

I.R. No. 2007-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-2007-104

CAMDEN COUNTY SHERIFF'S OFFICERS
PBA LOCAL #277,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the Camden County Sheriff violated the New Jersey Employer-Employee Relations Act by reassigning sheriff's officers and sergeants from "biddable" to "non-biddable" positions. The charge alleges that the Sheriff's conduct violated the parties collective agreement, provisions of which had been the subject of previous Commission decisions regarding the scope of negotiations. The Sheriff asserts that the collective agreement permits the reassignments which are the subject of the charge and application. The Designee found that the PBA had not demonstrated a substantial likelihood of success on the merits, which concerned contractual rights and obligations.

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Appearances:

For the Respondent, Howard S. Wilson, Assistant County
Counsel

For the Charging Party, Klatsky, Sciarrabone &
DeFillippo, attorneys (Fred M. Klatsky, of counsel)

INTERLOCUTORY DECISION

On October 4, 2006, Camden County Sheriff's Officer's PBA Local No. 277 filed an unfair practice charge against the Camden County Sheriff. The charge alleges that on or about September 25, 2006, the Sheriff ". . . violated the [2003-2007] collective [negotiations] agreement [by] transferring or reassigning sheriffs officers and sergeants from negotiated bidded positions, shifts and assignments to non-bidded shifts, assignments and positions contrary to the specific terms of the agreement. . . ." It alleges that the Sheriff failed to "negotiate significant modifications and alterations to terms and conditions of employment . . . [and] violated the contract both by breaching

the terms of the contract and/or proposing new rules and modification of existing rules . . . which were never negotiated with or agreed to by the majority representative." The charge also alleges that in late September, 2006, the Sheriff unlawfully met with "individual members of the majority representative" and requested that they "not file grievances and not support this unfair practice charge." The Sheriff's conduct allegedly violates 5.4a(1), (2), (3), (4), (5), (6) and (7)^{1/} of the Act.

On the preceding day, October 3, the PBA filed an application for interim relief, together with a brief, certification and exhibits. The application seeks the rescission of the Sheriff's September 25 directive ordering "changes of assignment" of eight named unit members and reassignment to their

^{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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (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."

previous "biddable positions and shifts." It seeks the reassignment of 3 named sergeants and 1 named sheriff's officer to "the shifts which they received as a result of the bidding process in the Identification Bureau." It also seeks a restraint of the Sheriff from "discussing with individual [unit] members the merits of the PBA's grievance and Order to Show Cause."

An Order to Show Cause was executed on October 4, 2006, scheduling a return date for October 11. On October 10, Respondent filed a brief in opposition to the application, together with a certification and exhibits. Counsel for both parties argued in person on the return date.

The following facts appear:

The Sheriff and the PBA signed a collective negotiations agreement extending from January 1, 2003 through December 31, 2007. An extensive "job bidding" provision under the "Personnel Regulations" Article [XIII] sets forth a "methodology" of unit employees "choosing their shift assignment by seniority and college credits." The PBA highlighted several pertinent paragraphs:

- B1. By October 15 of each year, the Sheriff shall provide a written Organizational Bidding Chart with the 13 assignments for Officers, as set forth in Section 5C and for the Sergeants in Section 5G, which organizational chart shall set forth the days off and shifts for each of the 13 assignments for Officers and the 5 for Sergeants, and the specific number of slots for all the Officers and

Sergeants who are needed within each of the 13 assignments for Sheriff Officers and within each of the five (5) assignments for Sergeants. For example, if there are 79 biddable slots within the 13 assignments, then the Sheriff shall have 79 slots for the Officers and Sergeants to sign up.

- B2. By October 15 of each year, the Sheriff shall designate those Officers and Sergeants that he is assigning to non-biddable positions. Therefore, the Officers and Sergeants who have not been assigned to non-biddable positions shall receive the above Organizational Bidding Chart on or before October 15 of each year, for purposes of bidding their assignments, including days off and shifts.
- B5. An Officer or Sergeant who is in a bidded position cannot be moved out of that bidded position solely because disciplinary charges might be brought or have been brought, except to meet the bona fide safety needs of the citizens of the County. Solely for disciplinary reasons, the Officer or Sergeant may be moved out of a bidded position after the Officer or Sergeant has been found guilty of the disciplinary charges or had consented to be disciplined, which discipline includes being moved out of a bidded position for a specific period of time. The penalty for the discipline may be being moved out of a bidded position for a specific period of time, which shall be included in the Notice of Discipline and Specification of Charges.
- B6. If the County moves a Sheriff Officer or Sergeant out of a non-biddable assignment to a biddable assignment, then the Sheriff Officer or Sergeant who is being moved to a biddable assignment, shall have the right to bid for any assignment that he has seniority for.

This rebid process shall take place prior to the actual transfer from the non-biddable position to a biddable assignment. For example, if there are 70 Sheriff Officers in biddable positions with seniority ranked 1 through 70, and a Sheriff Officer is moved from a non-biddable position to a biddable position, and that moved Sheriff Officer has seniority number 52 (with 1 being the highest), then all biddable assignments with Sheriff's Officers with seniority from 52 through 70 shall be rebid by the above process, but the rebid process will be done in two weeks and not four weeks, with the rebid process being divided into two groups of 50% bidding in one week and 50% bidding in the second week. This rebid clause shall not trigger a bidding process between September 1 through December 31 of each year.

* * *

- D. Nothing contained in this entire Article shall be interpreted to mean that assignments such as K-9, Internal Affairs, Missing Persons, Prosecutor's Office, Dive Team, Sheriff's Emergency Response Team (SERT), Bomb Unit, Civil Process, Civil Office, Tech Services and Helicopter Corp. are to be bid. Those assignments remain a prerogative of the Sheriff or his designee, which shall be in accordance with controlling statutes. Further, in order to meet with needs of training and/or specialized abilities, shift assignments may need to be altered in order to meet a bona fide safety needs of citizens of the County. In these cases, the changes shall be made with timely notice and explanation and shall last until such time as the specific needs have been met, at which time the affected employee shall be returned to his/her bid shift.

On September 25, 2006, Camden County Sheriff William Fontanez issued a directive ordering 25 reassignments of unit employees, effective October 1. Seven named sheriff's officers and one named sergeant were ordered reassigned from "biddable" positions to "non-biddable" positions. The directive did not include a rationale for the employment action.

Sheriff Fontanez certified that the latter reassignments ". . . were the result of the employees' written requests." Eight written and signed requests from the named unit employees accompany the Sheriff's certification.

On or about September 26, 2006, the PBA filed a contractual grievance contesting the Sheriff's directive ordering reassignments from "biddable" to "non-biddable" positions. The grievance procedure's terminal step is binding arbitration.

The PBA contends that the collective agreement provides only two ways to reassign an officer or sergeant out of a bidded position. The first way requires a finding of guilty on disciplinary charges or the unit employee's consent to be disciplined, pursuant to Section B5. The second way requires the Sheriff's "bona fide safety needs of citizens of the County," pursuant to Section D. The PBA argues that none of the unit

employees reassigned from bidded positions fall within either or both contract provision(s).^{2/}

The PBA notes that the Commission and Court had previously found and then affirmed the negotiability of the cited contract provisions. See Camden Cty Sheriff and PBA Local No. 277, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), aff'd. 27 NJPER 357 (¶32128 App. Div. 2001); Camden Cty. Shrf. and Camden Cty. Shrf. Offrs. and Camden Cty. SOA, PBA Loc. 277, P.E.R.C. No. 2004-65, 30 NJPER 33 (¶10 2004) [app. withdrawn App. Div. Dkt. No. A-005214-03T5].

The Sheriff contends that Section D of the collective agreement enshrines its prerogative to assign employees to particular jobs to meet the governmental policy goal of matching the best qualified employees to particular jobs. The Sheriff emphasizes that assignments to the non-biddable positions set

^{2/} The PBA also contends that the Sheriff violated sections 5.4a(1) and (2) of the Act by discussing the merits of the grievance and Order to Show Cause (i.e., this unfair practice charge) with individual unit members.

The certification of PBA President John Reinmuth provides in a pertinent part: "I have been informed [that] Sheriff Fontanez, his secretary and other agents, servants and/or employees of the County of Camden have been soliciting and discussing with individual PBA members the merits of filing this unfair practice charge . . ." (p. 15).

The certification does not reveal the PBA President's personal knowledge of the purported fact. For purposes of this application I do not regard the quoted hearsay statement as a "fact."

forth in Section D -- the ones complained of -- ". . . remain a prerogative of the Sheriff or his designee . . ." The Sheriff argues that the word "[F]urther" describes "the right to deviate from the bidding systems" for the purpose of filling a non-biddable position; i.e., the Sheriff may alter biddable assignments.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain 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).

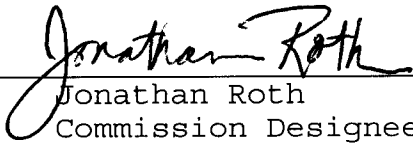
I deny the PBA's application because the PBA has not demonstrated a substantial likelihood of success on the merits of the case. The parties' filings reveal a dispute over the rights and obligations set forth in Sections "B" and "D" of Article XIII. Arbitration, not interim relief, is the appropriate forum

for a ruling on whether the Sheriff's conduct violates the contract "methodology" of "choosing shift assignments", including the reassignment of unit employees from biddable to non-biddable positions.

The unfair practice charge shall be forwarded to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied.


Jonathan Roth
Commission Designee

DATED: October 17, 2006
Trenton, New Jersey