

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX and  
ESSEX COUNTY SHERIFF'S OFFICE,

Respondent,

-and-

Docket No. CO-2011-318

PBA LOCAL 183,

Charging Party.

SYNOPSIS

The Essex County Corrections PBA Local 183 alleged that the County of Essex and the Essex County Sheriff's Office retaliated against its president when the County required him to personally report to the chief warrant officer at the start of each work day before being released to engage in representational activity. Local 183 further claimed that an established practice granted its president full release time and the County's directive requiring him to report to work unilaterally changed a term and condition of employment during the course of collective negotiations. The County asserted that it did not require Local 183's president to report in retaliation for his engaging in protected activity. The County also argued it had a managerial prerogative to require employees to report-in each work day. The Commission Designee found that retaliation claims are ill suited for interim relief proceedings and found a factual dispute existed resulting in his denying interim relief regarding that claim. The Designee also found that employee release time for representational purposes is a mandatory subject of negotiations and that the County has a managerial prerogative to determine the manner in which it maintains oversight of its employees. Therefore, given the co-equal interests of the County and Local 183, the Designee ordered the County to refrain from requiring the president report personally to the Chief to sign-in, since the County could not demonstrate any governmental policy basis for requiring Local 183's president to report in person. The Designee, however, did not restrain the County from requiring the president to account for his time and indicate whether he is in duty status.

I.R. NO. 2011-42

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Appearances:

For the Respondent  
Genova, Burns & Giantomasi, attorneys  
(Joseph M. Hannon, of counsel)

For the Charging Party  
Loccke, Correia, Limsky & Bukosky, attorneys  
(Merrick H. Limsky, of counsel)

INTERLOCUTORY DECISION

On February 15, 2011, the Essex County Corrections PBA Local 183 (PBA or Local 183) filed an unfair practice charge, accompanied by an application for interim relief seeking temporary restraints, with the Public Employment Relations Commission (Commission) alleging that the County of Essex and the Essex County Sheriff (County) violated 5.4a(1), (2), (3), (4), (5), (6) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations

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<sup>1/</sup> 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  
(continued...)

Act, N.J.S.A. 34:13A-1 et seq. (Act). Local 183 contends that effective February 2, 2011, the County ordered the Local's president to report to his regular assignment in the detective bureau before conducting any union business each day in retaliation for the president's exercise of his right to engage in concerted activity protected by the Act. Additionally, the Local alleges that the County unilaterally changed a term and condition of employment during the course of collective negotiations when it changed the existing practice by requiring the Local's president to sign-in at the detective bureau at the start of each work day. The County claims that it did not retaliate against the Local's president and that it merely required the president to sign-in at the detective bureau and advise a supervisor before leaving to engage in PBA business. The County contends it has a managerial prerogative that allows

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1/ (...continued)  
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."

it to unilaterally require the Local president to appear at the detective bureau and sign-in each work day.

On February 23, 2011, I was designated as commission designee in this matter. On February 24, 2011, I executed an Order to Show Cause scheduling a return date for March 24, 2011. I denied the PBA's request for temporary restraints. On March 7, 2011, with the consent of Local 183, I granted the County's request for a postponement of the scheduled return date and rescheduled oral argument for April 12, 2011. The parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argued orally on the rescheduled return date. I delayed issuing this decision in order to provide the parties an opportunity to meet on a related matter to explore settlement possibilities on both cases. No settlement was achieved.

Essex County, the Essex County Sheriff and the Essex County Corrections PBA Local 183 have been parties to a series of collective negotiations agreements. The most recent agreement covers the period January 1, 2006 through December 31, 2007. Successor negotiations for the expired agreement has resulted in the parties employing the compulsory interest arbitration process under which the assigned arbitrator had issued a decision which is currently pending appeal. Local 183 represents approximately

330 rank and file sheriff's officers. Article XVIII, Local 183 Activities, provides the following:

The president of Local 183, or his designee, may process grievances of Local 183 while on working time.

The agreement contains no other provision addressing union release time.

For at least the last fifteen years, the president of PBA Local 183 has been granted full-time release from sheriff's officer's duties to perform PBA work. The president is administratively assigned to the detective bureau. Until recently, the president could perform PBA business without having to first report in person to the detective bureau.

On January 14, 2011, a Commission Designee granted an application for interim relief filed by Local 183 (Docket No. CO-2011-212) enjoining the County from shifting unit work involving criminal identification responsibilities away from sheriff's officers in the Essex County Jail (I.R. No. 2011-29, 39 NJPER 30 (¶10 2011)). The PBA contends that immediately after the Commission Designee's decision was issued, the County conducted a press conference expressing its displeasure with the ruling. The PBA asserts that subsequent to the County's press conference, the PBA held a meeting during which the PBA president made statements expressing the PBA's displeasure with the County's response to the Designee's order and Local 183 memorialized that displeasure

in a written communique delivered to the County. The PBA claims that within days after the County received Local 183's written comments, the Local's president was summoned by the chief warrant officer and told to report to his regular assignment in the detective bureau at the start of each work day, effective February 2, 2011.

Local 183 claims that its president, Chris Tyminski, unlike any prior president, is now required to report directly to the chief warrant officer each day. The PBA contends that requiring the president to report to the chief warrant officer constitutes a unilateral change in terms and conditions of employment and was implemented in retaliation for Tyminski's exercising his protected rights.

The Sheriff's office is located at 50 West Market Street in Newark, New Jersey. Sheriff's officers are required to report for duty each day in the Sheriff's office. The County contends that one of the responsibilities performed by the Sheriff is to be aware of which sheriff's officers are present for duty each day. The Sheriff claims that over the years, he frequently saw Officer Tyminski in the Sheriff's office. Beginning in the summer of 2010, the Sheriff realized that he rarely saw Tyminski, whose regular assignment is to the detective bureau. In or around the last week of January 2011, the Sheriff contends that he conferred with the chief warrant officer (chief) charged with

the responsibility over personnel matters in the detective bureau, concerning Tyminski's whereabouts. Since the chief was unaware of Tyminski's whereabouts, the Sheriff claims that he asked the chief whether Tyminski was signing in at the start of his shift. The Sheriff asserts that on the basis of the chief's response, he learned for the first time that Tyminski was not required to sign-in at the beginning of the shift. The Sheriff claims that he directed the chief to inform Tyminski that he would be required to sign-in like all other sheriff's officers and personally report to the detective bureau for his assignment each day. However, the Sheriff claims that Tyminski could notify the chief whenever he needed release time to attend to union business. The chief asserts that Tyminski was not required to provide him with information regarding the nature of the union business nor was Tyminski required to obtain the chief's approval; Tyminski was merely required to advise the chief that he was leaving the office to attend to PBA business. By implementing this directive, the chief was satisfied that Tyminski was at work each day.

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 primary thrust asserted in the Charging Party's unfair practice charge and initial brief takes the position that the County required Tyminski to sign-in at the detective bureau as a retaliatory measure in response to Local 183's contest of the unit work issue raised in Docket No. CO-2011-212. The County contends that its directive to Tyminski to report in person for duty merely treated Tyminski in the same manner it treated all other sheriff's officers and Tyminski's union activity was not a motivating factor in its determination. In a claim of retaliation, the Charging Party must demonstrate that the protected conduct is a substantial or motivating factor in the adverse action. Bridgewater Twp., 95 N.J. 235, 246 (1989). The assessment of the employer's motivation in determining whether it has violated N.J.S.A. 34:13A-5.4a(3) of the Act is critical. However, by its very nature, establishing the employer's motivation is a fact-intensive exploration and does not lend itself to a grant of interim relief. Jackson Tp., I.R. No. 2011-32, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 2011). Here, there exists a factual



dispute as to whether the County was motivated by anti-union animus in its directive to Tyminski to sign-in at the detective bureau each work day. Ultimately, the County's motivation must be ascertained by the Commission at the conclusion of a plenary hearing. At this juncture, however, it is premature to make a determination as to the County's motivation inasmuch as the parties have presented conflicting factual claims.

The Commission has long held that employee release time for representational purposes is mandatorily negotiable. City of Paterson, P.E.R.C. No. 2005-32, 30 NJPER 463 (¶153 2004); City of Newark, P.E.R.C. No. 90-122, 16 NJPER 394 (¶21164 1990); Maurice River Tp. Bd. of Ed., P.E.R.C. No. 87-91, 13 NJPER 123 (¶18054 1987). It is also well settled that public employers have the inherent managerial prerogative to determine the manner in which they employ time keeping procedures for employees. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 135 N.J. Super. 269 (Ch. Div. 1975), aff'd 142 N.J. Super. 44 (App. Div. 1976); South Hackensack Bd. of Ed., P.E.R.C. No. 98-70, 24 NJPER 14 (¶29009 1997); State Operated School District of the City of Paterson, P.E.R.C. No. 97-107, 23 NJPER 202 (¶28097 1997); Boro. of Butler, P.E.R.C. No. 94-51, 19 NJPER 587 (¶24281 1993); North Bergen Bd. of Ed., P.E.R.C. No. 92-5, 17 NJPER 378 (¶22177 1991); Town of Pennsauken, P.E.R.C. No. 80-51, 5 NJPER 486 (¶10248 1979). Additionally, the Commission has held that an employer violates

its duty to negotiate when it unilaterally alters an existing practice or work rule governing a term and condition of employment even where that practice or rule is not specifically set forth in a collective agreement.  Tp. of Middletown, P.E.R.C. No. 98-77, 24  NJPER 28 (¶29016 1997), aff'd 334  N.J. Super. 512 (App. Div. 1999), aff'd 166  N.J. 112 (2000);  Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9  NJPER 138 (¶14066 1983).

This case involves the application of competing, co-equal interests and rights of the County and Local 183. The facts appear to establish that for at least fifteen years the PBA president has been granted full-time release from his duties. As noted above, employee release time for representational purposes is mandatorily negotiable. Accordingly, an established practice which allows a union officer to be granted full-time release from his duties constitutes a term and condition of employment which may only be modified through the conduct of bilateral collective negotiations between the employer and the employee representative.

However, the employer's exercise of a managerial prerogative is not subject to negotiations and may be unilaterally implemented. Thus, an employer has a prerogative to unilaterally implement a procedure to account for an employee's time, ascertain an employee's whereabouts during work time, and be informed as to whether the employee is in duty status.

Consequently, in this case, the County maintains a prerogative to require an employee to adhere to a procedure which allows the employer to know whether that employee is on duty. Therefore, to reconcile the competing interests in the instant matter, I find that absent negotiations, the employer, at this juncture, must adhere to the existing term and condition of employment which allows Tyminski full-time release from duty in order to continue to perform his representational responsibilities for Local 183. Since the record sets forth no governmental policy reason requiring Tyminski to physically report to the chief warrant officer before he advises the chief of his departure from the detective bureau to engage in representational activities, I find that charging party has established a likelihood of success on the merits which warrants an order directing the County to refrain from requiring Tyminski to physically report to the chief at the beginning of the work day simply for the purpose of advising the chief that he will be departing to engage in representational activities. The County's directive represents a change in the existing condition of employment without negotiations. However, this finding does not prevent the County from exercising its managerial prerogative to require Tyminski to communicate with the chief, or other person designated by the County, on a daily basis to advise the County that the Local 183 president is in duty status and whether the president is

performing representational responsibilities or other work on behalf of the County.

The parties remain engaged in the interest arbitration process. N.J.S.A. 34:13A-21 provides as follows:

During the pendency of proceedings before the arbitrator, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other. . . .

Additionally, the parties are currently in the midst of collective negotiations for a successor agreement. A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability.

Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). Thus, under Galloway, I find that the County's unilateral change in the established practice during the course of interest arbitration and on-going successor negotiations undermines Local 183's ability to represent its membership and results in irreparable harm. See also Borough of Roseland, I.R. No. 2000-11, 26 NJPER 191 (¶31077 2000); Tp. of Nutley, I.R. No. 99-19, 25 NJPER 262 (¶30109 1999).

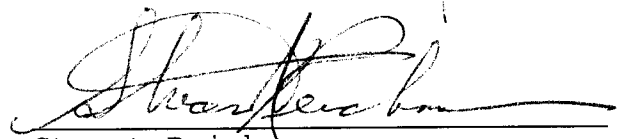
Considering the public interest and the relative hardship to the parties, I find that the public interest is furthered by adhering to the tenets expressed in the Act which require the parties to negotiate prior to implementing changes in terms and

conditions of employment. Maintaining the collective negotiations process results in labor stability and promotes the public interest. In assessing the relative hardship to the parties, I find that the scale tips in favor of Local 183. The County experiences a lesser degree of hardship by being required to adhere to the longstanding established practice which constitutes the existing terms and conditions of employment. However, Local 183 will be irreparably harmed as the result of a unilateral change in a term and condition of employment during the pendency of the collective negotiations process.

ORDER

The County is restrained from unilaterally altering the established practice which allows the president of Local 183 to be granted full release time from his duties as a sheriff's officer in order to engage in representational activity of the Local without being required to physically report to the sheriff's office at the beginning of each work day. However, the County is not restrained from requiring the president of Local 183 to contact a designated management official on a daily basis to advise as to the president's work status. This interim order

will remain in effect pending a final Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.

A handwritten signature in cursive script, appearing to read "Stuart Reichman", written over a horizontal line.

Stuart Reichman  
Commission Designee

DATED: April 26, 2011  
Trenton, New Jersey