

P.E.R.C. NO. 2003-46

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-2003-82

UNION COUNTY SUPERIOR CORRECTIONS  
OFFICERS ASSOCIATION, PBA LOCAL  
NO. 199A,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Union County Superior Corrections Officers Association, PBA Local No. 199A for reconsideration of I.R. No. 2003-8. In that decision, a Commission designee denied the PBA's application for interim relief. The designee concluded that the PBA had not demonstrated that it had a substantial likelihood of prevailing in a final Commission decision with respect to its claim that the County had unilaterally changed terms and conditions of employment. The designee also concluded that there was a material factual dispute over whether the alleged change was intended to discriminate against the PBA's president. The Commission finds that there are no extraordinary circumstances warranting reconsideration of those determinations.

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.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-2003-82

UNION COUNTY SUPERIOR CORRECTIONS  
OFFICERS ASSOCIATION, PBA LOCAL  
NO. 199A,

Charging Party.

Appearances:

For the Respondent, Schenck, Price, Smith & King, attorneys  
(Kathryn V. Hatfield, of counsel)

For the Charging Party, Loccke & Correia, attorneys  
(Michael A. Bukosky, of counsel)

DECISION

On December 27, 2002, the Union County Superior Corrections Officers Association, PBA Local No. 199A moved for reconsideration of I.R. No. 2003-8, \_\_ NJPER \_\_ (¶\_\_\_\_\_ 2002). In that decision, a Commission designee denied the PBA's application for interim relief. The designee concluded that the PBA had not demonstrated that it had a substantial likelihood of prevailing in a final Commission decision with respect to its claim that the County had unilaterally changed terms and conditions of employment. He found that the County's decision to reduce the number of lieutenants on the first shift "may have enhanced its supervisory coverage on the evening and midnight shifts" and "may implicate the exercise of a managerial prerogative." He also found that there were material

facts in dispute involving an allegation that the shift change was discriminatory.

The PBA argues that if relief is not granted now, any subsequent relief will be moot. It further argues that the County had to prove that it had a managerial prerogative and that it failed to do so. Finally, the PBA argues that the County's defense to the discrimination allegation -- that it was not targeting the PBA president, but another officer -- is not sufficient to meet its burden.

The County responds that the PBA has not identified any extraordinary circumstances warranting reconsideration. It argues that the evidence tended to show that the County's actions resulted in enhanced supervision and therefore was the exercise of a managerial prerogative. The County also argues that interim relief was properly denied on the discrimination allegation because material facts are in dispute.

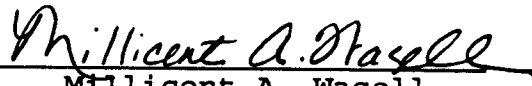
We can reconsider interim relief decisions, but will do so only in extraordinary circumstances. N.J.A.C. 19:14-8.4. The designee found that the PBA had not demonstrated that it had a substantial likelihood of success of prevailing in a final Commission decision because the County may have been acting pursuant to a managerial prerogative. There are no extraordinary circumstances warranting reconsideration of that determination. Based on the limited record before the designee in the interim relief proceeding, it appears that the County's witnesses will testify that the change was to enhance supervision. The PBA's

witnesses will presumably challenge that assertion. That dispute must be resolved after a plenary hearing. Similarly, the PBA alleges that the change was intended to discriminate against its president. The County disputes that allegation. That factual dispute must also be resolved after a plenary hearing.<sup>1/</sup>

ORDER

Reconsideration is denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: January 30, 2003  
Trenton, New Jersey  
ISSUED: January 31, 2003

---

<sup>1/</sup> If the facts show that the County changed its staffing to "discriminate" against an employee other than the union president, the PBA still has the burden of proving that the change was motivated by a reason illegal under our Act.