

I.R. NO. 2004-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY,

Respondent,

-and-

Docket No. CO-2004-105

BURLINGTON COUNTY CORRECTIONS
PBA LOCAL NO. 249,

Charging Party.

SYNOPSIS

A Commission Designee grants interim relief and restrains the employer from implementing a policy limiting employees' eligibility to bid on open, posted positions. The Designee rejected the employer's claim that it had a managerial and contractual right to set the job qualifications since it was also appointing equally unqualified employees to the same positions.

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Appearances:

For the Respondent,
Evan Crook, County Counsel
(Daniel Hornickel, Assistant Counsel)

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

INTERLOCUTORY DECISION

On October 9, 2003 Burlington County Corrections PBA Local 249 filed an unfair practice charge with the Public Employment Relations Commission alleging that Burlington County violated 5.4a(1), (2) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} when it unilaterally

^{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. (2) Dominating or

changed the requirements for corrections officers to bid on open, posted positions.

The County denies the unfair practice and asserts generally that it had a contractual right to limit bidding on open positions to only qualified corrections officers.

On December 8, 2003, the PBA filed an application for interim relief pursuant to N.J.A.C. 19:14-9. On December 11, 2003, I issued an Order to Show Cause scheduling the return date on the interim relief application for January 9, 2004. The return date was postponed to January 15. The parties submitted briefs and affidavits in accordance with Commission rules and argued orally on the rescheduled return date. The following facts appear.

PBA Local 249 is the majority representative of the County's corrections officers. It has a current collective agreement with the County covering corrections officers' terms and conditions until December 31, 2004. Article XIII(D) of the agreement provides,

All new assignments and vacant assignments which the County seeks to fill shall be posted for bid

1/ Footnote Continued From Previous Page
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."

at the County's various correctional facilities for a minimum of seven (7) days. The bid sheet shall state facility, shift, and days off as well as any special requirements for the assignment. The position shall be filled with the most senior employee who bids on the assignment and who has the minimum qualifications to perform the job. An employee shall not be permitted more than two (2) bids per year.

Section 2 of Article XIII(D) identifies a list of posts which are subject to bidding. Section E of the Article XIII provides,

Except where New Jersey Department of Personnel statutes require otherwise, promotion, demotion, layoff, recall and vacation schedules, as well as choice assignments...shall be based on seniority, with an employee with the greatest amount of seniority given preference provided the employee has the minimum qualification to perform the job.

Newly hired corrections officers are required to undergo training through the Correction Officers Training Academy within the first year of their employment with the County. The Academy training includes certification in weapons qualification. Thereafter, corrections officers are required to renew their weapons qualification certification annually. During periods of high employee turnover, the County has difficulty keeping pace with its training requirements; the result is that many employees have not been scheduled for weapons requalification.

On September 12, 2003, County Corrections Deputy Warden Henry Jackson issued a Memorandum ordering that "All officers must

maintain their weapons certification and PR-24^{1/} certification when submitting for any future bids or positions."

However, the County did nothing to enforce this order until November 18, 2003, when Deputy Warden Jackson issued a Memorandum advising corrections officers that only weapons-qualified officers would be permitted to bid for positions which were being posted for bid. Further, Warden Jackson announced that if no weapons-qualified officer bids on a position, the position would be involuntarily assigned to the least senior weapons-qualified officer.

The PBA then applied for interim relief. Thereafter, PBA President Vernon Scott and Deputy Warden Jackson discussed the issue. The PBA pointed out to the Warden that involuntarily assigning the least senior officer who possesses a weapons qualification card would, in effect, penalize officers who had obtained their qualification certification, and potentially discourage officers from maintaining their weapons certification to avoid an involuntary assignment to an unbidden, undesirable post. The Deputy Warden then revised his order to now require that, if no weapons-qualified officers apply for bid positions,

1/ A PR-24 is a baton or nightstick.

the Warden will assigned the least senior corrections officer, whether weapons-qualified or not.^{2/}

ANALYSIS

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 PBA argues that the County's new restriction on post bidding eligibility repudiates Article XIII of the collective negotiations agreement. The PBA seeks to restrain the County from implementing the new restrictions without negotiations. The County argues that it has a contractual right to limit post bidding to "qualified officers," and it has the managerial right to decide what qualifications it needs.

^{2/} These facts are based upon the parties stipulation at the Order to Show Cause proceeding. (Transcript pp. 5-6).

In New Jersey Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that claimed violations of a contract provision would not ordinarily invoke the Commission's unfair practice jurisdiction. Further, where the parties each rely on a reasonable interpretation of the contract's provisions, the charging party is not likely to succeed on the merits of an unfair practice charge, and interim relief will be denied. See Tp. of Irvington, I.R. No. 2000-10, 26 NJPER 167 (¶31065 2000); Tp. of Woodbridge, I.R. No. 2000-8, 26 NJPER 163 (¶31063 2000). However, Human Services noted some specific exceptions to this general principle, where we would assert unfair practice jurisdiction:

This holding does not mean, however, that a breach of contract is never evidence of an unfair practice or that we do not have the power to interpret collective negotiations agreements Thus, if the contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate in good faith, we would certainly have the authority to remedy that violation under subsection (a)(5).

A specific claim that an employer has repudiated an established term and condition of employment may be litigated in an unfair practice proceeding pursuant to subsection 5.4(a)(5) A claim of repudiation may . . . be supported . . . by a contract clause that is so clear than an inference of bad faith arises from a refusal to honor it or by factual allegations indicating that the employer has changed the parties' past and consistent practice in administering a disputed clause. [Id. at 422-423]

Where the employer stops giving effect to a clear contract provision, it repudiates the agreement, and thus it violates the Act. Piscataway Tp., P.E.R.C. No. 87-47, 12 NJPER 833 (¶17320 1986).

Here, the parties' contract language is clear and the parties had a consistent interpretation, which the County now suddenly seeks to change. As the County points out, the contract requires the bidded post to be awarded to the most senior employee who has "the minimum qualification for the job." However, the County has not previously applied that language to mean that the officer needed a weapons certification. Moreover, the County cannot at the same time maintain that a weapons qualification certification is a "minimum qualification" for the job, then assign the job to an employee who does not have the qualification.

For the same reason, the County's contention that it has a managerial right to decide which qualifications are needed for a particular position must also fail in this instance. Bidding for shifts/posts is not mandatorily negotiable if it would compromise the employer's ability to match special qualifications to particular needs of a position. Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), aff'd 27 NJPER 357 (¶32128 App. Div. 2001) Burlington Cty., P.E.R.C. No. 2002-52, 28 NJPER (¶33064 2002);. But seniority can be a factor in selecting shift assignments where all qualifications are equal and managerial

prerogatives are not otherwise compromised. Mercer Cty. Sheriff, P.E.R.C. No. 99-46, 25 NJPER 19 (¶30006 1998); City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391 (¶25197 1994); City of Asbury Park, P.E.R.C. No. 90-11, 15 NJPER 509 (¶0211 1989), aff'd NJPER Supp. 2d 245 (¶204 App. Div. 1990). Here, the unique facts of this case do not support a claim that the County had a managerial prerogative to require a weapons certification as a condition of post bidding.

Once the County determined that, absent a weapons-certified volunteer, it would fill a vacant position by appointing the least senior officer, whether weapons qualified or not, it could no longer claim that a weapons certification was a legitimate qualification of the job. Rather, it appears that the County only imposed the weapons qualification requirement on officers seeking a bidded position (presumably the more favorable jobs) as a way of inducing correction officers to renew their weapons qualification certifications.

While the parties both agree that all corrections officers need to be weapons qualified, the County's action appears to have repudiated the language of Article XIII (D) and (E) of the contract when it suddenly changed the rules about who is qualified to bid on positions. Simply put, if the involuntarily assigned officer (with or without weapons certification) is "qualified" to hold the post when no one bids, then the corrections officer applying to the

bidded post is also qualified. Accordingly, I find that the PBA has demonstrated that a substantial likelihood of success on the merits of its unfair practice claim.

The PBA asserts that its members will suffer irreparable harm when they are prevented from applying for posted positions as they come up for bid. That is, it argues, once the bidded position goes to a less senior officer, it would be difficult and disruptive to reinstate the previous bidding process retroactively at the conclusion of the unfair practice litigation. The selection of one bidded position effects the bidding opportunities for future bids.

Further, officers' personal schedules would be disrupted by being denied a position to which their seniority entitles them.


I find that the PBA has demonstrated that its members will be irreparably harmed if interim relief is not granted in this case. Further, no assertion has been made that the public interest will be harmed if the County is required to maintain seniority bidding on open posts.

For the reasons set forth above, I find that interim relief is appropriate in this matter. Accordingly, I enter the following order. The charge will continue under the Commission's normal processing mechanism.

ORDER

The County of Burlington is restrained from implementing its order limiting corrections officers' post bidding eligibility to

only those employees who possess weapons qualifications certification. The County will maintain seniority bidding for bidded positions pursuant to the terms of the parties' current contract. This order will be in effect until the parties negotiate otherwise or until the Commission so orders.



Susan Wood Osborn
Commission Designee

DATED: January 28, 2004
Trenton, New Jersey