

I. R. NO. 86-14

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON COUNTY SHERIFF,

Respondent,

-and-

Docket No. CI-86-23

GARY WARFORD,

Charging Party.

SYNOPSIS

A designee of the Public Employment Relations Commission temporarily restrains the Hunterdon County Sheriff from terminating Sheriff Officer Gary Warford because he was not scheduled to attend a training course within the time requirements set forth in N.J.S.A. 52:17B-69.

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Appearances:

For the Respondent, Gaetano M. DeSapio, Esq.

For the Charging Party, Gary Warford, pro se

INTERLOCUTORY DECISION AND ORDER

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on November 8, 1985, and amended on December 11, 1985 and January 14, 1986, by Gary Warford ("Charging Party") alleging that the Hunterdon County Sheriff ("Sheriff") discriminated against him because he filed a grievance. This action was alleged to be in violation of §§5.4(a) (1), (3) and (4) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").<sup>1/</sup>

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

On January 14, 1986 Warford filed an application for Interim Relief. An Order to Show Cause was executed on January 17, 1986 scheduling a return date of January 27, 1986. On January 23, 1986 the Sheriff submitted his response in opposition to Interim Relief. A hearing was held on the return date pursuant to N.J.A.C. 19:14-9.4, at which the parties argued orally.

The grounds for the issuance of a restraint or order pursuant to the Commission's rules, are set forth in N.J.A.C. 19:14-9.2(c). The Charging Party must demonstrate a substantial likelihood of success on the merits of the entire charge, and that immediate and irreparable harm will result if the requested relief is not ordered. Both conditions must be met before interim relief will be granted.

The Charging Party was hired as a sheriff's officer effective on February 5, 1985. Pursuant to N.J.S.A. 52:17B-69 the Sheriff had one year to send Warford to a training course, but could obtain a six-month extension under that statute. That statute provides as follows:

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1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (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; and (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."

52:17B-69

Duration of probationary or temporary appointment as policemen to take training course; leave of absence;

Notwithstanding the provisions of R.S. 11:22-6, a probationary or temporary appointment as a police officer may be made for a total period not exceeding one year for the purpose of enabling a person seeking permanent appointment to take a police training course as prescribed in this act, provided, however, that the time period may exceed one year for those persons enrolled prior to the one-year limit in a police training course scheduled to end subsequent to the one-year limit, and for those persons who, prior to the one-year limit, have been scheduled to attend a police training course which commences subsequent to the one-year limit. In no case shall any extension granted for the reasons herein listed exceed six months. No person shall be permitted to take a police training course unless he hold such probationary or temporary appointment, and such appointee shall be entitled to a leave of absence with pay during the period of the police training course.

The Sheriff enrolled Warford in a training course that was scheduled to begin in early June 1985. On May 30, 1985 Warford filed a grievance over the Sheriff's denial of mileage reimbursement for driving to the training course. On or about May 31, 1985 the Sheriff withdrew Warford from the June 1985 training course, and has not rescheduled him for any other training course. The Charging Party filed this Charge alleging that the Sheriff has refused to reschedule him for a training course because he filed the May 30th grievance.<sup>2/</sup>

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<sup>2/</sup> The Charging Party also alleged that the Sheriff harassed him and discriminated against him for filing the grievance by changing his work assignments and by denying him timely access to his personnel file.

On the return date the parties extensively argued their respective positions, and they waived a written decision in favor of a bench decision. I issued a bench decision on the return date restraining the Sheriff from terminating Warford because of the Sheriff's projected inability to literally comply with the time constraints in N.J.S.A. 52:17B-69. This Decision and Order issued upon the Sheriff's request for a written order.<sup>3/</sup>

On the return date the Sheriff, through his attorney, orally represented that he had directed the Undersheriff to immediately take the necessary steps to schedule and enroll Warford in a training course scheduled to take place in Morris County in the Spring or Fall of 1986. The Sheriff indicated, however, that he had no control over the scheduling of the training course itself, and acknowledged that the course might not be completed within 18 months after Warford's employment, which might not literally satisfy N.J.S.A. 52:17B-69.

In view of the timing of the grievance and Warford's subsequent removal from the June 1985 training course, I find a substantial likelihood of success exists in this matter.<sup>4/</sup> In

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<sup>3/</sup> Since the parties waived a written decision I have not detailed in this decision all of the arguments developed by the parties. An official transcript was taken which contains the parties complete positions. The request for a restraint was denied regarding the work assignment and the personnel file issues.

<sup>4/</sup> This finding is only for purposes of interim relief. The Sheriff presented several reasons/defenses for his actions which may yet prevail at a full evidentiary hearing.

addition, when considering the harm to the Sheriff as balanced against the possible harm to Warford if he is terminated because N.J.S.A. 52:17B-69 has not been complied with, and in view of the Sheriff's representation that he will schedule Warford for a training course, Warford must be allowed to continue his employment pending the results of a full hearing without being concerned about the timing of his training course.

Since the Sheriff specifically represented that he will immediately schedule Warford for the Spring/Fall training course in Morris County, a restraint will protect both the Charging Party and the Sheriff from the ramifications of not literally complying with 52:17B-69.<sup>5/</sup>

Therefore, I HEREBY ORDER that the Hunterdon County Sheriff is restrained from terminating Officer Gary Warford because the time constraints established in N.J.S.A. 52:17B-69 have not been (or may not be) complied with, pending the final disposition of this matter by the Commission.<sup>6/</sup>

  
Arnold H. Zudick  
Commission Designee

Dated: January 28, 1986  
Trenton, New Jersey

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- <sup>5/</sup> If the Sheriff fails to schedule Warford for the training course as represented, the Charging Party may apply to me for an Order to that effect.
- <sup>6/</sup> This restraint is not intended to restrain the Sheriff from disciplining or terminating Warford for other lawful reasons.