassigned the PBA President to a different tour and required 48 hours notice for him to be authorized union release time. The PBA asserts that

the County's conduct allegedly violates 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The application seeks an Order requiring the County to return to the status quo ante. The County responds that the change in the PBA President's duties and tour and the 48 hour notice requirement is authorized by the specific language in the CNA.

On August 14, an Order to Show Cause without temporary restraints was issued. The County filed an opposition brief, a certification and a document. The parties presented oral argument via telephone conference call on September 21.

FINDINGS OF FACT

The PBA President has been granted full release time from work duties to attend to union business since approximately 1995. The current PBA President, Luis Ocasio ("Ocasio"), was elected in June 2010 and has been assigned to the 9 a.m. to 5 p.m. tour Monday through Friday on full union release time.^{2/} On July 19,

^{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."

^{2/} There are four tours available for the approximately 438 corrections officers: 6 a.m. to 2 p.m., 2 p.m to 10 p.m., 10
(continued...)

2012, Ocasio was informed by the Deputy Director of the County's Department of Corrections, that effective July 23, 2012, the practice of the PBA President having full release time was being abolished and he (Ocasio) was being reassigned to the 6 a.m. to 2 p.m. tour, Monday through Friday. Additionally, any request for union release time would be required to be made 48 hours prior to the release time.

The CNA at Article XIV, Section 6 provides:

The PBA President shall be assigned to a day tour, and to a duty assignment where he will be reasonably accessible to bargaining unit members. The PBA President shall be granted reasonable release time from work duties to attend to union business during work time, provided that such release time shall in no way interfere with the operation or normal routine of the correctional facility or any other County department, office or function, and provided further that the PBA President first secures permission from Director or his designee to utilize such release time, which permission shall not be unreasonably denied.

CONCLUSIONS OF LAW

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^{3/} and that irreparable harm will occur if the requested relief is

2/ (...continued)
p.m. to 6 a.m., and 9 a.m. to 5 p.m.

3/ Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999) (federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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). In Little Egg Harbor Tp., the designee stated:

[T]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

In pertinent part to the outcome of this decision, the PBA argues that the changes that occurred effective July 23 with respect to the repeal of full time union release, change of tour to 6 a.m. to 2 p.m. and the requirement for 48 hours notice prior to the approval of the union release time was a unilateral change

in a term and condition of employment and is mandatorily negotiable.

The County responds that the actions it took were authorized Article XIV, Section 6 of the CNA. Specifically, Ocasio is assigned to a day tour, Monday to Friday, in a duty assignment and he works in Unit 2 which makes him accessible to other PBA members. Labor negotiations, grievance hearings, disciplinary hearings and arbitrations are scheduled during Monday through Friday and usually between 8 a.m. and 11 a.m. Additionally, the 48 hour notice requirement is not unreasonable because the County needs an adequate amount of time to secure coverage for Ocasio's post if he is granted release time to attend to union business.

The Commission has held, "Where clear and unambiguous contract language grants a benefit to employees, an employer does not violate the Act by ending a past practice granting more generous benefits and by returning to the benefit level set by the contract." Kittatinny Reg. Bd. of Ed. P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991) citing, See, e.g., New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79).

In the instant case, Article XIV, Section 6 of the CNA clearly allows for Ocasio to be assigned to a day tour and in a duty status. Therefore, the change by the County in the past

practice of allowing the PBA President full union release time and being assigned to a different day tour does not constitute a violation of the Act.

The issue of the 48 hour notice requirement is not specifically mentioned in Article XIV, Section 6 of the CNA. However, the language states in pertinent part, "[A]nd provided further that the PBA President first secures permission from Director or his designee to utilize such release time, which permission shall not be unreasonably denied." Thus the issue is whether or not the 48 hours notice requirement is authorized and/or reasonable under the CNA language.

The Commission has held that "allegations setting forth 'at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction.' Contract disputes must be resolved through negotiated grievance procedures." Camden Cty Pros. P.E.R.C. No. 2012-42, 38 NJPER 289 (¶102 2012) citing, State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

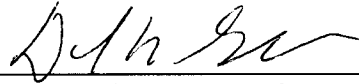
Based on the above, I find that the PBA has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain interim relief.^{4/} The application for interim

^{4/} As a result, I do not need to conduct an analysis of the other elements of the interim relief standard.

relief must be denied. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied. The charge will be forwarded to the Director of Unfair Practices for processing in accordance with the Commission's Rules.



David N. Gambert
Commission Designee

DATED: October 9, 2012
Trenton, New Jersey