

H.E. NO. 98-13

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-97-158

MORRIS COUNTY SHERIFF
PBA LOCAL 151,

Charging Party.

SYNOPSIS

A Hearing Examiner grants in part and denies in part a public employer's motion for summary judgment. The motion was denied to the extent that material issues of fact surround an alleged unilateral increase in job duties without negotiations. It was granted to the extent that the complaint alleges that the employer's actions violated 5.4a(2), (6) and (7).

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Appearances:

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

For the Charging Party
Loccke & Correia, attorneys
(Charles Schlager, of counsel)

HEARING EXAMINER'S RECOMMENDED DECISION
ON MOTION FOR SUMMARY JUDGMENT

On November 14, 1996 and October 6, 1997, Morris County Sheriff PBA Local 151 filed an unfair practice charge and amended charge^{1/} against Morris County Sheriff's Office. The charge

^{1/} The amended charge changes the name of the captioned charging party from "Morris County Sheriff Superior Officers Association-PBA Local 151" to "Morris County Sheriff PBA Local No. 151." The text of the original charge incorporates the current collective agreement executed by the respondent and "Morris County PBA, Local 151." The recognition clause of the agreement identifies the unit as "all sheriff's officers and sheriff's officer detectives." The text also refers to the charging party as "sheriff's officers of PBA Local 151." Accordingly, I accept the amendment as merely correcting charging party's name.

alleges that on August 7, 1996, the Morris County Sheriff issued a directive advising sheriff's officers that they were being assigned duties previously performed by court aides. The directive was issued unilaterally and without negotiations over the increase in duties and/or compensation, allegedly violating 5.4a(1), (2), (5), (6) and (7)^{2/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On March 21, 1997, a Complaint and Notice of Hearing issued.

On May 15, 1997, the Morris County Sheriff filed an Answer, admitting that a directive was issued on August 7, 1996, and denying that additional duties were assigned to sheriff's officers. It also asserts its managerial prerogative to administer the operations of the Sheriff's Office.

On August 29, 1997, the Sheriff filed a Motion for Summary Judgment with the Commission. On September 3, the motion was referred to me for a decision. N.J.A.C. 19:14-4.8.

^{2/} 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 of any employee organization. (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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

On October 6, 1997, the PBA filed a brief, opposing the motion.

On October 14, the Sheriff filed reply letter.

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).

Applying these standards and relying upon the briefs and supporting documents, I make the following:

FINDINGS OF FACT

1. Morris County PBA, Local 151 is the majority representative of all sheriff's officers and sheriff's officer detectives employed by the Sheriff of the County of Morris. In February 1996, the parties signed a collective agreement extending from January 1, 1996 through December 31, 1998. It has a grievance procedure ending in binding arbitration.

Article II, Section 1 reserves to the Sheriff's Office the "right" to "direct its working forces and operations" and to "hire, promote and assign employees in accordance with law and the provisions of this agreement."

2. N.J.S.A. 40A:9-117.6 provides in the relevant portion:

The sheriff of each county shall, subject to the budget of the county, appoint such persons as may be necessary, to the position of sheriff's officer, pursuant to the provisions of Title 11 of the Revised Statutes, where applicable, to perform the duties involved in attending the courts heretofore performed by court attendants, or in serving court processes, or in the investigation and apprehension of violators of the law, or in criminal identification, or in ballistics, or in any related work which the sheriff shall, from time to time prescribe and as shall be determined to be appropriate by the Civil Service Commission.

N.J.S.A. 40A:9-117.7 provides:

Any person who is appointed on or after the effective date of this act to perform the duties set forth in section 1 of this act (do you want fn Section 40A:9-117.6.) shall be appointed as a sheriff's officer.

3. The Department of Personnel job description states that a "sheriff's officer" performs "one or more functions in the following areas: maintaining order and security in the courtroom,

serving court processes, criminal identification, ballistics and investigation and apprehension of violators of the law; does related work as required." Among the three pages itemizing "examples of work" are: "if necessary, guards prisoners in a courtroom; when necessary, subdues, restrains and physically removes unruly individuals from a courtroom"; "restrains individuals who make or attempt an attack, assault or an aggressive act against the judge; court personnel or litigants, and other parties appearing in a courtroom or adjacent areas." Other examples include serving warrants, taking fingerprints, making arrests, maintaining criminal files, testing and identifying firearms, etc.

Listed among the types of "knowledge" required is: "some knowledge of court practices and procedures, and of the techniques which would be useful in maintaining order and security in the courtroom."

Sheriff's officers are required to complete a training program mandated by the New Jersey Police Training Commission.

4. On February 22, 1996, former Chief Justice Robert Wilentz issued a memorandum to all assignment judges concerning "attrition -- courtroom staff; typists to report-writing staff." The memorandum advises that among the steps necessary "to close the projected [budget] deficit" was limiting "courtroom staffing" to two persons. The Chief Justice wrote:

Those people may be either judiciary or non-judiciary employees, e.g., Sheriff's officer and a court clerk, a sound/video operator and an aide, or some other combination thereof. This

means that effective immediately assignment judges shall not replace any clerical workers separated from employment. Rather, that position is to be filled where possible by transferring any clerical worker now serving in the courtroom.

5. On August 7, 1996, Undersheriff John Dempsey issued a "general order" to all "bureau of law enforcement sworn personnel" concerning "courtroom security." The order advises that "the following additional duties will be performed by sheriff's officers assigned to courtroom security when a court aid[e] is not present: (1) from the courtroom, announce when the judge is going on the bench and ask all to rise; (2) if a witness is not in the courtroom when called, make an announcement outside the courtroom that their [sic] presence is requested; and (3) pass documents from a pro se defendant to the judge."

6. Certain sheriff's officers performed the disputed duties, at the request of their assigned judges, before August 7, 1996. Sheriff's officer Thomas Rohling has been employed by the Morris County Sheriff's Office for about ten years and has not performed the disputed job duties.

7. The Department of Personnel "court aide" job description states that an aide "performs various non-security tasks, such as making proclamations and announcements, maintaining decorum in the courtroom and swearing in witnesses and jurors." Although some tasks may "overlap" with other positions "in this class", the ascribed "distinguishing characteristic" of the court aide is its non-security function; it is "primarily responsible for

attending to the needs of the judges, jury, attorneys and others in the courtroom." The first "example of work" is, "makes court proclamations and announcements as directed by the judge." The position also "attends the judge both on the bench and in chambers, answering telephone, obtaining law books, procuring documents and records." Court aides are employed by the State Judiciary.

8. The Department of Personnel job description for "court attendant" also requires the employee to "attend the judge and make proclamations and announcements." The description closely follows the one for "court aide." An updated description (7/28/97) states that the position also "maintains order and security in the courtroom" and "in accord with state statute, may assist in the apprehension, arrest and conviction of offenders...."

9. In November or December 1996, PBA President John Paradiso met with Undersheriff Dempsey concerning the general order described in finding number five. Paradiso expressed his "opposition" to the order.

10. On March 27, 1997, the Judiciary (Morris/Sussex vicinage) posted a "job vacancy announcement" for the "court aide" title. The description provided substantially repeats the duties described in finding number seven.

ANALYSIS

The Sheriff's Office contends that N.J.S.A. 40A:19-117.6 preempts negotiations over the assignment of "additional duties" because it specifies that the Sheriff "shall appoint such persons as

may be necessary, to the position of sheriff's officer...to perform the duties...heretofore performed by court attendants." The Sheriff also argues that it has the managerial prerogative to assign duties falling within the "recognized scope of their job titles" and to assign the disputed additional duties because they are "incidental to the sheriff's officers' primary duties." The Sheriff also contends that it and the Judiciary determined the "reallocation of public services" -- a governmental policy decision which is neither negotiable nor arbitrable. Finally, the Sheriff asserts a contract defense and that the PBA never demanded negotiations over the "impact" of the assignment.

I deny the motion.

A statute or regulation will not preempt negotiations unless it speaks in the imperative and expressly, specifically and comprehensively sets an employment condition. Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112 (1985); Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). We ask not whether a statute or regulation permits an employer to take an action, but whether it precludes an employer from exercising any discretion over an employment condition so that there is nothing left to negotiate. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330-331 (1989).

I do not see how the proffered statute requires the Sheriff to do anything more than "appoint" sheriff's officers to perform various security functions which had "heretofore [been] performed by

court attendants." The statute does not require sheriff's officers to perform the duties disputed in this case.

I must also deny the motion because there are genuine issues of material fact. For example, the delineation of job duties among sheriff's officers, court aides and court attendants is not clear. Whether sheriff's officers actually performed the disputed functions before August 1996 helps define "overlapping" job duties.^{3/} (Thomas Rohling's certification raises this factual issue). The materiality of this issue is highlighted by the specific duties listed in the "court aide" description (i.e., to make "proclamations, etc."). Furthermore, I cannot assess the impact of the Chief Justice's memorandum considered against the 1997 court aide vacancy announcement. At this stage of the proceeding, I cannot determine if the disputed duties are "within the scope of" or even "incidental to" the sheriff's officer title.

Even assuming that the assignment of the disputed duties is a managerial prerogative, I cannot now resolve another material factual issue -- whether the PBA demanded to negotiate compensation. Majority representatives must demand negotiations over severable economic consequences of the exercise of a managerial prerogative. See Cherry Hill Tp., P.E.R.C. No. 97-33, 22 NJPER 375 (¶27197 1996); Trenton Bd. of Ed., P.E.R.C. No. 88-16, 13 NJPER 714 (¶18266 1987). The certifications of the Undersheriff and the PBA president present this issue of fact.

^{3/} The answer to this question will also give meaning to the contractual provision prematurely cited as a waiver.


No facts have been alleged which suggest a possible violation of either 5.4a(6) and (7) of the Act. Accordingly, I grant the motion concerning these allegations.

A violation of 5.4a(2) occurs when an employer's actions dominate or interfere with the formation, existence or administration of the employee organization. Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 87-3, 12 NJPER 599 (¶17224 1986). The Commission has also determined that an employer's mere refusal to negotiate does not "constitute pervasive employer control or manipulation of the employee organization itself, which is the type of activity prohibited by [this section]." North Brunswick Tp. Bd. of Ed., P.E.R.C. No. 80-122, 6 NJPER 193 (¶11095 1980).

The PBA has not alleged facts suggesting that the Sheriff has violated 5.4a(2). Accordingly, I grant the motion concerning this allegation.

DECISION

The Motion is denied to the extent that the Complaint alleges violations of 5.4a(1) and (5). It is granted to the extent that the Complaint alleges violations of 5.4a(2), (6) and (7).


Jonathon Roth
Hearing Examiner

DATED: November 3, 1997
Trenton, New Jersey