

I.R. NO. 2023-9

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SALEM COUNTY SHERIFF'S
DEPARTMENT (CORRECTIONS),

Respondent,

-and-

Docket No. CO-2023-075

POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL 400,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application based on the unfair practice charge filed by PBA Local No. 400 ("PBA") against the Salem County Sheriff's Department (Corrections) ("County"). The charge alleged that the County violated sections 5.4a(1), (2), (3), (4), and (7) of the Act by unilaterally assigning civilians to perform duties previously performed by sworn corrections officers in the Correctional Facility's Maintenance Department. The Designee determined that the PBA had not established a substantial likelihood of success on its legal and factual claims, as there were material factual disputes, including whether the County actually removed any correctional officers from Maintenance Department assignments in September of 2022.

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Appearances:

For the Respondent,
Archer & Greiner, P.C., attorneys
(David A. Rapuano, of counsel)

For the Charging Party,
Sciarra & Catrambone, LLC, attorneys
(Christopher A. Gray, of counsel)

INTERLOCUTORY DECISION

On November 7, 2022, the Policemen's Benevolent Association, Local No. 400 ("PBA" or "Charging Party") filed an unfair practice charge accompanied by an application for interim relief against the Salem County Sheriff's Department (Corrections) ("County" or "Respondent"). The charge alleges that the County violated sections 5.4a(1), (2), (3), (4), and (7)^{1/} of the New

^{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 (continued...)"

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by unilaterally assigning civilians to perform duties previously performed by sworn Correctional Officers in the Correctional Facility's Maintenance Department. The charge alleges that the County's conduct violates the unit-work rule, as well as sections of the New Jersey Administrative Code that delineate duties and responsibilities of correctional personnel.

In support of its application for interim relief, the PBA submitted a legal brief with exhibits and a certification from Correctional Officer and PBA delegate Brian Pio ("Pio Cert."). In its proposed Order to Show Cause ("OTSC"), the PBA seeks the following interim relief:

(1) An order reinstating the transport and supervision of inmate work detail back to the responsibilities of the Corrections Officers;

2) An order prohibiting the transfer of responsibilities of transporting and supervising of inmates working maintenance duty to civilian staff;

(...continued)

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"; and "(7) violating any of the rules and regulations established by the commission."

(3) An order awarding Petitioner's attorneys' fees and costs of suit; and

(4) For such other, further, additional and different relief as this Commission deems just and proper.

On November 7, 2022, I signed an OTSC setting a briefing schedule and a return date for oral argument on November 23, 2022. The County requested a continuance of the briefing schedule and oral argument date, which was unopposed by the PBA. On November 21, 2022, I signed an amended OTSC setting a deadline of December 28, 2022 for the County's response to the OTSC, and January 6, 2023 for the PBA's reply to the County's response. On December 28, 2022, the County filed a brief and certification from Correctional Lieutenant Charles Angelus ("Angelus Cert."). On January 6, 2023, the PBA requested an extension of the deadline by which to submit a reply brief until January 9, 2023, which the County did not oppose. I granted the PBA's request. On January 9, 2023, the PBA filed a reply brief and supplemental certification from Correctional Officer Roxie D'Acciaio ("D'Acciaio Cert."). Oral argument on the OTSC was held by teleconference on January 11, 2023, at which time both parties appeared and had a full opportunity to argue their positions.

Based on the parties' submissions, the following facts appear:

The PBA is the majority representative of a unit of approximately 122 full-time, permanent and provisional Correctional Officers ("COs") employed by Salem County. (Angelus Cert., at ¶¶5-6). The PBA and County are parties to a Collective Negotiations Agreement ("CNA") covering the term of January 1, 2021 through December 31, 2024. (Angelus Cert., at ¶4).

On September 12, 2022, the PBA sent correspondence to Warden John Cuzzuppe ("Warden Cuzzuppe") stating in part "[i]t's been brought to the PBA's attention that recently we started allowing civilians to take inmates out of the unit to do maintenance work" and that the PBA believes that such conduct violates provisions of the New Jersey Administrative Code^{2/} and the unit work rule. Following an exchange of emails between the parties, Warden Cuzzuppe stated on September 13, 2022 that he did not agree that the administrative regulations ". . . have anything to do with

^{2/} Specifically, the PBA contends that the County is in violation of N.J.A.C. 10A:31-8.11 ("Inmate movements"), which provides:

"(a) Inmates shall move about the adult county correctional facility in an orderly fashion to facilitate the maintenance of security and the orderly operation of the facility.

(b) Inmate movements shall be observed by custody staff located in strategic areas in order to: (1) Detect the occurrence of assaults; (2) Deter the passage of contraband; (3) Maintain security and order; and (4) Expedite the movement of inmates from one location to another." N.J.A.C. 10A:31-1.3 provides that custody staff ". . . except as otherwise provided, means Custody Supervisors, Senior Correction Officers and Correction Officer recruits who have been sworn as peace officers."

restricting civilian maintenance workers from supervising inmates that are properly classified for work details on the premises. In addition, the NJ DOC has civilian staff supervising inmate work details." (PBA Reply Brief, at Ex. 2).

CO Brian Pio, a PBA delegate, certifies that the County "used to have" COs working in the County Correctional Facility's Maintenance Department, and that such CO's were responsible for duties including escorting inmates and performing laundry service. (Pio Cert., at ¶¶2-3). CO Pio certifies that in or about September of 2022, the County removed COs from the Maintenance Department "and began to assign civilians to work these maintenance positions." (Pio Cert., at ¶5). CO Pio certifies that civilian employees are now improperly performing CO duties, including searching and escorting inmates. (Pio Cert., at ¶6). CO Pio further certifies that the civilian employees are not performing laundry services, resulting in inmates being forced to remain in the same clothes for multiple days. (Pio Cert., at ¶7). The PBA asserts that the County's actions violate the unit work rule and create major safety hazards at the facility since civilians are not properly trained or authorized to perform Correctional duties. (Pio Cert., at ¶8).

In its brief submitted in support of its position, the PBA argues that the County was previously found to have violated the

unit work rule by an arbitrator on January 16, 2020. It argues the recent decision in Bergen County, P.E.R.C. No. 2019-20, 45 NJPER 208 (¶54 2018), is similar to the instant matter, and demonstrates the PBA's likelihood of success. The PBA argues it would face great hardship absent the granting of interim relief because the Union is undermined by the County's unilateral conduct, and because the safety and security of the prison is at risk while civilians improperly perform correctional functions.

Lieutenant Charles Angelus ("Lt. Angelus") submitted a certification in opposition to the PBA's petition. Lt. Angelus has worked in the Facility's Maintenance Department since 2010, and has served as "Maintenance Supervisor" since 2014. (Angelus Cert., at ¶1). Lt. Angelus currently supervises/manages four COs and four civilians that are assigned to the Maintenance Department. (Angelus Cert., at ¶17). Since at least 2010, the Maintenance Department has been staffed with a mix of COs and civilians.^{3/} (Angelus Cert., at ¶¶18-19).

Lt. Angelus certifies that there have been no material

^{3/} Lt. Angelus certifies that both civilian and CO maintenance employees perform "light maintenance" duties, including clearing clogged drains, changing light bulbs, and collecting trash. COs, rather than civilians, are "generally assigned" other maintenance duties, such as fixing broken locks or changing lights in housing units, because they are authorized to work unescorted in certain secured areas. (Angelus Cert., at ¶¶21, 23-24).

changes to the assignment of maintenance duties or the types of maintenance performed at the facility since at least 2010.

(Angelus Cert., at ¶¶20, 22). The County denies that any COs have been removed from maintenance assignments. (Angelus Cert., at ¶24) ("Sworn [COs] have always been and continue to be assigned to the Maintenance Department"). Lt. Angelus certifies that "[a]t no point in September 2022, or any other time since at least 2010, did the SCCF remove Correctional Officers generally from performing any tasks which they had normally performed." (Angelus Cert., at ¶32).

Although civilians work in Maintenance, Lt. Angelus certifies that civilian employees are prohibited from searching inmates for contraband, supervising inmates from a security standpoint, escorting inmates to holding cells, and securing inmates in holding cells. (Angelus Cert., at ¶28). Civilian employees performing such duties would be in violation of Facility rules and regulations. (Angelus Cert., at ¶29). The Facility has received no reports in the last twelve years alleging that civilian employees were improperly performing correctional job duties in the Maintenance Department, nor has Lt. Angelus been personally aware of such an occurrence. (Angelus Cert., at ¶30).

Lt. Angelus certifies that whether a specific inmate needs security supervision during a maintenance assignment is (and has

been for the last twelve years) determined on a case-by-case basis, depending on factors including the inmate's security classification and the types of tools required for a particular maintenance assignment. In situations where inmates work alongside civilian maintenance workers without a CO, the civilian employee "is not responsible for supervising the inmate in terms of maintaining security and control - only managing the work being performed." (Angelus Cert., at ¶31).

The County denies that there have been any disruptions to laundry services at the facility. (Angelus Cert., at ¶34) ("There has been no long-term disruption to inmates being able to have laundry at any time in the recent past - in at least the past year."). Lt. Angelus certifies that laundry is performed each weekday, and that, ". . . under normal circumstances, such as in the absence of machine breakage or extended lockdown . . ." inmates have clean uniforms every day. Lt. Angelus further certifies that both civilians and COs in the Maintenance Department perform laundry duties, though civilians generally perform a larger portion of the work. (Angelus Cert., at ¶¶34-35).

Lt. Angelus further certifies that CO Pio, who submitted a certification in support of the PBA's application for interim relief, has never been assigned to the Maintenance Department,

and therefore, has no personal knowledge of the matters set forth in his certification. (Angelus Cert., at ¶36).

While the County denies that there has been any change in maintenance assignments, it asserts that even if the alleged reassignments had occurred, the PBA is still unable to show a violation of the unit work rule because maintenance work has historically been shared between civilians and Cos. (County's Opposition Brief, at 7; Angelus Cert., at ¶¶18-19).

CO Roxie D'Acciaio submitted a certification in support of the PBA's application for interim relief. CO D'Acciaio certifies that she has worked in the Facility's Maintenance Department and that COs assigned to Maintenance perform duties including supervising and escorting inmates, laundry services, and bathroom cleaning/maintenance. (D'Acciaio Cert., at ¶¶2-4). CO D'Acciaio certifies that "[i]n or about September of 2022, the County removed Corrections Officers from this position and began to assign civilians to work these maintenance positions."

(D'Acciaio Cert., at ¶5). D'Acciaio further certifies that as a result of the County's reassignment, COS are no longer assigned to maintenance duties over the weekends, and therefore, "the clothing of inmates . . . [and] bathrooms are no longer being cleaned over the weekends," resulting in inmates wearing uniforms for two to three consecutive days. (D'Acciaio Cert., at ¶¶6-8).

ANALYSIS

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. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmeyer 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).

In advance of a hearing or more fully developed record, interim relief should not be granted “. . . except in the most clear and compelling circumstances.” 1 NJPER at 38. An applicant’s claim for interim relief should “rest on settled law” and “. . . where there is a dispute over material facts, we have held that interim relief is properly denied because the charging party will not have met its burden of showing that it has a substantial likelihood of success on the merits of its charge.” Rutgers University, P.E.R.C. No. 2023-23, __ NJPER __ (¶ __) (pp. 16-17 of Slip Op.); see also North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2008-61, 34 NJPER 113 (¶48 2008); County of Burlington, P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009).

In this case, I find the PBA has not established a substantial likelihood of success on its legal and factual claims. The record here presents material factual issues that require a plenary hearing concerning whether the County actually removed any COs from Maintenance Department assignments in September of 2022. Factual disputes also exist regarding whether the alleged reassignments had an impact on the provision of laundry services at the Facility, and whether the County's conduct, even accepting the PBA's allegations as true, constitutes a violation of state law or regulation.

Critically, the parties disagree on whether any COs have been removed from the Maintenance Department and replaced with civilian workers. Central to the PBA's application for interim relief is its allegation that "[i]n or about September of 2022, the County removed Corrections Officers from [Maintenance] position[s] and began to assign civilians to work these maintenance positions." (Pio Cert., at ¶7). The County, on the other hand, denies that any COs have been removed from maintenance assignments. (Angelus Cert., at ¶24) ("Sworn [COs] have always been and continue to be assigned to the Maintenance Department"). Lt. Angelus certifies that "[a]t no point in September 2022, or any other time since at least 2010, did the SCCF remove Correctional Officers generally from performing any tasks which they had normally performed." (Angelus Cert., at

¶32). Similarly, while the PBA contends that the alleged reassignment resulted in the inability to provide inmates with clean clothing, the County maintains that there has been no change in the provision of laundry services in at least the past year. (Pio Cert., at ¶7; Angelus Cert., at ¶34). Under Commission precedent, the PBA cannot show a substantial likelihood of success on the merits of its claims given these fundamental and material factual disputes.

The Commission's decision in Bergen County, P.E.R.C. No. 2019-20, 45 NJPER 208 (¶54 2018), relied upon by the PBA in support of its application for interim relief is distinguishable from the instant matter. In that case, the Bergen County PBA, Local No. 49, filed an unfair practice charge and application for interim relief alleging, in part, that Bergen County unilaterally (and in retaliation for protected activity) transferred unit work to non-unit members. In the interim relief decision affirmed by the Commission, the designee found, "[t]he Sheriff admits eliminating the day tour of County police officers and transferring their unit work to sheriff's officers. It maintains that it . . . exercised its managerial prerogative to determine staffing levels and assign personnel based on experience and training to address gaps in coverage and supervision resulting from attrition" Bergen County, I.R. No. 2019-6, 45 NJPER 123 (¶33 2018) (internal citations omitted). In this case, the

County denies that there have been any changes to the staffing or assignment of work in the Facility's Maintenance Department.

The PBA also asserts that following the removal of correctional officers from maintenance positions, civilian maintenance workers now perform certain correctional duties in violation of N.J.A.C. 10A:31-8.11, including searching inmates for contraband and escorting inmates to holding cells. (Pio Cert., at ¶¶5-6). The County maintains that civilians are not performing correctional functions, and that such conduct would be a violation of prison policy. It asserts that COs have not been removed from the Maintenance Department and continue to perform the same correctional duties, including searching and escorting inmates. Once again, in light of this material factual dispute, the PBA cannot meet the heavy burden necessary to obtain interim relief.

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over mandatorily negotiable terms and conditions of employment. In City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), the Supreme Court analyzed the transfer of unit work issue under the unit work rule and the balancing test set forth in Local 195, IFPTE, 88 N.J. 393 (1982). Under the unit work rule, the shifting of work from employees within a particular negotiations unit to other public employees outside of the unit is a mandatorily negotiable subject of

negotiations. An employer has an obligation to negotiate with the majority representative before shifting work to employees outside of the unit. Id. at 575. The rule contemplates three exceptions whereby the transfer of unit work is not mandatorily negotiable. The exceptions apply where (1) the union has waived its right to negotiate over the transfer of unit work, (2) historically, the job was not within the exclusive province of the unit personnel, and (3) the municipality is reorganizing the way it delivers government services. Id. at 577.

A material factual dispute also exists with respect to the PBA's unit work rule claim. The certification of CO Pio submitted with the PBA's original application for interim relief, states that the County removed correctional officers from maintenance work and replaced them with civilians. (Pio Cert., at ¶5). While the County denies this allegation, it asserts that even if it did shift maintenance work to civilians, it cannot be found to violate the unit work rule since Maintenance Department work has been shared between correctional personnel and civilians for at least the past twelve years. (Angelus Cert., at ¶¶18-19). This factual dispute requires a more complete record and precludes the granting of interim relief.

Given the material disputes expressed above, I find the PBA has not established a substantial likelihood of success on its

legal and factual claims, an essential element for the granting of interim relief.^{4/}

ORDER

The PBA's application for interim relief is **DENIED**.

/s/ James R. Glowacki
James R. Glowacki
Commission Designee

DATED: January 25, 2023
Trenton, New Jersey

^{4/} Having determined that the underlying claim is not settled and that there is a dispute of material facts, the analysis ends here and no further analysis of the remaining Crowe factors is warranted. Crowe, supra (explaining substantial likelihood of success is a prerequisite for obtaining interim relief). See also, Paterson State Operated School District, I.R. No. 2021-25, 47 NJPER 510 (¶120 2021) (citing Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019); Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018); Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017); New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012)).