

I.R. NO. 2023-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX (CORRECTIONS),

Respondent,

-and-

Docket No. CO-2023-096

ESSEX COUNTY PBA LOCAL 382,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application based on an unfair practice charge filed by PBA Local 382 (PBA) against the Essex County Department of Corrections (County). The charge alleged the County violated sections 5.4a(1), (5) and (7) of the Act by unilaterally "revamping" the bidding process for job bids without negotiating with the PBA over the re-bidding of positions. The County asserted it had the managerial prerogative to do so in order to address serious staffing and safety concerns at the Essex County Correctional Facility (ECCF). The PBA also asserted the re-bidding of already awarded job bids to officers violated a provision of the parties' collective negotiations agreement, a provision the County believes gave it the authority to re-bid positions for the effective and efficient operation of the ECCF. The Designee determined that the PBA had not established a substantial likelihood of success on its legal and factual claims, as there were material factual issues as to (1) whether negotiations over the re-bidding process would significantly interfere with implementation of the County's governmental policy determination to address staffing and safety concerns at ECCF and (2) adjudication of the unfair practice charge depended upon resolution of a contractual dispute which should be resolved in accordance with the parties' negotiated grievance procedures.

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Appearances:

For the Respondent, Hatfield Schwartz Law Group, LLC,
attorneys
(Kathryn V. Hatfield, of counsel)

For the Charging Party, Law Offices of Nicholas J.
Palma, PC, attorneys
(Valerie Palma DeLuisi, of counsel)

INTERLOCUTORY DECISION

On December 1, 2022, Essex County PBA Local 382 (PBA or Charging Party) filed an unfair practice charge accompanied by an application for interim relief and temporary restraints against the County of Essex (County or Respondent). The charge alleges the County violated sections 5.4a(1), (5) and (7)^{1/} of the New

^{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"; "(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"; and "(7) violating any of the rules and
(continued...)

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by unilaterally "revamping" the County's bidding policy on job postings for PBA unit employees in repudiation of Article 10 of the parties' collective negotiations agreement. The charge also alleges the County notified PBA officers that they had used up all of their available "union time" for the year, resulting in the cancellation of the PBA's November 2022 meetings^{2/} and violated the Act by refusing to allow officers to make vacation selections pending the "revamping" of the bidding process. The PBA also alleges that unit officers who were awarded jobs during the previous bidding process will be ousted from their positions as a result of the new, "revamped" bidding process.

In support of its application for interim relief and temporary restraints, the PBA submitted a brief and a certification with exhibits from David Matos ("Matos Cert."), PBA President. In its proposed Order to Show Cause (OTSC), the PBA seeks the following interim relief:

(1) An order requiring the County to ". . . maintain the current bid posts at Essex County Correctional Facility and immediately commence vacation selection for 2023";

1/ (...continued)
regulations established by the commission."

2/ The PBA does not seek interim relief on this claim.

(2) An order enjoining the County “. . . from revamping bid posts without the consent of PBA Local 382 until such time as this matter is heard and decided by PERC”; and

(3) An order compelling the County to “. . . immediately permit vacation selection for 2023.”

On December 1, 2022, I signed the OTSC without temporary restraints^{3/} and set a return date for oral argument on December 23, 2022.^{4/} The OTSC set a deadline of December 9, 2022 for the County's response to the OTSC and December 13, 2022 for the PBA's reply to the County's response. On December 9, 2022, the County filed a brief and certifications with exhibits from Ronald Charles, the County's Director of the Department of Corrections (DOC); ("Charles Cert.") Christopher Foy, the County's DOC Scheduling Coordinator ("Foy Cert."); and Kathryn V. Hatfield, Esq., counsel for the County ("Hatfield Cert."). The PBA filed a

3/ After reviewing the PBA's OTSC, Kathryn V. Hatfield, Esq., counsel for the County, emailed PBA counsel and the undersigned on December 1, 2022 that there “. . . will be no change to existing posts until early January 2023" and requested the County be "permitted the opportunity to respond to the PBA's assertions . . ." before cancelling the re-bidding process scheduled for December 2. Hatfield noted that permitting the re-bidding process to move forward "will be no harm to the PBA as the County will simply not implement the new picks in January 2023." PBA counsel did not respond to this email.

4/ After reviewing the parties' written submissions, I determined oral argument was unnecessary.

reply brief and supplemental certification from Matos ("Matos Reply Cert.") on December 13, 2022.

Based on the parties' submissions, the following facts appear:

The PBA is the exclusive majority representative of 619 County DOC officers below the rank of sergeant. (Matos Cert., Para. 1 and Exhibit A). The PBA and County are parties to a collective negotiations agreement extending from January 1, 2014 through December 31, 2017 (Agreement). (Exhibit A to Matos Cert.). Article 10 of the Agreement, entitled "Seniority", provides, in pertinent part:

A. Job Assignments, Shift Assignments, and Vacation Picks

Seniority shall be the basis on which Officers select vacation schedules, shifts and overtime, **except in circumstances where the granting of such vacations, shifts or overtime will interfere with the efficient operation of the Jail, as determined in the sole discretion of the Director of Corrections or his designee.**

Bid jobs will be posted and awarded according to jail policy "Job Bids PS.ADM.014."

The County agrees that all future assignments to preferred positions will be posted and that overall seniority may be considered as a factor for filling these assignments, as long as an Officer had requested the preferred position of a preference sheet. **The parties expressly understand and agree, however, that final authority in filling these positions remains with the Director of Corrections or his designee.** Any Officer holding a preferred position may be removed for good cause at the discretion of the Director of Corrections or his designee.

[Exhibit A to Matos Cert., Emphasis Added]

Effective February 1, 2007, the County issued the job bids policy PS.ADM.014 ("Bid Policy") that is referenced in Article 10 of the parties' Agreement. (Exhibit B to Matos Cert.). The Bid Policy sets forth several procedures for the creation and posting of job bids, the process of bidding for different jobs and for awarding bids to unit officers. Matos certifies that a "plain reading" of Article 10 of the Agreement and the Bid Policy ". . . clearly demonstrates that once an officer is awarded a bid, the officer cannot be removed from that bid absent demonstrable reasons, as set forth in [Section] E of PS.ADM.014." Under Section E of the Bid Policy, those "demonstrable reasons" for bid removal or job revocation include removal in order to "isolate aberrant behavior(s) of staff members until a corrective action plan can be enacted" or where " a staff member demonstrates a serious deficiency due to a lack of understanding or inability to develop competence in the job assignment despite on the job training/counseling; and where unsuccessful attempts have been made and documented to rectify the deficiency" (Matos Cert., Exhibit B).

Ronald Charles is the Director of the County's DOC. (Charles Cert., Para. 1). He has held this position since August 15, 2022. Prior to holding this position, Charles was the County of Union's DOC director for 7 years; and prior to holding that

position, Charles worked in various positions in Union County's DOC for 25 years. (Charles Cert., Para. 1). Charles certifies that he is also "an American Corrections Association auditor and a recognized subject matter expert on corrections." (Charles Cert., Para. 1).

At the time Charles commenced employment as the County's DOC Director in August 2022, the County had already retained the services of "Ambrose Group, LLC" to "conduct an assessment of the Essex County Correctional Facility (ECCF)." (Charles Cert., Para. 2). Charles "actively participated in the assessment." (Charles Cert., Para. 2). The County retained Ambrose Group to conduct the assessment ". . . because, over the prior two years, there were numerous critical incidents involving both inmates and staff members." (Charles Cert., Para. 3 and Exhibit A). These "critical incidents" include a prisoner ". . . escape, a murder, several attempted murders and numerous assaults on staff members." (Charles Cert., Para. 3 and Exhibit A).

On September 15, 2022, Ambrose Group provided the County with a 184 page report providing "critical findings and recommendations" in a number of DOC areas, including but not limited to "inmate intake, inmate classification, inmate housing, inmate medical review, contraband, internal affairs, training and review of force." (Charles Cert., Para. 4 and Exhibit B). Many of those findings and recommendations concerned staffing issues

at the County DOC. (Charles Cert., Para. 5). Specifically, the Ambrose Report made the following staffing recommendations:

- (1) Assignment of additional staff to the Legal Mail Room;
- (2) Additional officers be assigned to inmate search teams;
- (3) Expanding the scope and role of the Criminal Intelligence Bureau;
- (4) Creation of a Compliance Unit to ensure that rules, regulations, policies and procedures are properly implemented and followed;
- (5) Restructuring the Internal Affairs Bureau and Criminal Intelligence Bureau;
- (6) Increase the number of Training Unit staff; and
- (7) Re-establish the Safety and Security Bureau and have it be responsible for the emergency response team and any other specialized teams or functions related to safety/security, including cell searches.

(Charles Cert., Paras. 4 and 5).

Shortly after commencing employment as DOC Director in Essex County, Charles conducted his own "staffing analysis" of the ECCF and found ". . . numerous holes and shortcomings associated with current staffing" at the ECCF. (Charles Cert., Para. 6).

Charles "requested an independent correctional consulting group be engaged to review the facility's staffing" and, in September 2022, the County engaged the "Nakamoto Group, Inc." (Nakamoto

Group) to "evaluate staffing at the ECCF." (Charles Cert., Para. 7).

As part of its review of ECCF staffing, the Nakamoto Group "reviewed numerous documents and interviewed more than 125 staff members, including both sworn and civilian staff." (Charles Cert., Para. 7). The Nakamoto Group provided the County with its "ECCF Staffing Analysis Report" on September 21, 2022. (Charles Cert., Para. 8 and Exhibit C). The Staffing Report included "numerous findings and recommendations", including but not limited to the following staffing recommendations:

(1) Adding two captains to ensure appropriate supervisory coverage;

(2) Staff the scheduling departments with civilian personnel and re-assign sworn employees to security work;

(3) Limit special assignments to ensure that officers are placed in security driven positions;

(4) Ensure that the General Assignment Officers are posted in a manner to ensure that a significant response force is available at all times;

(5) Add supervisors on the third shift and in each celled housing unit;

(6) Reduce the number of staff in the intake area;

(7) Limit the number of transportation officers and reassign others to security posts;

(8) Limit the number of officers assigned to Video Court and reassign others to security posts;

(9) Lower the numbers of officers assigned to Visitation, Security Checkpoint, CHART and other posts and utilize them on posts that split their time throughout the shift for duties that fluctuate in terms of need;

(10) Dissolve posts such as Movement Officer, Sanitation and Recreation and reassign to housing unit GA [General Assignment] positions;

(11) Assign security staff to security positions at all times and eliminate the use of corrections officers in non-security posts;

(12) Reassign sergeants in the Records Room to security posts; and

(13) Reassign officers assigned to recruitment unit to security posts.

[Charles Cert., Exhibit C and Para. 8]

Charles certifies that the County's new staffing plan for the ECCF ". . . will address the shortcomings identified in both the Ambrose and Nakamoto Reports as well as the PBA and FOP's safety concerns by adding twenty (20) dedicated Search Officers and forty (40) dedicated General Assignment Officers in housing locations." (Charles Cert., Para. 9). Furthermore, the ECCF staffing plan will "add a sergeant on each housing floor whereas

we only had one Sergeant for every two (2) floors under the prior staffing plan." (Charles Cert., Para. 9).

Christopher Foy is the County DOC's Scheduling Coordinator. (Foy Cert., Para. 1). He has held that position since October 2022. (Foy Cert., Para. 1). Prior to working for the County, Foy worked for Union County for 27 years and was "responsible for creating staffing plans to meet the operational needs" of Union County's correctional facilities. (Foy Cert., Paras. 1 and 2). During his employ for Union County, Foy also ". . . spent six (6) years in charge of the scheduling department and identifying staffing needs and changes based on economy and efficiency." (Foy Cert., Para. 2).

At the Essex County DOC, Foy "assessed and evaluated the current schedule [of DOC officers] and identified deficiencies which were preventing the Jail from operating in a safe and effective manner." (Foy Cert., Para. 4). Those "deficiencies" included ". . . a lack of sufficient level of security in the buildings and large gaps in coverage which led to even greater security issues and excessive overtime." (Foy Cert., Para. 4.) Based on the Nakamoto and Ambrose Reports, and his own independent assessment, Foy determined that the County needed to "completely revamp the facility's [ECCF's] staffing plan in order to address the issues raised in the consultants reports." (Foy Cert., Para. 5).

Foy summarizes the benefits of the staffing plan to unit officers and the manner in which it addresses safety and staffing issues in this way:

(1) The Plan "increases the number of officers who are able to have weekends off by 12%";

(2) It "increases the safety and security of the facility by adding twenty (20) dedicated search officers, [and] 40 dedicated general assignment officers in housing locations and adding housing sergeants on every floor." Prior to these changes, "there were never any dedicated general assignment officers in the housing locations" and half the number of sergeants in the housing locations than those provided under the new staffing plan; and

(3) The new staffing plan "provides for significant coverage where gaps previously existed."

[Foy Cert., Para. 7]

Foy also certifies that the County needed to "eliminate tying days off to specific posts because it prohibits us from creating a staffing plan that would allow for coverage" and that "there was not balance in the prior schedule", which "effectively created an unsafe environment because there were not enough officers to cover all gaps." (Foy Cert., Para. 8). Charles and Foy certify that the new staffing plan "will ensure the facility [ECCF] can operate in a safe and effective manner while

preserving employees' seniority right" by allowing officers to continue to "select their post, days off, shift and vacation days based on seniority." (Foy Cert., Para. 9; Charles Cert. Paras. 11 and 12). Charles further certifies the new staffing plan addresses safety concerns expressed by PBA and FOP members and that "officers will still be permitted to select their own shift, post, days off, and vacations by seniority", a process that "is anticipated to be completed no later than December 15, 2022." (Charles Cert., Paras. 9 and 11).

During the first week of November 2022, Matos and three other PBA Executive Board members met with Charles, Foy, ECCF Warden Cirillo and a Lieutenant Camacho. (Matos Cert., Para. 6). At that meeting, the County's representatives advised the PBA that they were planning to "revamp the entire bid process, remove all officers from their awarded bids, and have all officers rebid." (Matos Cert., Para. 7). The PBA advised the County at the meeting that "bid posts are awarded in accordance with the CNA [collective negotiations agreement]" and that the County "cannot circumvent the collective negotiations process by unilaterally revamping the bid process", which also, according to the PBA, precludes the County from removing officers from their awarded bid "without cause." (Matos Cert., Para. 7).

On November 7, 2022, Valerie Palma DeLuisi, Esq., Labor Counsel for the PBA, emailed Sylvia Hall, the County's Labor

Relations Director, about the re-bidding issue. (Matos Cert., Para. 8, Exhibit C). Referring to Article 10 and the County's Bid Policy, Palma asserted in the email:

[O]nce an officer has a bid post, it cannot be taken from that officer unless the officer is subject to discipline or demonstrates a serious deficiency due to lack of understanding or inability to develop competence in the job assignment despite on-the-job training and counseling, after attempts to correct the deficiency have been made. Director Charles has advised the union that he is starting the bid process over, which will remove all current officers from their bids (several hundred assignments). This is a clear violation of the CNA and the union cannot allow it to proceed without significant opposition.

[Exhibit C to Matos Cert.]

In the email, Palma also requested the County advise whether they were willing to negotiate the rebidding process by "COB tomorrow" [November 8]." (Exhibit C to Matos Cert.). On November 7 and 9, 2022, Hall emailed Palma that the County was in the process of "examining your email with attached documents", that the matter was being "discussed internally" and that "the County does not have a position at this time." (Exhibit C to Matos Cert.).

On November 22, ECCF administrators held a meeting with PBA officers advising of their new plan for bid posts. (Matos Cert., Para. 16). According to Matos, the November 22 meeting was "NOT a negotiations meeting, this was an 'information meeting', wherein Administration TOLD Officers what they planned to do."

(Matos Cert., Para. 16). Matos certifies that "officers were not permitted to engage in a dialogue with Administration." (Matos Cert., Para. 16).

Matos also certifies that the rebidding process violated the ECCF's vacation selection policy. (Matos Cert., Paras. 13 and 14).^{5/} Under that policy, officers must commence vacation selection on October 15 each year and conclude selection by December 15 that same year. (Matos Cert., Para. 14). This year, Matos certifies that officers are not being allowed to select vacation time (as of December 1, 2022) until the rebidding process is completed. (Matos Cert., Para. 14).

The PBA disputes the facts presented by the County on whether re-bidding here was a proper exercise of a managerial prerogative. However, comparing its original and reply submissions, the PBA's position on the negotiability of the re-bidding process changes considerably. In its original OTSC submissions, the PBA's position is unequivocal: no job bid awarded to a unit officer can be revoked or re-bid absent disciplinary reasons or other competency/training issues as

^{5/} Matos also refers to a policy violation concerning union meetings, but as indicated previously, the PBA is not seeking interim relief on its unfair practice claim concerning the cancellation of a union meeting in November 2022.

outlined in section E of the County's Bid Policy.^{6/} In its reply submissions, the PBA qualifies this position: an officer can be removed from an awarded bid if a bid post is "extinguished" under the County's new staffing plan even if the County does not cite reasons for removal under Section E of the County's Bid Policy. (Matos Reply Cert., Para. 3). The PBA then narrows the issue in the case to whether the County is "removing officers from bid posts that will still exist under the new staffing plan." (Matos Reply Cert. Para. 3). It is unclear from the record what, if any, bid posts "still exist" under the new staffing plan.^{7/} The PBA also disputes the factual predicates for the County's asserted prerogative to re-bid posts to effectuate staffing changes that will promote public safety at the ECCF. (Matos Reply Cert., Paras. 6-8, 19; PBA Reply Brief, pp. 3-6).

On November 30, 2022, ECCF Warden Cirillo advised Matos that the re-bidding process would begin at 8 a.m. on December 2, 2022

^{6/} For instance, Matos certifies that under Article 10 and the County bid policy ". . . once an officer is awarded a bid, the officer cannot be removed from that bid absent demonstrable reasons, as set forth in [Section] E of [Bid Policy]", and that the County ". . . cannot remove officers from their awarded bids without cause." (Matos Cert., Paras. 5 and 7).

^{7/} Since this position was first advanced in the PBA's reply, the County did not have an opportunity to respond to this position (nor did the County request such an opportunity).

and conclude on December 4, 2022.^{8/} (Matos Cert., Para. 20).

This charge and interim relief application ensued.

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); Whitmeyer 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).

In advance of a hearing or more fully developed record, interim relief should not be granted “. . . except in the most clear and compelling circumstances.” 1 NJPER at 38. An applicant’s claim for interim relief should “rest on settled law” and “. . . where there is a dispute over material facts, we have held that interim relief is properly denied because the charging party will not have met its burden of showing that it has a substantial likelihood of success on the merits of its charge.”

^{8/} It appears however from the record that this period was extended to December 15. (Charles Cert., Paras. 9 and 11).

Rutgers University, P.E.R.C. No. 2023-23, ___ NJPER ___ (¶ ___) (pp. 16-17 of Slip Op.); see also North Hudson Reg. Fire and Rescue, P.E.R.C. No. 2008-61, 34 NJPER 113 (¶48 2008); County of Burlington, P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009).

I find the PBA has not established a substantial likelihood of success on its legal and factual claims. The record here presents material factual issues that require a plenary hearing concerning (1) whether negotiations over the re-bidding process would significantly interfere^{9/} with the implementation of the County's governmental policy determination to address staffing and safety concerns at the ECCF; and (2) whether Article 10 of the Agreement, read in conjunction with the County Bid Policy, gives the County the discretion to revoke or re-bid job posts when doing so is needed for the efficient operation of ECCF. Given these material factual disputes, I cannot at this early

^{9/} The language "significantly interferes" comes from the "time honored test" for determining whether a subject is mandatorily negotiable. Robbinsville Tp. Bd. of Ed. v. Washington Tp. Educ. Ass'n, 227 N.J. 192 (2016) ; In Re Local 195 IFPTE v. State of New Jersey, 88 N.J. 393 (1982). Where negotiations over a subject would "significantly interfere" with the determination and implementation of a governmental policy, the subject is **not** mandatorily negotiable. Id.

stage of the processing of PBA's charge grant interim relief.^{10/}
I, therefore, **DENY** the PBA's application for interim relief.

Seniority Bidding Dispute

A majority representative and public employer can negotiate over job bidding procedures that rely on seniority as a factor in bid selection ". . . provided all qualifications are equal and managerial prerogatives are not otherwise compromised." City of Hoboken, P.E.R.C. No. 95-23, 20 NJPER 391, 393-394 (¶25197 1994); City of Passaic, I.R. No. 2004-7, 30 NJPER 5 (¶2 2004), recon. den. P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004). These "managerial prerogatives" include, but are not limited to, governmental policy determinations designed to address minimum staffing levels, employee supervision or training, qualifications for particular positions, and other measures addressing public safety issues. Id., see also Camden Cty. Sheriff, P.E.R.C. No. 2000-25, 25 NJPER 431 (¶30190 1999), aff'd 27 NJPER 357 (¶32128

^{10/} The County also argues that the re-bidding process has not had an identifiable impact on PBA unit employees' terms and conditions of employment, since the County did not reduce the number of positions available for bid, had in fact *added* positions to the previous bidding process, and officers were permitted to bid based on seniority according to the same criteria applicable to the prior bidding process under Article 10 and the County Bid Policy. Since I do not need to address this issue in reaching a decision on the interim relief application, I decline to do so.

App. Div. 2001).^{11/} Shift assignments based on "seniority alone" are **not** mandatorily negotiable. Hoboken, 20 NJPER at 393-394.

In the context of interim relief applications, Commission Designees have consistently declined to grant interim relief on section 5.4a(5) claims where an employer has presented a colorable managerial prerogative defense. Passaic. Time and again, Commission Designees have denied interim relief on claims that an employer unilaterally changed shift assignments, work schedules, and/or bidding procedures where there was a material factual dispute over the exercise of a managerial prerogative. Passaic; Hudson Cty. (Corrections), I.R. No. 95-21, 21 NJPER 195, 196 (¶26129 1995) (Commission Designee denies interim relief on claim that employer repudiated contractual prohibition against shift assignment changes where employer had ". . . introduced evidence that the reassignments were made for managerial reasons and was therefore outside the scope of negotiations.").^{12/}

^{11/} Somerset Cty Sheriff, P.E.R.C. No. 2002-15, 27 NJPER 377 (¶32138 2001); Union Tp., P.E.R.C. No. 2003-81, 29 NJPER 214 (¶63 2003); Camden Cty. Sheriff, P.E.R.C. No. 2004-46, 30 NJPER 33 (¶10 2004), recon. den. P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004); Sussex Cty. Sheriff, P.E.R.C. No. 2019-55, 46 NJPER 20 (¶7 2019); State of New Jersey (Corrections), P.E.R.C. No. 2020-37, 46 NJPER 324 (¶79 2020).

^{12/} City of Long Branch, I.R. No. 2003-9, 29 NJPER 39 (¶14 2003) (Commission Designee denies interim relief on challenge to transfer and reassignment of firefighters where the reassignments may have implicated the exercise of a managerial prerogative); Hillside Tp., I.R. No. 2004-4, 29 (continued...)

In City of Passaic, a Commission Designee denied interim relief on a claim by a PBA unit that is virtually identical to the claim here. 30 NJPER at 8. There, the City during the end of September 2003 permitted unit officers to bid for shift assignments. 30 NJPER at 6. The bidding was conducted by officers in the City's patrol division and was done in "straight seniority order", consistent with a contractual provision between the City and Passaic PBA that based bidding assignments on "seniority alone." Id. On October 7, 2003, the City notified officers of the outcome of the bidding and their new shift assignments, and indicated the assignments would go into effect on October 12, 2003. Id. After reviewing the scheduled assignments, the City's Police Chief realized that 16 of the 22 officers on the midnight shift (12 a.m. to 8 a.m.) were "inexperienced, junior police officers, and 9 of those officers had less than one year's experience." Id. Since the midnight

12/ (...continued)

NJPER 378 (¶119 2003) (Commission Designee denies interim relief on a challenge to a work schedule change where the employer made a "colorable claim" that the scheduling change was based on a managerial prerogative); Essex Cty. Prosecutor, I.R. No. 2019-12, 45 NJPER 244 (¶65 2019) (Designee denies interim relief on a challenge to a change in work shifts where there were material factual disputes over whether change was a proper exercise of a managerial prerogative); Camden Cty. (Corrections), I.R. No. 2021-17, 47 NJPER 291 (¶68 2021) (Designee denies interim relief on a unfair practice alleging repudiation of bidding procedures where there was a material factual dispute over whether the employer's change to bidding procedures was designed to address legitimate staffing issues).

shift, according to the City, was the "highest crime" shift of the three shifts available for bid, the City decided to revoke the awarded bids and re-bid the positions on October 10 to ensure a sufficient number of experienced offers worked the midnight shift. Id.

The Passaic PBA filed an unfair practice charge and application for interim relief challenging the City's revocation and re-bidding of shift assignments as a repudiation of the parties' seniority based shift bidding contractual provision and past practice governing shift assignments. 30 NJPER at 7. The Commission Designee denied the application for interim relief, explaining:

The PBA claims that the City has not articulated a specific need - such as training, special skills, or supervision - of any particular assignment that would warrant deviating from seniority order. The City has. It has said that 16 rookies of 22 officers on the highest crime shift is too many inexperienced police officers for the highest crime shift. It is not for us to second guess how many is too many inexperienced officers. Rather, the City has made a colorable claim that it has a managerial prerogative to decide how many experienced police officers it needs on each shift. Thus, I cannot find that the PBA has a substantial likelihood of success on the merits of its charge that the City had a negotiations obligation before altering the bidding procedure.

[30 NJPER at 8].

The Designee, while acknowledging that "the Passaic police officers' personal lives are again disrupted by being assigned to a possible different shift", determined that because the PBA had not demonstrated a substantial likelihood of success on the merits of its charge, a "plenary hearing was needed to find the facts" and interim relief could not be granted. Id.

Here, like the city in Passaic, the County has presented a colorable managerial prerogative defense for the re-bidding of PBA unit officer positions to address serious staffing and safety concerns at ECCF. Charles certifies that over the past two years, a number of "critical incidents" have occurred at ECCF, including a prisoner escape, a murder, several attempted murders and numerous assaults on staff members.^{13/} The Ambrose and Nakomoto Reports, along with independent assessments by Foy and Charles of ECCF, provide extensive empirical data, analysis and findings establishing the need to substantially restructure ECCF's organization and address staffing issues that have contributed to unsafe conditions at ECCF.^{14/} While the PBA disputes the factual basis for the County's managerial prerogative to re-bid officer positions and maintains at least some awarded job bids could be preserved under the County's

^{13/} Charles Cert., Para. 3.

^{14/} Charles Cert., Paras. 3 - 6 and Exhibits A and C; Foy Cert., Paras. 4-8.

staffing plan^{15/}, this contention presents a material factual dispute over whether negotiations over the re-bidding process would significantly interfere with the County's governmental policy to address staffing and safety concerns at ECCF. That dispute cannot be resolved without a plenary hearing or more fully developed record. Rutgers; Passaic.

Like the Commission Designee in Passaic, I acknowledge that the re-bidding process may have had a disruptive impact on PBA unit employees' vacation selections and personal lives.^{16/} But, as the Designee in Passaic also noted, there remains a material issue of fact over the negotiability of the re-bidding process that constrains me to deny interim relief. Rutgers; Passaic. For these reasons, I find the PBA has failed to establish a

^{15/} Assuming awarded bids could be preserved under the new staffing plans for ECCF (which is far from clear on this record), it is unclear on this record whether other officers whose job bids were extinguished would have the right to bid for the preserved positions based on seniority or other criteria. This issue, and others, need to be fleshed out at a plenary hearing and reinforce the point that interim relief here is inappropriate.

^{16/} What impact, if any, on unit officers is unclear from this record. There are no facts indicating any of the positions available to unit officers have been reduced by the County as compared to the prior bidding process. In fact, the parties do not dispute that up to 40 positions have been added to ECCF. Theoretically, at least, it is possible that officers could have re-bid for positions that preserved their vacation schedules they selected during the prior bidding process. This is yet another issue that cries out for a more fully developed record.

substantial likelihood of success on its legal and factual claims.

Contractual Dispute

I am also denying interim relief because adjudication of PBA's unfair practice charge depends upon the resolution of a contractual dispute over the interpretation and application of Article 10 of the parties' Agreement. City of Trenton, I.R. No. 2001-8, 27 NJPER 206, 208 (¶32070 2001), recon. den. P.E.R.C. No. 2001-66, 27 NJPER 233 (¶32080 2001); Hudson Cty. (Corrections), I.R. No. 2003-10, 29 NJPER 324 (¶100 2003). In general, the Commission will refuse to issue a complaint on an unfair practice charge where resolution of the charge depends upon the resolution of competing, colorable differences in the interpretation of the parties' collective negotiations agreement. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); Woodland Park Bd. of Ed., D.U.P. No. 2014-12, 40 NJPER 429 (¶147 2014). In the interim relief context, Commission Designees have repeatedly denied interim relief applications that require resolution of contractual disputes because such a dispute undercuts a Charging Party's position that it has a substantial likelihood of succeeding on the merits of its charge. Trenton, 27 NJPER 206; Hudson Cty, 29 NJPER 324; Township of Irvington, I.R. No. 2000-10, 26 NJPER 167 (¶31065 2000); Township of Woodbridge, I.R. No. 2000-8, 26 NJPER 163 (¶31063 2000).

Here, the PBA and County present competing, colorable interpretations of Article 10 of the Agreement that undermine the PBA's likelihood of success on the merits of its charge. The PBA, based on its "plain reading" of Article 10 and the County Bid Policy referenced therein, contends no job bid can be revoked once awarded except for disciplinary reasons or reasons related to training/competency to perform the job under Section E of the County Bid Policy.^{17/} The County disagrees, contending that two clauses in Article 10 give it the discretion to revoke and re-bid jobs beyond the reasons outlined in Section E of the County Bid policy.^{18/} Those clauses are:

(1) Language in Article 10 giving the DOC Director or his/her designee "sole discretion" to deviate from seniority based shift assignments when needed to promote the "efficient operation" of ECCF; and

(2) Language on job bids that provides, in pertinent part, that the parties "expressly understand and agree . . . that final authority in filling these positions remains with the Director of Corrections or his/her designee" and that "any officer holding a

^{17/} Matos Cert., Para. 5 and Exhibit C.

^{18/} County Brief, pp. 3-4.

preferred position may be removed for good cause at the discretion of the Director of Corrections or his designee.”^{19/}

Given this contractual dispute, I find the PBA has not established a substantial likelihood of success on its legal and factual claims, an essential element for the granting of interim relief.^{20/}

^{19/} Exhibit A to Matos Cert. The PBA counters that the “good cause” language for removal of an officer from an awarded job bid is limited to the reasons outlined in Section E of the County Bid Policy. However, based on this record, it is far from clear that “good cause” is limited to those reasons outlined in Section E. “Good cause” may also include circumstances where an awarded job bid interferes with the effective and efficient operation of the ECCF. Regardless, how the phrase “good cause” should be interpreted is a contractual dispute that should be resolved in accordance with the parties’ negotiated grievance procedures. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); Woodland Park Bd. of Ed., D.U.P. No. 2014-12, 40 NJPER 429 (¶147 2014).

^{20/} Having determined that the underlying claim is not settled and that there is a dispute of material facts, the analysis ends here and no further analysis of the remaining Crowe factors is warranted. Crowe, supra (explaining substantial likelihood of success is a prerequisite for obtaining interim relief). See also, Paterson State Operated School District, I.R. No. 2021-25, 47 NJPER 510 (¶120 2021) (citing Harvey Cedars Bor., I.R. No. 2020-4, 46 NJPER 261 (¶64 2019); Irvington Tp., I.R. No. 2019-7, 45 NJPER 129 (¶34 2018); Rutgers, I.R. No. 2018-1, 44 NJPER 131 (¶38 2017); New Jersey Transit Bus Operations, I.R. No. 2012-17, 39 NJPER 328 (¶113 2012)).

ORDER

The PBA's application for interim relief is **DENIED**.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Commission Designee

DATE: December 29, 2022