

P.E.R.C. NO. 2003-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY,

Respondent,

-and-

Docket No. CO-2002-310

UNION COUNTY CORRECTIONS
PBA LOCAL 199,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies a motion for reconsideration of I.R. No. 2002-12, 28 NJPER _____ (1_____ 2002) filed by Union County. In that decision, a Commission designee granted the application of Union County Corrections PBA Local 199 for interim relief and enjoined the County from shifting certain transport duties from corrections officers to non-unit sheriff's officers until negotiations are completed. The Commission concludes that there are no extraordinary circumstances that warrant full Commission review of the designee's interim relief determination. In light of that ruling, the County's application for a stay pending reconsideration is found to be moot.

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 Respondent, Schenck, Price, Smith & King, LLP
attorneys (Kathryn V. Hatfield, on the brief)

For the Charging Party, Loccke & Correia P.A., attorneys
(Michael A. Bukosky, on the brief)

DECISION

On July 23, 2002, Union County moved for reconsideration of a Commission designee's decision and order in I.R. No. 2002-12, 28 NJPER ____ (¶ ____ 2002). In that decision, the designee granted the application of Union County Corrections PBA Local 199 for interim relief and enjoined the County from shifting certain transport duties from corrections officers to non-unit sheriff's officers until negotiations are completed. The County also asked us to stay the designee's interlocutory order pending our decision on the motion for reconsideration. On July 29, Union County Corrections PBA Local 199 filed a response opposing reconsideration and a stay.

We summarize the facts as found by the designee.

Before April 1, 2001, the County operated two correctional facilities. These facilities were next to each other and the movement of inmates between them was overseen by corrections officers. Around April 1, the County closed the old jail, except for the third and fourth floors, and transferred most corrections officers to the new jail.

At around the same time, the County entered into a contract with Delaney House to provide drug rehabilitation services to inmates. Delaney House is located in Newark and the County transports inmates from the jail to receive services. Before April 2001, the County provided only in-house rehabilitation services.

From the outset, the County assigned corrections officers represented by Local 199 the responsibility of transporting prisoners to and from Delaney House. Corrections officers performed this duty until June 3, 2002. Other than moving inmates between jails and transporting inmates to Delaney House, corrections officers rarely performed routine transport services. Most other routine transport services have been performed by sheriff's officers in a different negotiations unit.

In October 2001, the County advised the PBA that the Delaney House transport assignment would be temporary and ultimately transferred to sheriff's officers. The PBA filed an unfair practice charge (CO-2001-314) contesting the County's

classification of the positions as temporary, administrative positions and asserting that the positions had to be included in the contractual pick system. The PBA's application for interim relief was denied and that charge is still pending. See I.R. No. 2001-16, 27 NJPER 273 (¶32098 2001).

In November 2001, the next contractually mandated annual pick was scheduled among corrections officers. Since corrections officers were continuing to perform the Delaney House transport function, the County included the four transport posts in the pick.

In May 2002, the County notified the PBA that it intended to reassign the Delaney House work to sheriff's officers. The PBA then advised the County that it objected to "unilaterally shifting unit work . . . especially when such modifications occurred during the pendency of negotiations or interest arbitration." The PBA demanded negotiations over the shifting of unit work.

The work was shifted to sheriff's officers. No corrections officers have lost their jobs.

The Department of Personnel job specification for corrections officer states, in part, that corrections officers "[escort] a group of inmates 'during movements within or outside the institution to prevent disorder or breaches in security." The job specification for sheriff's officer states, in part, that a sheriff's officer "may operate a motor vehicle for transporting prisoners to various locations" and "is responsible for the care,

custody and security of prisoners while being transported to various locations."

The County has submitted a new certification from the Sheriff. The certification raises a few new facts about minor differences in the training of corrections and sheriff's officers. These facts are not newly discovered and will not be considered in a motion for reconsideration. Accordingly, we also will not consider facts raised in the PBA President's responding certification or the Sheriff's supplemental certification.

The unit work rule provides that an employer must negotiate before using non-unit employees to do work traditionally performed by unit employees alone. City of Jersey City v. Jersey City POBA, 154 N.J. 555, 575 (1998). The County argued to the designee that the unit work rule is inapplicable and that even if it applies, the PBA waived its right to negotiate; sheriff's officers have historically been responsible for routine inmate transportation outside of the jail; and the reassignment of transport duties is part of a restructuring that does not result in significant cost savings.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement

would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

The designee applied the negotiability balancing test in light of the facts and issues presented. Jersey City. He found that Local 195's first prong was met. Corrections officers have been performing the transport duties for 14 months, they bid on the assignments with the expectation of continuing in the job for one year, and removal of the duties affects unit size, overtime assignments and work schedules. The designee found that Local 195's second prong was not implicated.

Regarding Local 195's third prong, the designee found that there was no clear expression of the County's policy goal necessitating the unilateral transfer of the transport assignment, or explanation how the transfer has affected the delivery of governmental services. On balance, he concluded that the interests of the corrections officers in negotiations before a change was made outweighed the County's need to decide unilaterally that the transport work would be reassigned to sheriff's officers outside the contractual bid process. The designee noted that the change occurred during the interest arbitration process and that, under N.J.S.A. 34:13A-21, the PBA

established irreparable harm. Addressing the relative hardship to the parties, the designee noted that there was no claim that corrections officers have performed the assignment inadequately, nor is there a claim on behalf of the sheriff's officers union that the work should be performed by its negotiations unit. Finally, the County did not contend that the transport function would be harmed if corrections officers continued to perform that assignment. The public would continue to be adequately protected by trained personnel overseeing the custody of incarcerated individuals.

We can reconsider interim relief decisions, but will do so only in extraordinary circumstances. N.J.A.C. 19:14-8.4.

The County argues that the Designee erred by:

1. Determining that the County had not satisfied the Local 195 test;
2. Rejecting the argument that corrections officers cannot make a claim to the work because sheriff's officers have also performed transport duties;
3. Rejecting the argument that the decision was part of a legitimate reorganization intended to make the delivery of governmental services more efficient; and
4. Determining that the PBA had established irreparable harm.

The County argues that we should reconsider the designee's decision because each of these alleged errors raises substantial legal and factual issues which constitute extraordinary circumstances. The PBA responds that the County has not shown any

extraordinary circumstances warranting reconsideration. It asserts that it seeks only to preserve the status quo during negotiations and that granting a stay would undermine the integrity of the negotiations process.

Interim relief will be granted only when a party has shown that it has a likelihood of success on the merits and will suffer irreparable harm if relief is not granted.

Likelihood of success is not a guarantee of success. Therefore, we will not reconsider a designee's decision simply because the PBA might not ultimately prevail on the merits of its claims. The County has not identified any extraordinary reasons to reconsider the Designee's determination that the PBA has shown that it has a likelihood of success on the merits. The County's general argument that it must maintain the discretion over how to manage and deploy department resources and assign corrections officers to best use their skills does not present extraordinary reasons for reconsidering the designee's decision. Nor are extraordinary circumstances presented by its argument that the unit work rule does not apply when there are no job losses to the negotiations unit. Similarly, there are no extraordinary reasons for reconsidering the designee's determinations that the PBA did not clearly and unequivocally waive its right to negotiate over the transfer of transport duties; the fact that sheriff's officers also perform transport duties is irrelevant; and the transfers were not part of a reorganization that rendered the decision non-negotiable.

Unilateral imposition of working conditions is the antithesis of the Legislature's goal that terms and conditions of employment be established through bilateral negotiations. If a change occurs during contract negotiations, the harm is exacerbated. Galloway Tp. Bd. of Ed. v. Galloway Tp. Teachers Ass'n, 78 N.J. 25, 48-49 (1978). In addition, N.J.S.A. 34:13A-21 prohibits unilateral changes in working conditions during the pendency of proceedings before the arbitrator. Given the irreparable harm to the collective negotiations process that occurs when there is a unilateral change before the execution of an agreement, there are no extraordinary circumstances to address the County's argument that N.J.S.A. 34:13A-21 does not apply. Cf. Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001).

Under all these circumstances, we conclude that there are no extraordinary circumstances that warrant full Commission review of the designee's interim relief determination.

In light of our ruling, the application for a stay pending reconsideration is moot. We will nevertheless comment briefly on the arguments raised in the stay application. The County argues that it will suffer irreparable harm should a stay not be granted. It asserts that the transport vehicle has been repainted to indicate that it is a Sheriff's Office vehicle, assignments to the transport duties would have to be undone, and the flip-flopping of the assignment has a detrimental effect on

consistency and supervision of officers, thereby increasing the danger of an inmate escape. We note that there is nothing in the record that suggests that leaving the assignment with corrections officers in any way threatens the public safety. Any inconvenience that will be caused by having to restore the status quo pending the completion of negotiations could have been avoided by delaying the transfer of duties until the completion of negotiations or at least until the return date on the interim relief application. The PBA filed its charge and request for interim relief before any changes were made.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: August 1, 2002
Trenton, New Jersey
ISSUED: August 1, 2002