

I.R. NO. 98-24

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PALISADES PARK,

Respondent,

-and-

Docket No. CO-98-321

PBA LOCAL 45,

Charging Party.

SYNOPSIS

PBA Local 45 applied for interim relief seeking to restrain the Borough of Palisades Park from transferring unit work to non-unit civilian dispatchers. The Commission Designee found that Local 45 established the elements required for granting interim relief and restrained the Borough from transferring unit work to civilian dispatchers pending final Commission order.

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Appearances:

For the Respondent, Murray, Murray & Corrigan  
(David F. Corrigan, of counsel)

For the Charging Party, Loccke & Correia  
(Joseph Licata, of counsel)

INTERLOCUTORY DECISION

On March 4, 1998, Palisades Park PBA Local 45 ("Local 45") filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Palisades Park ("Borough") committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7) and a violation of N.J.S.A. 34:13A-21.1<sup>1/</sup>

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<sup>1/</sup> While the a(5) violation is not listed on the front of the unfair practice charge form where the sections of the Act alleged to have been violated are normally set forth, the allegation that the Borough has violated a(5) is contained elsewhere in the body of the charge. The sections of the

The Charging Party asserts that the Borough violated the Act by announcing its intention to transfer unit work from police dispatchers to civilians. It is alleged in the charge that at least since December, 1982, it has been the exclusive responsibility of a uniformed police officer to perform the dispatch functions in the police radio room. One uniformed police officer staffs the police radio room on each shift of each day of the work week. Additionally, Local 45 asserts that at least since 1982, the collective negotiations agreement between the Borough and Local 45 contained a provision concerning "replacements" that reads:

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1/ Footnote Continued From Previous Page

Act alleged to have been violated 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. (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. (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. (7) Violating any of the rules and regulations established by the commission."

N.J.S.A. 34:13A-21 states "During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other, any change in or of the public employer or employee representative notwithstanding; but a party may so consent without prejudice to his rights or position under this supplementary act."

No post presently filled by a full-time employee covered by this agreement shall be covered by any non-police officer, part-time or other personnel.

The most recent collective negotiations agreement between the parties expired on December 31, 1997. During successor negotiations, the Borough has proposed to delete the "replacements" language from the agreement. The parties have not reached agreement on a successor contract and have filed for interest arbitration which is currently pending.

On February 17, 1998, the Borough passed a first reading of Ordinance No. 1297 entitled "Ordinance Creating the Position of Emergency Dispatchers for the Borough of Palisades Park". The hiring of such emergency dispatchers would permit the Borough to reassign the police officers currently performing dispatching duties to undertake patrol responsibilities. As the result of a corruption probe by the U.S. Attorney's Office, five police officers within the past two years have been convicted of criminal corruption charges. These convictions have caused a staffing shortfall. Further, during that same time period, there have been six superior officer retirements. While on occasion, only two police officers perform patrol duty during a shift, the Borough has augmented the number of officers on patrol through the use of overtime. Indeed, the Borough states that there will be absolutely no diminution in overtime assignments to unit personnel as the result of the reassignment of an officer performing the dispatching function to patrol. The Borough asserts that the sole purpose of hiring civilian dispatchers

is to permit police officers to perform patrol duties and, thus, increase the level of police services to the Borough and not to reduce police overtime.

The unfair practice charge was accompanied by an Order to Show Cause which was executed and a hearing was conducted on March 27, 1998. The parties submitted briefs, affidavits and exhibits and argued orally.

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).

Local 45 has shown that it has a substantial likelihood of success in prevailing on the facts in this case. Although the Borough argues that its actions are not motivated by economics, there is no evidence that the Borough has performed a general reorganization. See Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), aff'd. 23 NJPER 325 (¶28148 1997), cert. granted \_\_\_ N.J. \_\_\_ 1997. Rather, the Borough is simply substituting on a one

for one basis civilian employees to perform work formerly, exclusively done by police officers. The Commission has found such actions to violate the Act. Tp. of Nutley, H.E. No. 85-38, 11 NJPER 325 (¶16116 1985), adopted P.E.R.C. No. 86-26, 11 NJPER 16 (¶195 1985). Significantly, I note that in this case there is an existing preservation of work clause contained in the recently expired collective agreement. That preservation of work clause sets forth the terms and conditions of employment to which the parties must adhere, and it survives the expiration of that agreement. Consequently, I find that Local 45 has demonstrated that it has a substantial likelihood of prevailing on the merits in a final Commission decision.

Through the introduction of Ordinance No. 1297, the Borough has announced during the pendency of the interest arbitration process its intention to transfer unit work to non-unit employees. The announcement of an action violative of the Act, as opposed to the actual implementation, can constitute an unfair practice. Tp. of Riverside, H.E. No. 95-1, 20 NJPER 303 (¶25152 1994), adopted P.E.R.C. No. 95-7, 20 NJPER 325 (¶25167 1994). A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Education v. Galloway Tp. Education Assn., 78 N.J. 25 (1978). Further, a unilateral change of a term and condition of employment during the pendency of interest arbitration constitutes a

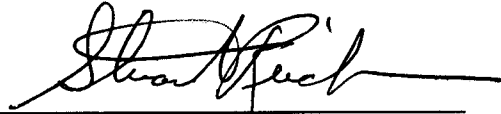
violation of N.J.S.A. 34:13A-21. Since a unilateral change in terms and conditions of employment during the pendency of the negotiations process undermines the employee representatives ability to represent its membership, I find that Local 45 is irreparably harmed as the result of the Borough's announcement to replace police officers with civilian dispatchers.

In considering the public interest and the relative hardship to the parties, I note that while the Borough's goal to increase the level of police services is laudable, it can achieve its goal by continuing its practice of assigning off duty police officers to work additional shifts. During oral argument, the Borough conceded that it has used police officers working overtime to engage in additional, necessary patrol duties. The level of protection afforded to the public can be maintained at current levels by continuing to assign police on an overtime basis. Conversely, Local 45 will be irreparably harmed as the result of a unilateral change in a term and condition of employment during the pendency of collective negotiations.

#### ORDER

It is **ORDERED** that the Borough is restrained from replacing police dispatchers with civilians or otherwise transferring that unit work pending negotiations with Local 45 concerning the transfer of dispatch work to civilian dispatch employees. This interim order will remain in effect pending a final

Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.

A handwritten signature in cursive script, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman  
Commission Designee

DATED: April 7, 1998  
Trenton, New Jersey