

I.R. NO. 2009-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-2009-173

ESSEX COUNTY CORRECTIONS OFFICERS
PBA LOCAL NO. 382,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain the County of Essex from requiring County corrections officers to have their photos taken by a private photographer for County personnel use. The Designee, however, requires the County to notify the PBA of the steps it has taken and/or will take to prevent the inadvertent release of the photos and/or employee privacy information.

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Appearances:

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

For the Charging Party
Loccke, Correia, Schlager, Limsy & Bukosky, attorneys
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On November 14, 2008, Essex County Corrections Officers, PBA Local No. 382 (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), (3), (4), (5), (6) and (7)^{1/} of the New Jersey Employer-Employee Relations

^{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 (continued...)

Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleged that recently the County unilaterally ordered employees in its unit to have their pictures taken by a private photographer rather than an in-house photographer. The PBA claims that the County's actions changed a term and condition of employment, raised serious privacy and security issues and that the County refused to negotiate. The PBA seeks an order restraining such picture taking and/or the use of the photos because of personal privacy and security concerns.

The unfair practice charge was accompanied by an application for interim relief which also requested temporary restraints. Although temporary restraints were not granted, an Order to Show Cause was executed on November 18, 2008, scheduling a telephone conference call return date by agreement of the parties for November 25, 2008. Both parties submitted briefs, certifications

1/ (...continued)
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."

and exhibits in support of their respective positions and argued orally on the return date.

The PBA argued that a practice had existed for the County to take photographs of employees for ID badges using their own equipment and personnel. It claims that the order to have pictures taken by an outside photographer is a departure from terms contained in the parties contract, and argued it raises personal privacy and security issues. The PBA seeks to restrain the picture taking and/or use and control of any photos.

The County opposes a restraint. It disputes the PBA's claim that the contract was violated or that employees were required to go to the photographer on their own time, it argues that it had a prerogative to require the photos and use a private photographer, and it indicated it has taken appropriate security measures.

The following facts appear:

On or about October 22, 2008, employees represented by the PBA were notified that they would be required to have their photographs taken by a private company from November 10 through November 24, 2008. Prior to taking any photographs, the private company came to the County's facility and employees were invited to attend an information session. The County entered into a confidentiality agreement with the photographer providing that pictures will not be used for unauthorized purposes.

The PBA claimed that employees were required to have the photos taken on their own time at a private facility. The County maintained the photos were taken during employee work time at the County's facility. During oral argument, the PBA did not dispute the County's claim that most of the 600 plus unit members already had their photos taken, and that the photos were taken at the County's facility during work time at no expense to employees.

The PBA argued that the County's actions violated the party's collective agreement, but the County argued the agreement was silent on this issue. The PBA did not present any article of the agreement directly on point with this issue.

The County's purpose for the photographs is to update their personnel files and to create a composite of the entire corrections department for display in an area of the correctional facility only accessible to employees. Other departmental pictures and the PBA bulletin board hang in that area.

Employees have the option--but are not required--to have the private company take pictures of them in uniform with their family at the employees' cost. If such photographs are taken, the photographs will be sent to the County for distribution to employees. The PBA asserted that the private company would be given employee private information, address and telephone numbers. The County maintained that no employee addresses or telephone numbers will be provided to the private company.

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 raised several reasons for seeking to restrain the taking of and/or use of the photographs including: the risk that gang members or felons could obtain the photos and/or private information; safety risks for the employees and their families; the distribution or sale of their photographs and information to unwanted companies and/or individuals; and the posting of photographs in undesired locations. In support of its position the PBA relied upon cases restricting the release or distribution of home addresses and photographs. Paul P. v. Verniero, 170 F. 3d 396 (1999); Doe v. Poritz, 142 N.J. 1, 83 (1995); DePiano v. Atlantic County, 2005 WL2143972 (DCNJ 9/2/05). The facts of

those cases are substantially different than the instant facts. Here, the County has maintained that it will not release employee addresses, telephone numbers or the photos. The PBA also relied upon cases restricting surveillance of employees, but those cases are also not on point with the instant facts.

The County, in support of its case, has argued, relying upon the balancing test in Local 195 IFPTE v. State, 88 N.J. 393 (1982), that it has a prerogative to take photographs for personnel purposes, and that it has a prerogative to subcontract the photography to a private vendor.

During oral argument the PBA noted it was not contesting the County's right to have employee photos taken for personnel use, nor its right to subcontract the photography to a private photographer. But it vigorously argued that serious privacy and employee and family security issues existed that warranted a restraint. The County argued it had taken measures to protect employee privacy and security.

Given the dispute over certain material facts, and noting no contractual provision or Commission decision restricting the County's actions in this context, I cannot find that the PBA has demonstrated a substantial likelihood of success on the merits of its application. Thus, the request for a restraint is denied.

Notwithstanding the above, however, the PBA has raised legitimate privacy and security issues regarding the control and

use of the photographs which the County should address.

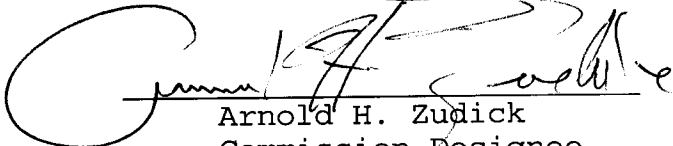
Consequently, the County should notify the PBA of the steps it has taken and will take to ensure that the photographs will only be used for personnel purposes, and how it intends to prevent the inadvertent release of the photos and employee information by the private photographer and/or County employees.

In accordance with the above, I issue the following:

ORDER

The County shall notify the PBA by December 30, 2008, of the steps it has taken and will take to ensure that recent employee photographs will only be used for personnel purposes, and how it intends to prevent the inadvertent release of the photos and/or employee privacy information by the private photographer and/or County employees.

The request for a restraining order is denied.


Arnold H. Zudick
Commission Designee

DATED: December 3, 2008
Trenton, New Jersey