

P.E.R.C. NO. 99-41

STATE OF NEW JERSEY
BEFORE THE MERIT SYSTEM BOARD
AND
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PBA LOCALS 51 & 51A,

Petitioner,
-and-

OAL DOCKET NO.
CSV 9166-97

HUDSON COUNTY POLICE
DEPARTMENT LAYOFFS,

Respondent.

COUNTY OF HUDSON,

Respondent,

-and-

PERC DOCKET NOS.
CO-H-97-58 and
CO-H-97-59

PBA LOCALS 51 & 51A,

Charging Party.

SYNOPSIS

The Chair of the Public Employment Relations Commission, in a joint order with the Merit System Board, finds that an unfair practice charge filed by PBA Locals 51 and 51A against the County of Hudson should be consolidated for hearing with a good faith layoff appeal to the Merit System Board filed by PBA Locals 51 and 51A. An Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Commission and the Merit System Board, disposing of all issues in controversy through a single initial decision. Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether the employer transferred PBA unit work to non-unit employees of the same public employer and, if so, whether it was required to negotiate before doing so. If those determinations do not resolve the unfair practice cases in their entirety, the Commission will then determine whether hostility to protected activity was a substantial or motivating factor in the decision to abolish the Hudson County Police Department. The Commission's decision and the complete record will then be sent to the Merit System Board which will determine whether the layoff was for legitimate business reasons and was otherwise warranted under Merit System law.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Charging Party, Schneider, Goldberger, Cohen,
Finn, Solomon, Leder & Montalbano, attorneys (Bruce D.
Leder, of counsel)

For the Respondent, Scarinci & Hollenbeck, attorneys
(Sean D. Dias, of counsel)

JOINT DECISION

On August 16, 1996, PBA Locals 51 and 51A filed unfair
practice charges against the County of Hudson. The charges allege
that the employer violated the New Jersey Employer-Employee
Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1),

(3) and (5),^{1/} when it abolished the Hudson County Police Department and unilaterally transferred unit work to non-unit personnel employed by the Hudson County Sheriff. In addition, the charges allege that the layoff of police officers was in retaliation for the use of the interest arbitration process.

On October 8, 1996, the unions filed a good faith layoff appeal with the Merit System Board. The appeal alleges bad faith based upon anti-union animus.

On January 23, 1998, the unions filed a motion for consolidation and predominant interest. They argued that the Commission has the predominant interest: the Commission must first determine how many employers are involved; then determine whether the County had an obligation to negotiate over the transfer of unit work to non-unit personnel; and finally determine whether the County's action was based upon anti-union animus.

The County responded that the Board has the predominant interest. It argues that the common issue is whether the layoff was for "economy, efficiency or other related reasons" and that

^{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. (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."

the determination of that issue is within the jurisdiction of the Board. It further argues that if the Board were to determine that the layoff was in good faith, the issues of unit work would be moot.

On July 13, 1998, Administrative Law Judge Jeffrey A. Gerson issued an Initial Decision finding that the cases should be consolidated and that the Board has the predominant interest. He stated that if a finding of good faith is made by the Board, the unfair practice charge would be moot.

On August 24, 1998, the unions filed exceptions reasserting their argument that the Commission has the predominant interest. The employer filed a response urging adoption of the ALJ's Initial Decision.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Merit System Board at its meeting on October 27, 1998 and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on October 16, 1998 made the following determination in this matter.

JOINT ORDER

The above matters are consolidated for hearing before an Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Merit System Board, disposing of all issues in controversy through a single initial decision under N.J.S.A. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether the employer transferred PBA unit work to non-unit employees of the same public employer and, if so, whether it was required to negotiate before doing so. If those determinations do not resolve the unfair practice cases in their entirety, the Commission will then determine whether hostility to protected activity was a substantial or motivating factor in the decision to abolish the Hudson County Police Department; and

The Commission's decision and the complete record will then be sent to the Merit System Board which will then determine whether the layoff was for legitimate business reasons and was otherwise warranted under Merit System law; and

Where appropriate, the matter will be returned to the Commission for its consideration of whether specialized relief is warranted under its Act.

DECISION RENDERED BY THE
MERIT SYSTEM BOARD ON
OCTOBER 27, 1998

DECISION RENDERED BY THE CHAIR
OF THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON OCTOBER 19, 1998

Margaret E. L. Howard
~~Janice Mitchell Mintz~~
~~Commissioner Margaret E. L. Howard~~
Presiding Board Member

Millicent A. Wasell
Millicent A. Wasell
Chair

DATED: Trenton, New Jersey
October 27, 1998

DATED: Trenton, New Jersey
October 19, 1998