

I.R. NO. 95-21

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-95-344

HUDSON COUNTY SUPERIOR CORRECTIONS
OFFICERS, PBA LOCAL No. 109A,

Charging Party.

Appearances:

For the Respondent,
Genova, Burns, Trimboli & Vernoia, attorneys
(Stephen E. Trimboli, of counsel)

For the Charging Party,
Shaljian, Cammarata & O'Connor, attorneys
(Thomas J. Cammarata, of counsel)

INTERLOCUTORY DECISION

On April 6, 1995, PBA Local 109A filed an unfair practice charge with the Public Employment Relations Commission alleging that the County of Hudson committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a) (1), (2), (3), (4) and (5)^{1/} when on or

^{1/} These subsections 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

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about March 3, 1995, the Warden of the Hudson County Correctional Center changed the duty tour for Captains Joseph Bellino and Joseph Flynn who are members of the union negotiating committee.

It was alleged that this unilateral action of the County violates the existing labor agreement of the parties. Specifically, Article IV, paragraph 4.2 which prohibits changing shift assignments of the negotiating committee and Article XVII, paragraph 17.1 which gives employees the right to bid for shift assignments.

An order to show cause accompanied the unfair practice charge. The order was executed and heard on April 21, 1995.

Local 109A submitted the affidavit of Joseph Bellino who states that the parties were engaged in interest arbitration when he and Flynn were reassigned. Prior to the shift change, he and Flynn had been working the 12 p.m. to 8 a.m. tour for at least six years. Bellino now works the 4 p.m. to 12 a.m. tour and Flynn now works the 8 a.m. to 4 p.m. tour.

Bellino states that as Association representatives, they were able to conduct union business during the day when they were

1/ Footnote Continued From Previous Page

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."

not on duty. The shift assignments have severely hampered their ability to conduct Association business.

The County opposes the application. It states by way of the affidavit of Warden Ralph W. Green that the reason for the change in shifts was to make supervision at the Jail more efficient and these captains would be more effective during the day shifts. The two captains were working the midnight shift. The Warden also felt it was unnecessary to have two captains on the midnight shift. The County points out that Article 4, of the contract provides for paid release time for up to three Association representatives and under the current shift assignment no more than three members of the Association's negotiations team are on duty at any one time. Accordingly, the Association's full negotiations team can participate in negotiations.

At the hearing, Bellino testified that Warden Green told him of a different reason for the transfer. Specifically, an inmate committed suicide on the 12 a.m. to 8 a.m tour and Green was transferring the two captains because he was unhappy with the level of supervision on their tour. The Association argued that the inconsistent reasons given for the transfers raises a question as to the true motivation for the reassignments.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested

relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Shift assignments are negotiable, subject to an employer's right to deviate from any assignment to ensure the department is properly manned and to ensure the assignment of qualified individuals. City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391, 394 (¶25197 1994); City of Orange Township, P.E.R.C. No. 86-23, 11 NJPER 522, 523 (¶16184 1985).

The County has introduced evidence that the reassignments were made for managerial reasons and was therefore outside the scope of negotiations. Although Bellino testified that the County's reason for the transfers are inconsistent, I am not satisfied that Bellino's testimony demonstrates an inconsistency. The Warden's affidavit simply avoids formally making a harsh accusation. The PBA has not demonstrated it has a substantial likelihood of success before the Commission. The application for interim relief is denied. This matter will go forward to a plenary hearing.

Edmund G. Gerber
Commission Designee

DATED: May 4, 1995
Trenton, New Jersey

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).