

H.E. NO. 92-30

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

Docket No. CO-H-91-308

ESSEX COUNTY POLICEMEN'S BENEVOLENT
ASSOCIATION, LOCAL NO. 54,

Charging Party.

SYNOPSIS

A Hearing Examiner grants the the Respondent's Motion for Partial Summary Judgment prior to hearing, in which he dismissed, in part, a Complaint alleging that the County had during the early months of 1991 unilaterally reassigned a substantial number of its Police Officers to the Office of Sheriff without first negotiating with the Charging Party. The County did so, based on the Commission's decision in Cape May County Bridge Comm., P.E.R.C. No. 92-8, 17 NJPER 382 (¶22180 1991) where it was found that one of two public employers could unilaterally reassign the work of certain of its unit employees to the other employer. Here, the Hearing Examiner concluded that the instant County had a like managerial prerogative to reassign certain of its Police Officers to the Office of the Sheriff since the decision predominantly involved governmental policy and negotiations would have significantly interfered with such policy determinations.

Since there remain many allegations to be litigated, the case will now proceed to hearing.

The granting of a Motion for Partial Summary Judgment is not a final administrative determination of the Commission. It may only be appealed by special permission of the Commission: N.J.A.C. 19:14-4.6(b) and 4.8(e).

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Appearances:

For the Respondent, Genova, Burns & Schott, Attorneys
(Stephen E. Trimboli, of counsel)

For the Charging Party, Simon M. Bosco, Labor Consultant

HEARING EXAMINER'S RECOMMENDED DECISION
AND ORDER ON RESPONDENT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

An Unfair Practice Charge was filed with the Public
Employment Relations Commission ("Commission") on May 14, 1991, and
amended on July 31, 1991,^{1/} by the Essex County Policemen's
Benevolent Association, Local No. 54 ("Charging Party" or "PBA")
alleging that the County of Essex ("Respondent" or "County") has
engaged in unfair practices within the meaning of the New Jersey
Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et

^{1/} This amendment, involving the alleged deployment by the County
of Essex of "civilian Park Rangers" to replace County Police
Officers, beginning May 24, 1991, is not included within this
proceeding.

seq. ("Act"), in that,^{2/} inter alia, the County, beginning on or about January 3, 1991, initiated a series of administrative actions, including the suspension of PBA President Timothy Smith on April 29, 1991, all of which culminated, in part, in the County having ignored the "...recognition of P.B.A. Local 54..." and in having increasingly given "...their traditional bargaining unit functions to another bargaining unit, specifically, P.B.A. Local #183..." [Unfair Practice Charge, second ¶ on p. 7].^{3/} The PBA concludes by alleging that the County has violated N.J.S.A. 34:13A-5.4(a)(1), (2), (3) and (5) of the Act by its conduct herein.^{4/}

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- ^{2/} The original Unfair Practice Charge, as drawn, is seven pages in length. Page 1 through the bottom of page 6 sets forth the material facts in support of seven alleged violations of the Act by the County. These allegations appear in six (6) separate paragraphs of the Charge at pages 6 & 7.
- ^{3/} The remaining six alleged violations of the Act are omitted for purposes of this decision since the agreed-upon issue presented for determination by the County's Motion for Partial Summary Judgment, infra, is the legality of its reassignment of unit work, involving Police Officers represented by the PBA herein, to another unit in the Office of the County Sheriff ("Sheriff"), represented by another local of the PBA.
- ^{4/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (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."

Since the County's Motion for Partial Summary Judgment raises only the issue of its alleged right to reassign County Police Officers to the Sheriff, the only subsection of the Act involved is Section 5.4(a)(5), supra.

It appearing that the allegations in the Unfair Practice Charge, as amended, if true, may constitute unfair practices within the meaning of the Act, a Complaint and Notice of Hearing was issued on June 18, 1991. The Respondent filed its Answer on June 27, 1991, and, as noted previously, the PBA filed its first and only Amendment on July 31, 1991. Thereafter, the Respondent filed its Answer to the Amendment on September 9, 1991.

Pursuant to a prehearing Order by the Hearing Examiner, entered on August 29, 1991, it was agreed, inter alia, that the Respondent would file a Motion for Partial Summary Judgment on the limited issue described above. This was done on November 13, 1991.^{5/} On November 18th, the Chairman referred the County's Motion to the undersigned pursuant to N.J.A.C. 19:14-4.8. Thereafter, the Charging Party filed its Response on November 21st and a Reply was filed by the County on December 3, 1991.

The original hearing dates of September 4-6, 9 & 10, 1991, were adjourned by agreement to December and thereafter cancelled without date, pending the filing of the instant Motion for Partial Summary Judgment.

^{5/} In support of its Motion, the County also filed Certifications by Thomas J. D'Alessio and Brenda Veltri Possumato.

The decision which follows is in accordance with N.J.A.C. 19:14-4.8, and is based upon the following:

INTERIM FINDINGS OF FACT^{6/}

1. The County of Essex is a public employer within the meaning of the Act, as amended, and is subject to its provisions.

2. The Essex County Policemen's Benevolent Association, Local No. 54 is a public employee representative within the meaning of the Act, as amended, and is subject to its provisions.

3. The Essex County Sheriff is a constitutional and statutory officer of the State, who functions separate and apart from the County. He employs Sheriff's Officers, among others, and possesses the exclusive authority to assign their duties and direct their work on a day-to-day basis.^{7/} The Sheriff is also a public employer within the meaning of the Act, as amended, and is subject to its provisions for purposes of this proceeding.

4. The County is a political subdivision of the State and operates under the County Executive form of government. The PBA is the exclusive collective negotiations representative for a unit of all Police Officers, Detectives, Patrolmen, Sergeants, Lieutenants

^{6/} These Interim Findings of Fact are based upon the relevant allegations in the original Unfair Practice Charge [excluding the Amendment], the original Answer, the D'Alessio and Possumato Certifications and Respondent's Main Brief, pp. 6-9. The PBA's Response of November 21, 1991, does not take issue with the facts as stated in the Respondent's Brief, supra, and the Reply Brief so notes at p. 4.

^{7/} See N.J.S.A. 40A:9-117 & 117.6, infra at p. 10.

and Captains employed by the County. [Agreement, January 2, 1987 to June 30, 1989; Art. I].

5. Between March 29, 1991 and May 10, 1991, the County laid off 88 of its Police Officers represented by the PBA. These layoffs, which were implemented in two "rounds," occurred as part of a County-wide program of cost reduction necessitated by a severe budget deficit. The "first round" of 22 layoffs occurred on March 29th and the "second round" of 66 layoffs occurred on May 10th. As a result, the County's Police Department was reduced in size from about 148 Officers to approximately 48 Officers. [Possumato Certif., ¶¶2, 5 & 8].

6. The County's action in reducing the size of its Police Department originated with the report of the Criminal Justice Committee of the Essex County Transition Team, which was forwarded to the County Executive-Elect under date of December 13, 1990. This Committee had studied the County's Police Department and found, inter alia, that its existing structure "...encourages duplication of work, stimulates excess overtime, condones unnecessary specialization and impedes the goals of good government." [D'Alessio Certif., Exh. 3 at p. 2]. This Committee also reported at length on the overlap of duties between the Office of the Sheriff and the County's Police Department. It found that the duties of the County Police were not "clearly defined," and that the County Police "...randomly engage in police activity that is the primary function of local and/or County Agencies, creating a conflict...and

duplicating much of the work which...should be done within the County Sheriff's Department...". [D'Alessio Certif. ¶7 & Exh. 3 at p. 4]. The Committee concluded that there should be a consolidation of operations between the County Police and the "Sheriff's Department," and that this consolidation be placed under the Sheriff. [D'Alessi Certif., Exh. 3 at p. 5].

7. The Committee's report above was submitted to the Policy and Budget Committee, which agreed with many of the prior findings and recommendations. On January 27, 1991, the Policy and Budget Committee reported its recommendations to the County Executive regarding the contemplated reorganization, in part, as follows:

County Police - we recommend that one of two approaches be taken regarding this organization, either approach resulting in the reduction of a force of some 160 to a remaining force of approximately 40.

*Option 1 - Elimination of the County police as an entity with the absorption of some 40 officers of a non-superior officer level into the Sheriff's Office for the purpose of taking on the additional duties of park and building security.

*Option 2 - Restoration of the County Police's original function, and reconstitution of the organization as County Park Police whose sole responsibility would be the security of the County Park System. Once again, this would require a force of some [40] officers.

In either case, all special units of the County Police (Communications, Narcotics Enforcement, Detective Bureau) should be eliminated and their functions picked up by the Sheriff's Office.

[D'Alessio Certif., Exh. 2 at pp. 1, 2].

The County Executive chose to implement Option 2 from the above recommendation. [D'Alessio Certif. ¶7].

8. For purposes of the instant Motion only, the Respondent has assumed as true the following facts alleged by the PBA:

a. Commencing in January 1991, certain duties formerly performed by the County's Police Officers are being performed by Sheriff's Officers.

b. The duties now being performed by the Sheriff's Officers were previously performed exclusively by the County's Police Officers.

c. A contractual prohibition, either express or implied, exists, which prohibits the reassignment of PBA unit work, and this prohibition has not been waived by the PBA.^{8/}

ANALYSIS

The Standard

A Motion for Summary Judgment is provided for in N.J.A.C. 19:14-4.8(a), which provides, in part, that: "Any motion in the nature of a motion for summary judgment may only be made subsequent to the issuance of the complaint and shall be filed with the chairman of the commission, who shall refer the motion to either the commission or the hearing examiner..." The Chairman has referred this matter to the undersigned Hearing Examiner for disposition.

^{8/} The County's willingness to concede that the above facts are true does not alter its position that it is entitled to prevail as a matter of law since it has a non-negotiable managerial prerogative to make the disputed reassignment. [See Respondent's Main Brief, p. 4].

N.J.A.C. 19:14-4.8(d) establishes the standard which the Commission utilizes in deciding whether or not to grant a motion for summary judgment, namely, that "...there exists no genuine issue of material fact and the movant or cross-movant is entitled to its requested relief as a matter of law..." in which case summary judgment may be granted and the requested relief ordered.

The Commission has, in many cases, followed the New Jersey Civil Practice Rules (R.4:46-2) and a leading decision of the New Jersey Supreme Court in Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954) in deciding motions for summary judgment under N.J.A.C. 19:14-4.8. Both the Civil Practice Rules and Judson apply the same standard.

But summary judgment is to be granted with extreme caution. The moving papers must be considered in the light most favorable to the opposing party, all doubts must be resolved against the movant, and the summary judgment procedure may not to be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182, 185 (App Div. 1981); Essex Cty. Ed. Services Comm'n., 9 NJPER 19 (¶14009 1982).

* * * *

The Hearing Examiner is persuaded that the Respondent's Motion for Partial Summary Judgment, based upon the above Interim Findings of Fact, which appear in the pleadings, the moving papers of the Respondent and those by the Charging Party in opposition, that Partial Summary Judgment must be granted in favor of the

Respondent "...as a matter of law..." on the single issue presented, namely, the County's unilateral assignment or reassignment of 88 of its Police Officers to the Essex County Sheriff without having first negotiated this decision with the PBA herein.

The Respondent's Motion For Partial Summary Judgment Must Be Granted In The Absence Of Genuine Issues As To Any Material Facts And Because It Is Entitled To Judgment As A Matter Of Commission Law On The Reassignment Issue.

The contention of the Respondent that the County and the Sheriff are separate employers is correct: Bergen Cty Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984). In that case the Commission considered the relationship between counties and sheriffs for purposes of collective negotiations. It was noted that counties and sheriffs are separate political entities but both such entities "...possess independent authority over various negotiable aspects of the employment relation..." of the employees of the Sheriff's Office (10 NJPER at 170. The Commission stated that while it recognized that "...the joint participation of the County and Sheriff is necessary to effective negotiations...it is equally necessary that the respective spheres of authority of the County and the Sheriff be recognized and honored in the negotiations and/or interest arbitration process..." (10 NJPER at 171). The Commission also noted this basic distinction between the County and the Sheriff: "...the County must have preeminent authority and final control over negotiable matters of compensation including...such economic

items...as wages are (sic) fringe benefits. Similarly, the Sheriff must have preeminent authority and final control over negotiable non-economic matters including...matters which may affect the day-to-day administration of the jail..." [Id.].

The authority of the Essex County Sheriff to hire employees, fix the level of their compensation and to direct them in the performance of such of their duties as attending the courts, serving processes or investigating and apprehending violators of the law, etc. is governed by two statutory provisions:

I.

N.J.S.A. 40A:9-117 provides, in part, that:

The sheriff shall select and employ the necessary deputies, chief clerks and other personnel. The sheriff shall fix the compensation they shall receive in accordance with the generally accepted county salary ranges and within the confines of the sheriff's budget allocation set by the governing body.

II.

N.J.S.A. 40A:9-117.6 provides specifically, in part, that:

The sheriff of each county shall, subject to the budget of the county, appoint such persons as may be necessary, to the position of sheriff's officer...to perform the duties involved in attending the courts...in serving court processes, or in the investigation and apprehension of violators of the law...or in any related work which the sheriff shall from time to time prescribe...

From the Commission's decision in Bergen Cty Sheriff, and the statutory authority granted to a sheriff, there can be no doubt but that the Essex County Sheriff was empowered to accept the reassignment by the County of 88 of its laid off Police Officers in

furtherance of a consolidation of services between the County and the Sheriff, Respondent argues that these 88 laid off Police Officers were thereby placed beyond the pale of the County and were thereafter under the exclusive jurisdiction of the Essex County Sheriff.

It remains only to determine whether the Respondent's position is supported by Commission precedent. The sole case relied upon by the Respondent is that of Cape May Cty. Bridge Comm., P.E.R.C. No. 92-8, 17 NJPER 382 (¶22180 1991)

The facts in Cape May involved the County and its Bridge Commission. When the Bridge Commission was about to be dissolved, it entered into a "Interlocal Services Agreement" with the County. As a result, the Bridge Commission conveyed certain bridges and roadways to the County^{9/} and agreed to discontinue its full-time Maintenance Department, which was represented by Local 196, IFPTE. The County agreed that its employees would assume the maintenance duties previously performed by Bridge Commission Local 196 unit employees. Finally, the Bridge Commission agreed that the County could utilize the Bridge Commission's maintenance facilities and equipment. [See 17 NJPER at 382, 383]. Local 196, upon learning of this plan, filed a "work preservation" grievance, demanding the

^{9/} Although the Bridge Commission discontinued its maintenance operations, it continued to operate several of the toll bridges it had operated previously.

abandonment of the plan. When the grievance was denied, arbitration was sought and the Bridge Commission filed a "Scope Petition.

Given that the Bridge Commission's maintenance department function had been abolished with ensuing layoffs and the reassignment of duties, the Commission concluded:

...We recognize that these decisions intimately and directly affect the work and welfare of many Bridge Commission employees. But these decisions predominantly involve governmental policy determinations about the Bridge Commission's existence, organization, size, and services and these grievances would significantly interfere with those determinations. We therefore restrain binding arbitration. [Emphasis supplied]. [17 NJPER at 384].

On the face of it, and considering the Cape May decision only, it would appear that no distinction can be made between the facts in Cape May and those of the instant case. Both matters involve two separate public employers and the decision by one such public employer to assign or reassign some of its employees to employment with the other public employer. The Hearing Examiner now considers the remaining authorities cited by the parties.

1. The PBA cites Bergen Pines Cty. Hosp., I.R. No. 91-16, 17 NJPER 236 (¶22102 1991)^{10/} in support of its position that the County's decision to reassign work traditionally performed by the Officers in its Police Department to the Sheriff without collective negotiations violates the Act. In Bergen Pines, the reassignment of work which had been performed by Head Nurses to the Assistant

^{10/} This decision is also distinguished by the Respondent in its Reply Brief, p. 11.

Directors of Nursing occurred within the confines of the same public employer rather than two distinct public employers as in the case at bar. Thus, Bergen Pines is inapposite. [17 NJPER at 236, 237].

2. A similar result obtains as to the PBA's reliance upon County of Bergen, P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991), adopting H.E. No. 91-39, 17 NJPER 292 (¶22129 1991) where the factual situation again involved employees of the same public employer. There, certain of the traditional communications functions of Sheriff's Officers were assigned to non-unit civilian dispatchers. Since the facts in Bergen involved the reassignment of duties among employees of the same employer, the case is indistinguishable from Bergen Pines.

3. The Respondent refers to, but does not discuss, City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988) where it was held that the assignment of unit work to non-unit employees of the same employer was mandatorily negotiable and, thus, arbitrable. This decision is likewise inapposite.^{11/}

* * * *

In conclusion, the Hearing Examiner can see no meaningful distinction between the facts in the instant case and those in Cape May County Bridge Commission. Here, the County of Essex decided

^{11/} See also, Toms River Bd. of Ed., P.E.R.C. No. 92-71, 18 NJPER 62 (¶23027 1991). [Preservation of unit work among employees of the same employer continues to be mandatorily negotiable (18 NJPER at 63)].

that, in lieu of abandoning its Police Department in its entirety, 88 of its laid off Police Officers would be reassigned to the Essex County Sheriff. The Bridge Commission, on the other hand, continues in existence for the collection of bridge tolls while the County of Cape May provides bridge maintenance using its employees.

* * * *

Based upon the foregoing, and upon the record papers heretofore filed and described above, the Hearing Examiner makes the following:

CONCLUSION OF LAW

The Respondent County did not violate N.J.S.A. 34:13A-5.4(a)(5) or (1) when in the early months of 1991 it unilaterally assigned or reassigned 88 of its Police Officers to the Essex County Sheriff without first negotiating this decision with the Charging Party herein; the Respondent's conduct having been consistent with the facts and holding of the Commission in Cape May Cty. Bridge Comm., supra.

RECOMMENDATION

The Hearing Examiner **ORDERS** that the Respondent County's Motion for Partial Summary Judgment be granted and that the Complaint be dismissed, but only as to alleged violation on page 7 of the Unfair Practice Charge, to wit: "Further, it is alleged and charged that the County is ignoring the recognition of P.B.A. Local 54 and is consistently and increasingly giving their traditional

bargaining unit functions to another bargaining unit, specifically, P.B.A. Local #183..." All other of the Charging Party's allegations of violations of the Act by the County shall remain in full force and effect for disposition by a hearing when scheduled.



Alan R. Howe
Hearing Examiner

Dated: May 8, 1992
Trenton, New Jersey