

I.R. No. 2007-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-2007-067

ESSEX COUNTY PBA LOCAL NO. 54,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the County violated the New Jersey Employer-Employee Relations Act by merging the County Police Department into the County Sheriff's Department in retaliation for the PBA's exercise of protected conduct. The County disputed the basis for the merger. The Commission Designee found that a dispute over material facts existed that prevented a finding that the charging party had a substantial likelihood of success on the merits of the case.

I.R. No. 2007-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-2007-067

ESSEX COUNTY PBA LOCAL NO. 54,

Charging Party.

Appearances:

For the Respondent, Genova, Burns & Vernioia, attorneys
(Brian W Kronick, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky, Bukosky, attorneys (Merick H. Limsky, of
counsel, Marcia J. Tapia, on the brief)

INTERLOCUTORY DECISION

On August 30, 2006, Essex County PBA Local No. 54 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the County of Essex (County) violated 5.4a(1), (2) and (3)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act). The PBA alleged that the County is abolishing the County

^{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 interfering with the formation, existence or administration of any employee organization. (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."

Police Department and merging the police employees and duties with the County Sheriff's Department in retaliation for its exercise of conduct protected by the Act.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the County from implementing the merger. An Order to Respond was executed on September 1, 2006, scheduling the County's response to the application. Both parties submitted briefs, affidavits and exhibits in support of their respective positions by September 15, 2006.

The PBA argued that in 2004 and/or in 2005, the County used Sheriff Officers to fill positions in the County Police Department rather than utilizing the overtime procedures contained in the parties collective negotiations agreement. The PBA contacted the State Department of Personnel over the matter in mid 2005, and filed grievances under the contract overtime provision in January and August 2005 which were sustained in arbitration in early 2006. The PBA claims that the County merged the County Police into the County Sheriff's Department because of its successful exercise of the above protected conduct.

The County disputes the PBA's claim arguing that the merger of the two Departments began as early as April 1997 when the County Police were placed under the Sheriff's control, that it continued in 2001 when the County Police became a Bureau within the Sheriff's office, and that it continued further in 2004 when there was a dramatic increase in the amount of cross assignments

between police and sheriff's officers. The County further argued that in December 2005, the separate PBA Locals representing the Police unit and Sheriff's unit settled their respective contractual agreements because representatives for the police and sheriff's officers indicated the separate police and sheriff's officers unions would not contest the merger, and that in March 2006 the Sheriff reorganized his Department resulting in police officers and sheriff officers performing many of the same duties. The County also argued that the police dispatcher functions were relocated into the Sheriff's Command Post, and that for efficiency and economy, and for administrative, equipment and personnel advantages, the Sheriff completed the merger effective August 2006.

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).

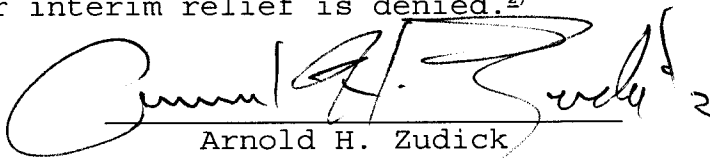
The fundamental issue in this case is why was the County Police Department merged into the County Sheriff's Department. Each party submitted affidavits and documents to support their respective positions and that information and the presentation of the facts in their respective briefs placed material facts in dispute. Whether the merger began with events in 1997, 2001 and 2004 and was implemented for economy and efficiency, or was in retaliation for the exercise of protected conduct can, short of a resolution between the parties, only be resolved through the conduct of a plenary hearing.

Consequently, noting the need for a plenary hearing because of a dispute over material facts, I cannot conclude at this stage of the proceedings that the PBA has a substantial likelihood of success on the merits of its application which is one of the requirements for a grant of interim relief.

Accordingly, based upon the above information and arguments, I issue the following:

ORDER

The PBA's application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: September 22, 2006
Trenton, New Jersey

^{2/} This charge will be sent to conference to resume normal processing.