

I.R. NO. 2000-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MIDDLESEX
(Department of Adult Corrections),

Respondent,

-and-

Docket No. CO-2000-66

MIDDLESEX COUNTY SUPERIOR CORRECTION
OFFICERS ASSOCIATION, PBA LOCAL No. 152A,

Charging Party.

SYNOPSIS

After an internal membership vote for officers, some members complained to the State PBA that the election process was improper. The State PBA investigated and ordered a new vote resulting in different people being elected to union office. Both newly elected presidents, one representing the Middlesex County Superior Corrections Officers Association (Association) and the other representing PBA Local 152A demanded to negotiate with the County on behalf of superior correction officers. The County advised that it would negotiate with the Association. The Commission Designee found the collective agreement was replete with references to PBA Local 152A as the majority representative. Consequently, he enjoined the County from negotiating with any employee organization other than PBA Local 152A.

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Charging Party.

Appearances:

For the Respondent,
Bruce J. Kaplan, County Counsel
(Benjamin D. Liebowitz, Deputy County Counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Robert A. Fagella and Paul L. Kleinbaum, of counsel)

For the Intervenor,
Robert F. Dato, attorney

INTERLOCUTORY DECISION

On September 29, 1999, the Middlesex County Superior Corrections Officers Association, PBA Local No. 152A (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Middlesex, Department of Adult Corrections (County), committed an unfair practice within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating 5.4a(1)

and (5).^{1/} The unfair practice charge was accompanied by an application for interim relief. On September 30, 1999, an order to show cause was executed and a return date was scheduled for October 18, 1999. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date.

On October 15, 1999, the Middlesex County Superior Corrections Officers Association (non-PBA) made an appearance in this case by filing a statement. The non-PBA submitted (1) a verified complaint filed on behalf of the non-PBA with the Middlesex County Superior Court, (2) a June 21, 1999 memorandum submitted in support of its complaint which included an attached Certification of Martin Vitale, (3) a June 22, 1999 Order of Dismissal entered by the Court, (4) a copy of the Middlesex County Superior Officers Constitution and By-Laws and (5) certain other documents. During oral argument, the non-PBA moved to intervene in the PBA's application for interim relief. After hearing the parties arguments on the issue of intervention, I granted the non-PBA's request to intervene limited solely to the interim relief matter. In arriving

^{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."

at my determination below, I considered the non-PBA's written submissions and their oral argument presented on the return date. The parties allege the following facts.

On or about June 9, 1998, unit employees gathered at a local restaurant for the purpose of electing officers to lead its employee organization. The election was conducted in accordance with a duly circulated notice of election which had been timely posted to alert the membership of the vote. The non-PBA contends that the election meeting commenced at 7:01 p.m. and concluded at 7:20 p.m. resulting in the election of Capt. Martin Vitale as President and others individuals elected as vice president, recording secretary, financial secretary and sergeant-at-arms. The PBA contends that the election meeting commenced at 7:01 p.m. and concluded at 7:04 p.m.^{2/}

Soon after the June 9 election, certain members of the organization challenged the validity of the election and registered a complaint with the State PBA. The Judiciary Committee of the State PBA investigated the election process and directed Vitale to conduct a new election based on its conclusion that the first election did not afford certain members the opportunity to nominate and elect officers of their choice. On or about September 3, 1998, Vitale advised the State PBA that he was refusing to conduct a new election and challenged the accuracy of the State PBA's

^{2/} I need not resolve this factual conflict in order to rule upon the application for interim relief.

information. As a result, on February 16, 1999, the PBA's judiciary committee issued a decision removing Vitale as the President of PBA Local No. 152A and ordered that a new election be conducted. On July 29, 1999, a new election was conducted and Lt. Robert Teeple was elected president of Local No. 152A. On July 30, 1999, Teeple advised the County that he had been elected PBA President and that all labor relations matters concerning the superior corrections officers' unit should be directed to him.

In an August 17, 1999 letter, the County advised the PBA of its understanding that two groups, specifically the PBA and the non-PBA, were claiming to represent superior correction officers and seeking to negotiate a successor collective agreement with the County. In its letter, the County cited references in the January 1, 1996 through December 31, 1999 collective agreement to both the "Association" and "PBA Local No. 152A". The County noted that the "PBA" references in the agreement were apparently used interchangeably with references to the "Association". It claims that there is an apparent split between organizations claiming to represent superior officers; one group referring to itself as the "Association" and the other group "PBA Local No. 152A". The County wrote that it found itself in the midst of a dilemma with respect to which group constituted the majority representative of the superior correction officers and was entitled to recognition to pursue negotiations for a successor agreement. The County proceeded to recite numerous articles in the collective agreement which

referenced the "Association" and "PBA Local No. 152A." The County concluded as follows:

Based upon a review of the entire labor agreement, the various references therein to 'the Association' and 'PBA Local No. 152A', including sub-articles not reviewed above, ... and a history of the matter as it is presently understood, the County perceives the Superior Correction Officers Association to be the entity with which it negotiated the existing labor agreement. Accordingly, the County expects to negotiate a successor agreement with Capt. Vitale and his Association, and not an apparently dissident number of superior correction officers who, with State PBA approval, have identified themselves as 'PBA Local No. 152A.' It does not appear that this group of Superior Correction Officers constitute the Superior Officers Association, are the majority representative of the Superior Correction Officers, or represent the entity with which the County negotiated the current labor agreement. [August 17, 1999 letter from County Counsel Bruce J. Kaplan, page 5.]

The County closed its letter suggesting that the PBA file a representation petition with the Commission.

The non-PBA claims that PBA Local No. 152A does not constitute a legal entity. The non-PBA contends that it is the exclusive representative for the County's superior correction officers and is so recognized by the County. The non-PBA asserts it is a viable employee organization because it possesses a Constitution and By-Laws, whereas the PBA has no separate Constitution or By-Laws for Local 152A.^{3/}

^{3/} The PBA contends that Local 152A is subject to the Constitution and By-Laws of the state organization and need not possess a separate Constitution and By-Laws pertaining only to Local 152A.

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. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer 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).

The collective agreement is replete with references to PBA Local No. 152A. The cover page of the collective agreement indicates that the agreement is between the County of Middlesex and the Superior Correction Officers of the Middlesex County Department of Adult Corrections, PBA Local No. 152A. The preamble states that the agreement is made between the County and the Superior Correction Officers of the Middlesex County Department of Adult Corrections, PBA Local No. 152A. The "Exclusivity of Association Representation" article states:

The employer agrees that it will not enter into any contract or Memorandum of Agreement with anyone but the recognized Association (PBA Local No. 152A) with regard to the categories of personnel covered by the said Memorandum of Agreement during the term of this Agreement.

The "Association Recognition" article states:

The Employer recognizes the Superior Correction Officers of PBA Local No. 152A as the exclusive bargaining representative for the purpose of collective negotiations with respect to all negotiable items of employment of all employees employed by the Employer's Department of Adult Corrections except those employees specifically excluded herein.

On the basis of the references to the PBA contained in the collective agreement, I conclude that the PBA has established the requisite likelihood of success element of the test for obtaining interim relief.

The principal of exclusivity serves as the cornerstone of the Act. Lullo v. International Association of Firefighters, 55 N.J. 409 (1970); Matawan-Aberdeen Reg. Teach. Ass'n and Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 89-130, 15 NJPER 411 (¶20168 1989); New Jersey Department of Law and Public Safety, I.R. No. 83-2, 8 NJPER 425 (¶13197 1982). Exclusivity promotes labor stability by discouraging rivalries among individual employees and employee groups and by avoiding the diffusion of negotiating strength which results from multiple representation. Lullo at 429.

Given Lullo's recognition of the fundamental importance of the exclusivity principle in public sector labor relations and the debilitating effects of departure from this principle, it is clear that a majority representative ... suffers harm when the employer permits a separate, uncertified organization to act on behalf of employees for purposes exclusively reserved to the certified employee representative. [citations omitted. New Jersey Department of Law and Public Safety, at 427.]

It is clear that the relief provided at the end of the unfair practice process cannot remedy the loss of prestige which the exclusive representative suffers during the time another employee organization is permitted to act on behalf of unit employees concerning terms and conditions of employment. Accordingly, I find that the PBA has established the requisite irreparable harm element.

In weighing the relative hardships to the parties, I find that the greater hardship would fall upon the PBA if interim relief is not granted. As noted above, the principle of exclusivity is important and entitled to protection. By granting interim relief, the parties return to the status quo ante. As noted above, failing to return to the status quo would cause the exclusive representative to suffer a loss of prestige as perceived by its membership and detrimentally effect its relationship with the County. Clearly, the County suffers no harm as the result of having to continue to deal with the exclusive representative. Moreover, I find no detriment to the public interest by entering an order which requires the County to continue to recognize and deal with the majority representative, PBA Local No. 152A.

ORDER

With respect to employees including in the superior correction officers unit, the County is restrained from recognizing or engaging in collective negotiations with any employee organization other than PBA Local No. 152A. Additionally, the

County is enjoined from paying dues to any employee organization other than PBA Local No. 152A. This interim order will remain in effect pending a final Commission order in this matter. The unfair practice charge will proceed through the normal unfair practice processing mechanism.


Stuart Reichman
Commission Designee

DATED: October 22, 1999
Trenton, New Jersey