H.E. NO. 98-24

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

In the Matter of

MORRIS COUNTY SHERIFF,

Respondent,

-and- Docket No. CO-H-97-337

MORRIS COUNTY CORRECTIONS
OFFICERS PBA LOCAL 298,

Charging Party,

-and-

MORRIS COUNTY SHERIFF'S OFFICERS
PBA LOCAL 151,

Intervenor.

A Hearing Examiner denies a motion for summary judgment filed by the employer on a complaint alleging that a transfer of unit work violates 5.4a(5) and (1) of the Act. The employer contended that the matter was preempted by a Merit System Board decision; that assignments are a managerial prerogative; and that the case is moot.

The Hearing Examiner also granted intervenor status to PBA Local 151, representing sheriff's officers.

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Appearances:

For the Respondent,
Courter, Kobert, Laufer & Cohen, attorneys
(Fredric M. Knapp, of counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

For the Intervenor,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

HEARING EXAMINER'S DECISION ON
MOTION FOR SUMMARY JUDGMENT

On April 3, 1997, Morris County Corrections Officers PBA Local 298 filed an unfair practice charge against the Morris County Sheriff. The charge alleges that on February 13, 1997, the Sheriff signed an agreement with Morris County Sheriff's Officers PBA Local 151 transferring transportation duties, previously

performed by corrections officers, to sheriff's officers. The charge alleges that "for a number of years" corrections officers had performed all transportation duties except transporting juveniles and that the Sheriff unlawfully transferred bargaining unit work during negotiations for a successor contract, violating 5.4a(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On June 20, 1997, a Complaint and Notice of Hearing issued.

On July 2, 1997, Morris County Sheriff's Officers PBA Local 151 filed a letter seeking to intervene in this matter.

On July 10, the Sheriff filed an Answer, denying that corrections officers performed all transportation duties (except transporting juveniles), and admitting that it signed a "settlement agreement" on a grievance concerning transportation duties with PBA Local 151. The Sheriff also asserts that on May 28, 1997, it signed a "memorandum of agreement" for a successor contract with PBA Local 298. The Sheriff asserts numerous defenses, including failure to join an indispensable party,

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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."

failure to exhaust administrative remedies, waiver and estoppel, unclean hands, etc. It also asserts that it acted pursuant to a managerial prerogative.

On July 28, 1997, PBA Local 151 filed a letter advising that sheriff's officers performed all prisoner transports continuously (except pre-incarcerated transports) for many years. Specifically, sheriff's officers performed the pre-incarcerated transports until 1992, when municipalities assumed that responsibility. In September 1996, PBA Local 151 learned that in June 1996, the Sheriff "unilaterally determined" that pre-incarcerated transports would be performed by corrections officers represented by PBA Local 298. PBA Local 151 filed a contractual grievance which was resolved in writing before arbitration.

On August 7, 1997, I granted intervenor status to PBA Local 151, pursuant to N.J.A.C. 19:14-5.1.

On October 28, 1997, the Sheriff filed a Motion for Summary Judgment with the Commission. The motion was referred to me for a decision. N.J.A.C. 19:14-4.8.

On December 8, 1997, intervenor PBA Local 151 filed a brief, opposing the motion.

On December 23, PBA Local 298 filed a brief, opposing the motion. On January 29, 1998, the Sheriff filed a responsive letter.

Summary judgment will be granted:

> if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law. [N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty. Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Applying these standards any relying upon the briefs and supporting documents, I make the following:

FINDINGS OF FACT

1. Morris County Corrections Officers PBA Local 298 represents corrections officers employed by the Morris County

Sheriff.[2/] Morris County Sheriff PBA Local 151 represents sheriff's officers employed by the Sheriff.

2. Corrections officers historically performed all transportation duties except transporting juveniles. Sometime in 1992, the Sheriff discontinued transporting "pre-incarcerated" municipal prisoners.

3. In March 1996, the Sheriff reinstituted the service, assigning corrections officers to the work.

4. In September 1996, PBA Local 151 learned that corrections officers were transporting "pre-incarcerated" prisoners and filed a contractual grievance, pursuing it to binding arbitration.

5. On January 31, 1997, a meeting about "prisoner transportation" with a representative of the Department of Personnel was attended by the Sheriff and presidents of PBA Local 298 and PBA Local 151, among others.

A June 14, 1994 Merit System Board decision concerning prisoner transportation in Camden County was discussed. In the Matter of Camden County Sheriff's Officers was appealed from a lower administrative determination that "all transportation functions, with one exception [medical emergencies] are to be classified under the sheriff's officer title series." In 1993, Camden County "assumed control of the County jail and sought the transfer of 70

2/ For purposes of the motion, the Sheriff is the employer of corrections officers.

sheriff's officers." The final decision noted preliminarily that the County "offered no documentation" on its assertion that "out of the eleven counties where Freeholders control the jail, correction officers participate in a substantial way in the transportation function in six counties." It also noted that the Attorney General advised that the transportation function is "best performed" by sheriff's officers but that this view was a "policy preference and not a legal directive."

The decision states that both corrections officers and sheriff's officers have "appropriate, mandated law enforcement training" and the specifications of both titles include "transportation functions." The issue in the case was not "the propriety of assigning...corrections officers to perform [the transportation] function"; it was "the reassignment of these functions from sheriff's officers, who have been performing such functions for several years, to corrections officers." The Merit System Board concluded, "the current assignment of these [transportation] functions to the Sheriff represents an efficient and effective allocation of human resources and should not be disrupted in Camden County."

6. On February 13, 1997, Sheriff Edward Rochford and PBA Local 151 President Thomas Paradiso signed a memorandum of agreement distributing transportation duties among sheriff's officers and corrections officers.

Assigned to sheriff's officers were "all pre-incarceration transports," all transports "pertaining to juveniles," and seven other "transports" to and from various destinations including state prisons, municipal police departments, Fort Dix and the Morris County Youth Center.

Assigned to corrections officers were transports to and from the county jail and municipal courts, other county courts, medical facilities and other medical and psychological programs.

The memorandum expressly "resolve[d] the issue as to transportation and PBA Local 151 agrees that they will withdraw their request for arbitration in this matter."

7. On July 13, 1997, the Sheriff discontinued its "pre-incarceration transportation of municipal prisoners" and does not intend to reinstitute the service.

ANALYSIS

The Sheriff asserts several arguments supporting the motion. It contends that the assignment of prisoner transportation duties is required by civil service statutes and preempts negotiations; that deployment of personnel is a managerial prerogative; that the charge alleges a breach of contract claim only; that it has a contractual right to assign the duties to sheriff's officers; that the case is moot; and that any unfair practice allegation asserted by PBA Local 151 is untimely and that the February 13, 1997 memorandum waives all its claims.

PBA Local 298 opposes the motion, asserting that the transfer of unit work from one unit of employees to employees outside the unit is mandatorily negotiable. It also denies that civil service statutes or decisions require that the disputed duties be performed by sheriff's officers; denies that the case is essentially a contractual dispute; and denies that the case is moot.

Intervenor PBA Local 151 also opposes the motion. It seems to argue that to the extent that this matter is preempted, preemption inures to its benefit. PBA Local 151 also agrees with the Sheriff that deployment of personnel is a managerial prerogative. It disputes that the charge is moot.

A statute or regulation will not preempt negotiations unless it speaks in the imperative and expressly, specifically and comprehensively sets an employment condition. Wright v. City of E. Orange Bd. of Ed., 99 N.J. 112 (1985); Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982). We ask not whether a statute or regulation permits an employer to take an action, but whether it precludes an employer from exercising any discretion over an employment condition so that there is nothing left to negotiate. Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 330-331 (1989).

The Sheriff contends that the Camden decision requires that "all prisoner transportation functions, except those involving medical emergencies, are to be performed by sheriff's officers" (motion brief at p. 14).

I disagree.

The Camden decision appears limited to its factual context. The statute cited, N.J.S.A. 11A-1 et seq., refers to the powers and duties of the Commissioner and the obligation to administer titles in the State classification plan. The Commissioner must also provide a job specification for each title. See also, N.J.A.C. 4A:3-3.1 and 3.

The decision rejects a reassignment of the "transportation function" from one civil service title (sheriff's officer) to another (corrections officer). The Merit System Board cautioned that it was not deciding the "propriety of assigning corrections officers to perform the [transportation] function", because both titles are "similarly qualified." It appears to me that the Commissioner was preserving the integrity of the sheriff's officer title in the wake of Camden County's effort to "transfer approximately 70 employees in the sheriff's officer title series." In any event, Camden indicates that an assignment of the "transportation function" to corrections officers may be an "efficient and effective" allocation of human resources. The decision does not "preempt" the possibility.

The Sheriff contends that it has the prerogative to "assign" prisoner transportation duties to sheriff's officers. The Commissioner's use of "assignment" for purposes of title classification, etc., is distinguishable from the Commission's. Under our Act, public employers have a prerogative to assign

employees to meet a governmental policy goal of matching the best qualified employees to particular jobs. See, e.g., Local 195, IFPTE v. State, 88 N.J. 393 (1982); Essex County, P.E.R.C. No. 90-74, 16 NJPER 143 (¶21057 1990). It is apparent that this matter does not concern an employer's selection of one employee over another for a particular assignment. Nor does it concern qualification for an initial assignment because the Commissioner determined that both titles are "similarly qualified."

It is the employment condition of corrections officers performing the disputed "transportation function" which PBA Local 298 seeks to have reinstated (If the function has been discontinued, the PBA may be entitled to a lesser remedy, provided that it is entitled to relief at all). The unit work rules enables employees to seek protection of such interests as preserving their jobs; maintaining salaries, benefits and overtime opportunities; and not having their collective strength eroded. Burlington Cty. Bd. of Social Services, P.E.R.C. No. 98-62, 24 NJPER 2 (¶29001 1997). Under the Act, public employers must negotiate over shifting work traditionally done by a group of employees within a unit to another group of its own employees outside that unit. City of Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996), aff'd 23 NJPER 325 (¶28148 App. Div. 1997), certif. granted S. Ct. Dkt. No. 44,268. For purposes of the motion, corrections officers were exclusively assigned the disputed work before and after the four-year hiatus. PBA Local 298 alleges that the Sheriff unilaterally shifted the work

to sheriff's officers in or around March 1996. Under these few facts, I cannot conclude that the Sheriff is entitled to relief as a matter of law.3/

No collective agreement was submitted. Accordingly, I cannot determine if the Complaint asserts a mere breach of contract or what effect, if any, a work preservation clause has on this case. Furthermore, the four-year hiatus may affect the charging party's ability to prove an implied contractual commitment based on an established practice, in the event that no express contractual commitment for the disputed work exists. If the evidence at hearing indicates only that an existing working condition was changed (and that the charging party did not waive a right to negotiate), then the Sheriff may have a duty to negotiate under section 5.3. See Middletown Tp., P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997).

DECISION

The motion for summary judgment is denied.

Jonathon Roth
Hearing Examiner

DATED: February 5, 1998
Trenton, New Jersey

3/ Similarly, "unit work" may not be defined merely as "pre-incarceration" transportation after a plenary hearing. For example, if both units "shared" transportation work -- albeit varied destinations, neither the charging party nor the intervenor may be able to prove their respective cases. See Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989).