

H.E. NO. 99-17

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

In the Matter of

MORRIS COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-H-97-337

MORRIS COUNTY CORRECTIONS
OFFICERS PBA LOCAL 298,

Charging Party,

-and-

MORRIS COUNTY SHERIFF'S OFFICERS
PBA LOCAL 151,

Intervenor.

SYNOPSIS

A Hearing Examiner denies a Motion for Summary Judgment filed by a respondent employer on a Complaint alleging an unlawful transfer of unit work from a police unit of corrections officers to another police unit of sheriff's officers. For purposes of the motion, the respondent conceded the alleged transfer of work.

The Hearing Examiner determined that the respondent's proffered reason(s) were not "operational" and did not, as a matter of law, constitute a managerial prerogative under City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998).

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Appearances:

For the Respondent,
Courter, Kobert, Laufer & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Charging Party,
Ross & Hirsh, attorneys
(Donald B. Ross, of counsel)

For the Intervenor,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

HEARING EXAMINER'S DECISION ON
MOTION FOR SUMMARY JUDGMENT

On April 3, 1997, Morris County Corrections Officers PBA Local 298 filed an unfair practice charge against the Morris County Sheriff. The charge alleges that on February 13, 1997, the Sheriff signed an agreement with Morris County Sheriff's Officers PBA Local 151 transferring transportation duties, previously

performed by corrections officers, to sheriff's officers. The charge alleges that "for a number of years" corrections officers had performed all transportation duties except transporting juveniles and that the Sheriff unlawfully transferred bargaining unit work during negotiations for a successor contract, violating 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On June 20, 1997, a Complaint and Notice of Hearing issued.

On July 2, 1997, Morris County Sheriff's Officers PBA Local 151 filed a letter seeking to intervene in this matter.

On July 10, the Sheriff filed an Answer, denying that corrections officers performed all transportation duties (except transporting juveniles), and admitting that it signed a "settlement agreement" on a grievance concerning transportation duties with PBA Local 151. The Sheriff also asserts that on May 28, 1997, it signed a "memorandum of agreement" for a successor contract with PBA Local 298. The Sheriff asserts numerous defenses, including failure to join an indispensable party,

^{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."

failure to exhaust administrative remedies, waiver and estoppel, unclean hands, etc. It also asserts that it acted pursuant to a managerial prerogative.

On July 28, 1997, PBA Local 151 filed a letter advising that sheriff's officers performed all prisoner transports continuously (except pre-incarcerated transports) for many years. Specifically, sheriff's officers performed the pre-incarcerated transports until 1992, when municipalities assumed that responsibility. In September 1996, PBA Local 151 learned that in June 1996, the Sheriff "unilaterally determined" that pre-incarcerated transports would be performed by corrections officers represented by PBA Local 298. PBA Local 151 filed a contractual grievance which was resolved in writing before arbitration.

On August 7, 1997, I granted intervenor status to PBA Local 151, pursuant to N.J.A.C. 19:14-5.1.

On October 28, 1997, the Sheriff filed a Motion for Summary Judgment with the Commission. The motion was referred to me for a decision. N.J.A.C. 19:14-4.8.

On February 5, 1998, I denied that motion. Morris Cty Sheriff, H.E. No. 98-24, 24 NJPER 138 (¶29069 1998).

The Sheriff has filed a second Motion for Summary Judgment, which was referred to me on August 4, 1998. Responses were filed on August 17 and September 1, 1998.

The current motion is based entirely on the Sheriff's reading of City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), issued after Morris Cty. Sheriff. For purposes of the motion, the Sheriff does not challenge the earlier findings of fact, which are now incorporated. See 24 NJPER 139.

Summary judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.
[N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

The Sheriff concedes for purposes of the motion that the transportation duties, now reassigned to sheriff's officers, had

been performed exclusively by corrections officers. The Sheriff argues that under Jersey City, it possessed the managerial prerogative to reassign the duties.

In July 1998, our Supreme Court issued Jersey City, reversing the Appellate Division which had upheld a Commission decision. Applying the negotiability balancing test detailed in Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Court held that the City had a managerial prerogative to transfer police officers performing certain non-police duties into operational positions and to replace them with civilian employees. The Court in Jersey City focused on the third prong of the negotiability test in Local 195, whether negotiations would "significantly interfere with the determination of governmental policy."

The Court emphasized that police officers are "different from other public employees" and that "the scope of discretion accorded to the public entities that administer police departments is necessarily broad." Jersey City, 154 N.J. at 572. It reversed the Commission's determination that "economic" reasons motivated the City's redeployment. According to the Court,

...the record supports the City's position that its actions were not taken primarily for economic reasons, but rather to augment the City's ability to combat crime by increasing the number of police officers in field positions.
[Id. at 573]

The purpose of the City's action was to improve "effectiveness and performance", which is an "inherent policy determination" that cannot be hampered by negotiations.

The "record" in Jersey City showed that a management consulting firm had recommended that the department would operate more efficiently if uniformed titles in administrative positions were moved into field positions; the police director reached the same conclusion and recommended a reorganization. Other pertinent "record" findings (which, the Court reasoned, justified a conclusion that a reorganization had been effected) concerned the Bureau of Criminal Investigation, the property room, crossing guard supervision, radio repairs, and the pistol range.

The Sheriff has not provided any affidavit setting forth an "operational" justification for the reassignment of transportation duties. Its motivation for the reassignment was,

a desire to resolve a dispute between two bargaining units -- each of whom has asserted and continues to assert, the exclusive right to perform all transportation related functions of the Sheriff's office.

[Employer brief at p. 16]

The Sheriff purportedly instituted a "division of transportation responsibilities...to serve the department's needs and promote labor peace." It acknowledged,

[This] case is more closely analagous to the work jurisdiction disputes in the private sector [in which] 'the employer is usually caught in the middle, necessarily unable to satisfy both unions, and sometimes unable to satisfy either.'

[Employer brief at p. 17, citing Hardin, The Developing Labor Law, 1366-1367, 1992]

The Sheriff's motivation for the contested action may very well coincide with the statutory goal of "prompt settlement of labor disputes." N.J.S.A. 34:13A-2. For purposes of this motion,

however, I find that the asserted motive is an inadequate "record" on which a legal determination may be predicated. Specifically, I cannot decide as a matter of law that the Sheriff's motive (assuming its legal sufficiency) is "operational" or a "managerial prerogative" constituting an "inherent policy determination." Nor can I distinguish the Sheriff's asserted operational "needs" from its desire to "promote labor peace." A unilateral employment decision to promote labor peace is at odds with the statutory duty to negotiate in good faith. See East Brunswick Bd. of Ed., P.E.R.C. No. 82-76, 8 NJPER 124 (¶13054 1982).

The Sheriff further contends that negotiations, would have required a delay in the assignment of transportation functions pending the conclusion of what would obviously be long, difficult and potentially inconclusive three-way negotiations, to the detriment of the public's interest in an effectively-performing Sheriff's offices.
[Employer brief at p. 17]

If this case concerned only a "delay" in the assignment of transportation duties, pending negotiations, I might have granted the summary judgment motion. For example, a "temporary" assignment for "operational" purposes, pending negotiations, would probably not violate the Act. But the Complaint alleges that corrections officers were assigned the duties exclusively and that the Sheriff unilaterally transferred those duties to sheriff's officers, implicating the unit work rule.

In Jersey City, the Court discussed and applied the rule, which provides that "an employer must negotiate before using

non-unit employees to do work traditionally performed by unit employees alone." 154 N.J. at 575.

Typically, the rule applies to require collective bargaining before workers in the bargaining unit are replaced by non-unit workers, the objective being to provide the union with at least an opportunity to negotiate an acceptable alternative, one that would not result in loss of jobs and reduction in union membership. [Id. at 576]

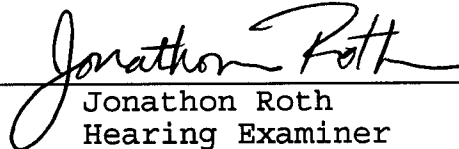
The Court also noted the three exceptions to the rule that the transfer of unit work is mandatorily negotiable: (1) the union waived its right to negotiate; 2) historically, the job was not within the exclusive province of unit personnel; and (3) the municipality is reorganizing the way it delivers government services.

The Court disapproved of the Commission's focus on each disputed position and findings that no change in duties had occurred. The Court held that civilianization was part of an overall reorganization, thereby establishing the third enumerated defense.

In this case, the Sheriff contends that "certain functions incidental to the regular work of corrections officers will no longer be performed by them, but will be added to the incidental functions [of] sheriff's officers" [Employer brief at p. 19]. Resisting the notion that the unit work rule is implicated, the Sheriff contends that the "reassignments in dispute are more closely analagous to a change in the delivery of services than to the mere replacement of a bargaining unit employee with a non-unit employee."

The facts of this case may show that the alleged unlawful change has not resulted in layoffs, loss of overtime, etc. Such a finding affects a Local 195 analysis, potentially easing the employer's burden to prove a managerial prerogative for the employment decision. Similarly, the charging party may be unable to prove the direst consequences from a violation of the unit work rule. But the rule also enables employees to seek protection of other interests, including job preservation, maintaining salaries and not having their collective strength eroded. See Burlington Cty. Bd. of Social Services, P.E.R.C. No. 98-62, 24 NJPER 2 (¶29001 1997). I cannot say as a matter of law that the unit work rule does not apply to this case, where two units of equally qualified police employees contest for certain police work and the employer has not demonstrated a reorganization or public safety or "operational" justification for its decision.

The motion is denied.


Jonathon Roth
Hearing Examiner

DATED: February 19, 1999
Trenton, New Jersey