

I.R. NO. 2021-17

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF CAMDEN,
(DEPARTMENT OF CORRECTIONS),
CAMDEN COUNTY SHERIFF,

Respondent's,

-and-

Docket Nos. CO-2021-109
CO-2021-115

POLICEMEN'S BENEVOLENT ASSOCIATION
LOCAL NO. 351, and PBA LOCAL 277,

Charging Parties.

SYNOPSIS

A Commission Designee denies applications for interim relief, based on two unfair practice charges (one from a corrections officer unit, the other from a sheriff's officers unit) alleging that the public employer violated the unit work rule, repudiated contractual provisions on bidded positions and violated contractual health and safety provisions by assigning some sheriff's officers to work certain posts at the employer's jail facility. The employer's conduct in both matters allegedly violated section 5.4a(1), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

The Designee initially ordered mutually requested temporary restraints that prohibited the public employer from assigning sheriff's officers to the facility. The employer sought dissolution of the temporary restraints and admitted that it did not comply with the Order because compliance would have endangered safety at the facility owing to staffing concerns.

The Designee ultimately determined that a factual dispute about an alleged loss of overtime was material (to the "irreparable harm" inflicted on the corrections officer unit) and that staffing concerns raised by the employer representative's certification implicated the majority representatives' demonstrated "likelihood of success" burden, requiring a plenary hearing to determine the facts. The Designee rescinded the Temporary Restraints and denied the applications.

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Appearances:

For the Respondent,
Brown and Connery, LLP, attorneys
(Michael J. DiPiero, of counsel)

For the Charging Party, PBA Local No. 351,
Sciarra & Catrambone, LLC, attorneys
(Christopher A. Gray, of counsel)

For the Charging Party, PBA Local 277,
Mets Schiro and McGovern, LLP, attorneys
(James M. Mets, of counsel)

INTERLOCUTORY DECISION

On December 1, 2020, Policemen's Benevolent Association Local No. 351 (Local 351) filed an unfair practice charge (CO-2021-109) against Camden County Department of Corrections (County), together with an application for interim relief seeking a temporary restraint, certification, exhibits and a brief. The charge alleges that on November 28, 2020, the County unilaterally assigned County sheriff's officers to job posts located within

the County Correctional facility (CCCF), thereby removing unit employees - corrections officers - from those posts and repudiating the parties' 2017-2021 collective negotiations agreement (Corrections CNA). The charge more specifically alleges that corrections officers had previously and exclusively been assigned to the posts of lobby security, foot patrol, back gate, transports and admissions and that the newly assigned sheriff's officers, not trained in the rules and regulations of the facility and bereft of their weapons, pose a danger to themselves , unit employees and detainees. The charge alleges a loss of unit work and overtime, violating section 5.4a(1), (2), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., (Act).

The charge seeks an interim relief order requiring the County to restore and maintain the status quo.

On December 3, 2020, PBA Local No. 277 (Local 277) filed an unfair practice charge (CO-2021-115) against the County and

^{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. (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. (7) Violating any of the rules and regulations established by the commission.

Camden County Sheriff (Sheriff), together with an application for interim relief seeking a temporary restraint, certification, exhibits and a brief. The charge alleges that on November 24, 2020, Local 277 President Paul Robeson was advised that beginning the next day, negotiations unit sheriff's officers will begin working certain posts at the CCCF; such work had not been required in the past. The charge alleges that on November 25th, Local 277 issued a letter to Camden County Sheriff Gilbert Wilson, demanding to negotiate "all negotiable aspects" of the order requiring unit members to work at CCCF. The Sheriff allegedly did not respond to the demand. The charge alleges that Articles III and XIII of the parties' CNA (Sheriff CNA), providing shift and post bidding by seniority, were repudiated when the Sheriff removed unit members from their bid posts and ordered them to work at CCCF. The Sheriff's and County's conduct allegedly violates section 5.4a(1), (5) and (7) of the Act.

The application seeks an order requiring the Sheriff and County to remove sheriff's officers unit employees from CCCF and return them to their assigned units with the Sheriff's Office and to negotiate with Local 277 all negotiable issues; and to be enjoined from repudiating the Sheriff CNA.

On December 7, 2020, I issued an Order to Show Cause with Temporary Restraints to the County and Sheriff for both applications, while enabling the County to seek dissolution or

modification of the Order on two days' notice. The Order also set forth dates for the submission of a response and of replies and for argument in a telephone conference call.

On December 8, 2020, the County filed a letter seeking dissolution of the Orders of Temporary Restraint, together with a certification of County Warden Karen Taylor. The letter advises that the County is unable to comply with the Order "under current circumstances," citing absences from work of corrections officers as a consequence of COVID-19 infections. The letter advises that 68 of 213 corrections officers employed by the County are quarantined due to COVID-19 exposure and the County has been unable to hire officers, ". . . because of pandemic-related delays at the Civil Service Commission." The letter also advises that, ". . . there is so much overtime being offered to remaining officers that fatigue is becoming a serious issue." The County avers that the sheriff's officers are being used to secure posts outside inmate housing facility and are "within the job duties of a sheriff's officer."

On December 11, 2020, I conducted a conference call among the parties. On December 21, 2020, the parties argued their respective cases on the Order to Show Cause in a telephone conference call.

The following facts appear.

The County and Local 351 signed a Corrections CNA extending from January 1, 2017 through December 31, 2021. The Corrections CNA includes "Appendix 1: Seniority Bid Charts," identifying these "posts;" "lobby security/work detail," "back gate," "foot patrol," "admissions booth," "kitchen," and "laundry," among others. "Transports" is not specifically set forth, though "medical expediter" is listed. During argument on December 21st, the County did not contest that "transports" included hospital transports of detainees that were assigned to sheriff's officers on or about November 25, 2020. Local 351 President Patrick Cornely certifies that, ". . . corrections officers bid on these posts based on seniority, with the most senior officers getting their preference of job posts" (Cornely cert., para no. 8). He attests to his "understanding" that on November 25, 2020, sheriff's officers were assigned to these posts; lobby security, foot patrols, back gate, admissions and transports (Cornely cert., para. no. 10). Cornely certifies that removing corrections officers from their contractual bid positions, ". . . will result in a loss of overtime opportunities for corrections officers" (Cornely cert., para. no. 26).

The Corrections CNA includes Article XVIII (Safety and Health) and Article XIX (Grievances), a multi-step procedure ending in binding arbitration. Cornely certifies that sheriff's officers aren't in the "facility's chain of command," nor trained

in proper procedures during emergency lockdowns and riots, nor trained to handle inmate "intake and security" (Cornely cert., para. nos. 12-18).

On November 30, 2020, Local 351 Counsel issued a letter to CCCF Director David Owens contesting the assignment of sheriff's officers to corrections officers' bidded positions, and averring the violation of the unit work rule, and safety implications of the action (Local 351 exhibit no. 4). Cornely certifies that the County did not reply to the letter (Cornely cert., para. no. 25).

The County and Local 277 signed a Sheriff CNA extending from January 1, 2016, through December 31, 2020 (Local 277, Exhibit A). Article XIX (Safety and Health) provides at Section 1:

The County will maintain safe and healthful working conditions at all times and will provide employees with any wearing apparel, tools or devices reasonably necessary in order to ensure their safety and health.

Article XX (Grievances) sets forth a multi-step grievance procedure ending in binding arbitration.

Article III (Seniority) and Article XIII (Bidding) together provide that the vast majority of positions are subject to bidding in "Hall of Justice," "Transportation" and "Probation" (Local 277, Exhibit A).

Local 277 President Paul Robeson certifies that on or about November 24, 2020, Sheriff's department Chief John Fetzer issued an email advising that Sheriff Gilbert Wilson authorized "the

unilateral deployment of [Local 277] unit members to the CCCF" to assume these "assignments:" scheduled clinic runs; rear security booth and foot patrol; front lobby and jail admissions; electronic monitoring programs and emergent hospital details (Robeson cert., para. no. 6; Exhibit B). On the same date, Robeson specifically learned that on the next day, November 25th, Local 277 unit employees would staff "lobby and admissions posts" at CCCF. He also received a "schedule for CCCF detail" identifying about 21 unit employees, each scheduled to work two shifts at CCCF on varying dates between November 25th and December 24, 2020 (Exhibit D). In Robeson's 20 years as a unit member, no unit employees had previously been assigned work at CCCF (Robeson cert., para no. 9). Local 277 unit employee assignments to CCCF have resulted in those employees' ". . . removal from their bid positions" (Robeson cert., para. no. 10).

On November 25th, Local 277 Counsel wrote to the Sheriff protesting his orders, ". . . compelling PBA [Local 277] unit members to work as corrections officers, effective today." Counsel wrote that such orders are "unlawful" and jeopardize the safety and well-being of [Local 277] unit members." Counsel wrote of Local 277's demand to rescind the orders and to meet and discuss the concerns raised in the letter (Exhibit E).

Robeson certifies that Local 277 unit employees deployed to "admissions," "rear security booth," "foot patrols" and "electronic monitoring program" haven't been trained in those respective duties, posing safety risks to themselves, corrections officers and inmates (Robeson cert., para. 20-23). Nor have Local 277 unit members received training in proper procedures during CCCF lockdowns and riots, or in equipment locations for purposes of self-defense and defense of others (Robeson cert., para 16-18).

In a supplemental filing, Robeson certifies that the unit employees he represents work primarily at the County Courthouse and that six unit employees are assigned to CCCF and perform duties, ". . . not well within the job duties [unit employees] perform in their regular assignments with the Sheriff" (Robeson supplemental cert., para. nos. 3, 5, 6). He certifies that unit employees working at CCCF patrol the facility's perimeter; drive a vehicle on patrol around the facility's perimeter every 30 minutes; inspect arriving vehicles at the gate of the facility; are stationed in the "admissions" area where they must "secure" an area of the "code" is called (i.e., securing many inmates in "holding" cells); guard prisoners brought to a hospital; and conduct "searches" of entrants to the facility (Robeson supplemental cert., para. nos. 7-12).

Camden County Corrections Warden Karen Taylor certifies that despite precautions against COVID-19 at CCCF, 68 of 213 Local 351 unit employees were either quarantined due to possible exposure or awaiting clearance to return to work following such COVID-19 exposure, as of December 8, 2020 (Taylor cert., para. 2, 3, 5, 6). 7 other unit employees are out for "injury on duty" reasons; 7 are out on FMLA leave and 3 are out on leaves of absence, leaving a total of 128 Local 351 unit employees available for duty (Taylor cert., para. 6).

Taylor certifies that the County has been ". . . unable to adequately hire additional staff as the Civil Service process, based on a certified list of candidates, is also used by Camden Metro and Camden County Sheriff." She certifies that Academy trainees will become available on December 13, 2020 and in January, 2021 (Taylor cert., para. 7).

Taylor certifies that minimum staffing levels are set at 53 corrections officers on "A1 and "A2" shifts and at 37 corrections officers on "P1 and P2" (7 pm to 7 am) shifts. She certifies that ". . . due to staffing levels and possible inmate exposure to COVID-19, the jail has been on 'quarantine lockdown' for weeks." On December 7, 2020, Taylor released detainees from quarantine lockdown during the day shift; "part of the reason," Taylor certifies, ". . . was because of the extra staffing [about five sheriff's officers] that sheriff's officers have provided to

the jail facility" (Taylor cert., para. 9). Lockdown was reinstated between 7 pm and 7 am, ". . . due to staffing levels." On several nights, staffing dropped on these shifts to 18, "due to high number of call outs."

Taylor certifies that, ". . . any reduction in staffing would force a 'shelter place' directive - effectively placing the facility back on full lockdown at all times." During such lockdowns, detainees are permitted to leave their cells for shower and phone calls, only. She certifies that "shelter in place" lockdowns create safety problems for staff because detainees become "strained and hostile" (Taylor cert., para. 10, 11). Taylor certifies that in the past months, eight correction officers were placed on "injured on duty leave," an increase attributable to detainee assaults occasioned by ". . . lockdown status due to understaffing" (Taylor cert. para. 11-13).

Warden Taylor certifies that in her effort to "alleviate staffing issues during the current state of emergency created by the pandemic, I have cancelled non-primary vacations, such as daily vacations, administrative days and compensatory time usage" (Taylor cert., para. 14). She certifies that on the day shifts (requiring staffing of 53 employees), she has supplemented staffing with employees working 8 am - 4 pm assigned to "programs, maintenance and special services." This adjustment in turn has caused a closing of laundry services, reduced capacity

to complete sanitation services and a cancellation of other work detail assignments, rendering COVID-19 control more difficult within the facility (Taylor cert., para. 15).

Taylor certifies that on the night of December 7, 2020 (the day preceding her certification), CCCF experienced "16 call-outs, which meant that only 15-16 staff were available to cover the facility." Also, "20 corrections officers worked overtime who carried over from the day shift, [while] 3 sheriff's officers worked posts at the facility." Taylor certifies that as a consequence of the "call-outs," (unspecified) staff were called in at 3 am to assist and are, ". . . on top of the mandatory overtime asked of corrections staff on a daily basis" (Taylor cert., para no. 17, 18).

Taylor certifies that "the admissions unit has been operating at minimum staffing levels since the pandemic began" and staff has been allocated from the admissions unit to the jail, regularly. She certifies: "The sheriff's officers assigned to this post have helped greatly, as it allowed me to reassign corrections officers to work within the housing units directly with the detainees" (Taylor cert., para no. 19). She certifies that each night, "a staff member" leaves the jail to conduct "foot patrol" by walking around the perimeter of the jail. By assigning a sheriff's officer to foot patrol, Taylor has been

able to reassign a corrections officer within the facility.

Talor certifies:

The assistance being provided by the Sheriff's Office has not reduced any overtime opportunities; staff members are being held over every day to fill vacancies.
[Taylor cert., para no. 21]

Finally, Taylor certifies that the Temporary Restraint issued in these matters, ". . . prohibiting the County from reassigning sheriff's officers to the jail facility to cover areas outside the housing units, places [CCCF] in grave danger and creates an environment which could lead to a potential riot or death" (Taylor cert., para. 23).

ANALYSIS

A charging party may obtain interim relief in certain cases. 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 unit work rule provides that an employer must negotiate before using non-unit employees to do work traditionally performed by unit employees alone. See Bergen Cty. and Bergen Cty. Sheriff's Office, I.R. No. 2019-6, 45 NJPER 123 (¶33 2018), recon. den. P.E.R.C. No. 2019-20, 45 NJPER 208 (¶54 2018); Hudson Cty. Police Dept., P.E.R.C. No. 2004-14, 29 NJPER 409, 410 (¶136 2003), recon. den. P.E.R.C. No. 2004-39, 29 NJPER 547 (¶177 2003); Rutgers, The State Univ., P.E.R.C. No. 2003-70, 29 NJPER 158 2003). In City of Jersey City v. Jersey City POBA, 154 N.J. 555, 568 (1998), our Supreme Court held that the negotiability balancing test set forth in Local 195, IFPTE v. State, 88 N.J. 393 (1982) must be explicitly applied to determine whether in a given set of circumstances, an employer may unilaterally transfer duties previously performed by police officers to civilians. That test provides:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately

affect employees working conditions. [88
N.J. at 404-405]

In applying the dispositive third prong, the Court agreed with the City that its actions (civilization of dispatching duties) were taken primarily to augment its ability to combat crime by increasing the number of police officers in field positions. It concluded that because the City implemented the reorganization for the purpose of improving the police department's "effectiveness and performance," the City's actions constituted an inherent policy determination that under Local 195, would be impermissibly hampered by negotiations. Id. at 573.

The unit work rule contemplates three exceptions in which the transfer of unit work is not mandatorily negotiable. The exceptions apply where (1) the union waived its right to negotiate over the transfer of unit work; (2) historically, the job was not within the exclusive province of unit personnel; and (3) the municipality is reorganizing the way it delivers government services Jersey City, 154 N.J. at 577.

The parties don't dispute that before November 28, 2020, corrections officers historically and exclusively performed duties at the CCCF posts of lobby security, foot patrol, back gate, transports and admissions. Nor do they contest that the transfer of work is between employees of the same employer (i.e., "Camden County Board of Chosen Freeholders," or "County" as set forth in the Corrections CNA and the Sheriff CNA). Local 351 and

the County dispute an alleged loss of overtime opportunities; Local 351 President Cornely certifies that removing corrections officers from their bid positions at CCCF, “. . . will result in a loss of overtime opportunities for corrections officers.” CCCF Warden Taylor has certified that the assistance of sheriff’s officers, “. . . has not reduced any overtime opportunities; staff members are being held over everyday to fill vacancies.” This dispute is material because it bears on whether Local 351 unit employees are being irreparably harmed by a loss of overtime opportunities.

A public employer retains a managerial prerogative to deploy a specific number and type of employee required for a particular shift or respond to emergencies. Watchung Bor. P.E.R.C No. 2016-49, 42 NJPER 351 (¶99 2016); City of Vineland, P.E.R.C. No. 2015-32, 41 NJPER 244 (¶80 2014) (“If an emergency condition exists, a public employer may deploy its workforce to respond, even if doing so may deviate from normal employee assignments and overtime allocation”).

Another material factual dispute implicating whether Local 351 and Local 277 have carried their respective “substantial likelihood of success” burdens is whether, as Warden Taylor certifies, staffing has become so precariously diminished that any further reduction would require a “full lockdown at all times,” a condition creating safety issues because prisoners

become "strained and hostile." Taylor has also certified that staffing has fallen below the minimum "floor" on the night shift and that on the day shift, she has reassigned civilian employees to "supplement" requisite staffing. The as-yet-tested veracity of these representations will determine if an "emergency" in fact authorized the County's deviation from the unit work rule. For these reasons, the Temporary Restraint issued on December 7, 2020 is rescinded.

The County has asserted that its actions, ". . . are not a management attempt to usurp the contractual agreements of the unions, rather they were taken as a last resort to ensure adequate staffing and safety" (brief at 6). It has subsequently represented that a substantial number of corrections unit employees have returned to work from quarantine or illness and that new unit employees are being hired, likely obviating a need to maintain an assignment of sheriff's officers to CCCF. I anticipate under these circumstances that the County shall, if it hasn't already, authorize the return of sheriff's officers to their historically and regularly assigned posts, and reinstate corrections officers to their bidded posts.

ORDER

The applications for interim relief are denied. The cases shall be processed in the normal course.

/s/ Jonathan Roth
Jonathan Roth
Commission Designee

DATED: January 6, 2021
Trenton, New Jersey