P.E.R.C. NO. 2008-43

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON (POLICE DEPARTMENT LAYOFFS),
Respondent,

-and-

PBA LOCALS 51 & 51A,
Petitioners.

OAL Docket No. CSV 9166-97

COUNTY OF HUDSON,
Respondent,

-and-

PBA LOCALS 51 & 51A,
Charging Parties.

PERC Docket Nos. CO-1997-058 and CO-1997-059

OAL Docket No. PRC-9928-03

SYNOPSIS

The Public Employment Relations Commission dismisses unfair practice charges filed by PBA Locals 51 and 51A against the County of Hudson. The charges allege that the County violated the New Jersey Employer-Employee Relations Act when it abolished its police department in retaliation for the PBA's obtaining an automatic salary increment system through an interest arbitration award and then unilaterally transferred negotiations unit work to non-unit personnel employed by the Hudson County Sheriff. The charges were consolidated with a layoff appeal before the Merit System Board (MSB) and transferred for hearing before an Administrative Law Judge (ALJ). The ALJ recommended dismissal of the unfair practice charges. The Commission accepts the ALJ's conclusion that hostility or anti-union animus was not a substantial or motivating factor in the abolishment decision. The Commission concludes, on balance, that the County's governmental policy determinations about its police department's existence outweighs the employees' interests in negotiating over their employment conditions and the County was not required to negotiate before the Sheriff assumed responsibility for providing some of the patrol division services previously performed by the County police department.

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, Cohen, Leder, Montalbano & Grossman, attorneys (Bruce D. Leder, of counsel)

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

DECISION

This case comes to us to review a second Initial Decision by an Administrative Law Judge ("ALJ"). On August 16, 1996, PBA Locals 51 and 51A filed unfair practice charges against the County of Hudson. The charges allege that the County 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 its police department in retaliation for the PBA's obtaining an automatic salary increment system through an interest arbitration award and then unilaterally transferred negotiations unit work to non-unit personnel employed by the Hudson County Sheriff.

On October 8, 1996, the unions appealed the layoffs of the County's police officers to the Merit System Board ("MSB"). The appeal alleges that the layoffs were made in bad faith and stemmed from hostility towards the award of the increment system.

The MSB and the Commission Chair issued a Joint Order consolidating the charges and appeal for hearing before an Administrative Law Judge. P.E.R.C. No. 99-41, 24 NJPER 530 (¶29246 1998). That order specified that the ALJ's Initial Decision would be transmitted to both agencies; the Commission would first determine whether hostility to protected activity was a substantial or motivating factor in abolishing the police department and whether the County transferred PBA unit work to non-unit employees of the same public employer; the MSB would

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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"; "(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 "(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. . . ."

then determine whether the layoff was for legitimate business reasons and otherwise warranted under Merit System law; and, if appropriate, the case would then be returned to the Commission to consider specialized relief under its Act.

On April 22, 2003, the ALJ issued an Initial Decision that this agency received on May 15, 2003. The ALJ found that unit work was not transferred to non-unit employees; the County's eliminating its police department was a way of reorganizing to achieve economies and efficiencies and was thus insulated from negotiations; and the savings that would benefit the public overcame any anti-union animus. The ALJ wrote:

> If there were two reasons for the reorganization, one being the economies and efficiencies generated thereby, and the other being a fear of implementing the interest arbitration result, the action taken that most benefits the public must be accepted. [Initial Decision at 7]

On September 25, 2003, we remanded the case to the ALJ. P.E.R.C. No. 2004-14, 29 NJPER 409 (¶136 2003), recon. den. P.E.R.C. No. 2004-39, 29 NJPER 547 (¶177 2003). We noted that the ALJ did not appear to have decided whether the alleged anti-union animus -- hostility to the PBA's success in interest arbitration -- was a motivating factor in the decision to abolish the County Police Department and transfer functions to the Sheriff's Office. Instead, he concluded that even if that reason partially motivated the decision, another reason -- the

generation of economies and efficiencies -- had to be accepted as overcoming the alleged illegal reason. That conclusion, however, was predicated on the case law applicable to good faith layoff appeals, see Peters v. City of Orange, 96 N.J.A.R.2d (CSV) 227 (1994), rather than the shifting burden analysis of In re Bridgewater Tp., 95 N.J. 235 (1984). We asked the ALJ to make specific factual conclusions as to whether the unions met their burden of proving that hostility toward the PBA's success in interest arbitration was a substantial or motivating factor in eliminating the police department. We also remanded the consolidated cases to the ALJ to make specific findings of fact as to whether the work traditionally performed by County police was transferred to non-unit employees of the same public employer.

On February 21, 2006, the ALJ issued an Initial Decision on remand. He recommended dismissal of the unfair practice charges.

With regard to the anti-union discrimination claim, the ALJ found that the suspicious timing of the layoffs so soon after the award sufficed to establish a prima facie case of illegal motivation. He then stated that he had to determine whether the County had proven that it would have eliminated its police department absent the PBA's success in interest arbitration. However, immediately after making that statement, the ALJ specifically found that the unions had failed to establish that

anti-union animus was a substantial or motivating reason for the elimination and that the unions' case was founded on nothing more than suspicion. He also specifically found that the County had reorganized its departments and the manner in which governmental services are delivered to save money in the face of severe economic difficulties and to avoid the duplication of services.

With regard to the transfer of unit work allegation, the ALJ found that the County was not required to negotiate over its decision to abolish its police department and the subsequent assumption of some police functions by the Sheriff's Office because that decision predominately involved governmental policy determinations about the police department's existence, organization, size and services.

On April 6, 2006, after an extension of time, the unions filed exceptions. They argue that the layoff of the entire police department was in retaliation for the PBA's success in obtaining automatic salary increments that no other County employees enjoyed. They also argue that City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998), requires negotiations over the transfer of unit work and that the ALJ relied on a 1992 Hearing Examiner's decision that was wrongly decided and not reviewed by this Commission.

The Commission's General Counsel asked the OAL to grant several extensions of time to allow the Commission to consider

this case. These requests were granted. The first extension was necessary because the County had asked until May 15, 2006 to file a response to the exceptions. The additional requests were necessary because the Commission lacked a quorum given three recusals and a vacancy.[2/]

We have reviewed the record. We adopt and incorporate the ALJ's findings of fact (Initial Decision on Remand at 4-8). Our analysis will add other relevant facts.

The retaliation claim

We first consider the allegation of retaliation for the PBA's success in interest arbitration. Under Bridgewater Tp., no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the

2/ Chairman Lawrence Henderson was Director of Personnel for Hudson County at the time of the litigated events and testified at the hearing. Commissioner Cheryl Fuller holds two stipended positions with the County and was in its Finance Division at the time of the litigated events. Commissioner Peter DiNardo was employed by Hudson County before his death in November 2007. The parties were notified of these recusals and the lack of a quorum given a vacancy on the seven-member Commission. None of the recused Commissioners has played any role in the deliberations or received any materials concerning this case.

employer was hostile toward the exercise of the protected rights. Id. at 246. Even if a charging party proves that hostility to protected activity was a substantial or motivating factor in the adverse action, the employer will not be found to have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected activity. Id. at 242. Conflicting proofs concerning the employer's motives are for the finder of fact to resolve.

Under the Joint Order, we must determine whether the unions proved that hostility to protected activity was a substantial or motivating factor for abolishing the department. The ALJ expressly concluded that the unions did not carry their burden of proving that hostility towards the PBA's success in interest arbitration was a substantial or motivating factor in that decision. For the reasons that follow, we accept that determination.

The ALJ credited the testimony of the County's witnesses that the department was abolished to save money and avoid duplication of services and was not motivated by resentment against the unions for prevailing in the interest arbitration process. Substantial evidence supports that determination and insufficient evidence exists to overturn it.

The ALJ accepted the testimony of the County Administrator/ Director of Finance that the County was facing severe economic difficulties when it abolished the department. The structural deficit in the budget had increased; tax ratables had declined; 9 out of the 12 Hudson County municipalities were listed in the top 100 distressed communities in the Municipal Distress Index; and Moody's Municipal Daily Rating Recap had just lowered the County's bond rating to the lowest investment grade. We add these facts about the Moody's report (A-12). That report listed several credit factors as contributing to the lowering of the County's bond rating: 15% of 1995 revenues derived from one-shot sources; reserves were at the lowest level in over a decade; although two months of the fiscal year had already passed, the County had yet to identify any initiatives to balance recurring revenues and expenditures; property values had eroded by four million dollars and the County had lost 16% of its tax base since 1991; debt service burdens were increasing; 15% of the County population lived below the poverty level; and unemployment was 9% in 1994. The report was issued on February 22, 1996, just three weeks before the interest arbitration award was issued.

The ALJ also accepted the testimony of the County's Personnel Director that the County had been reducing its payroll over several years and that it was seeking to avoid duplication of services. In 1991, the County had 5009 employees, but that

number was reduced to 3261 by the end of 1996. Between 1994 and 1996, a series of layoffs occurred for a variety of reasons. Those reasons included a desire to eliminate duplication of services. The Personnel Director testified, for example, about the layoffs of County firefighters who were performing work that could be done by the Secaucus fire department and County parking enforcement officers who were performing work that municipalities could do (2T86-2T88).

On June 19, 1996, the County notified the Department of Personnel that it was planning layoffs in all departments for reasons of economy and efficiency. A July 10 letter (part of R-1) expanded the scope of the layoff plan. That letter stated:

> Since submission of the June 7 letter, the County has determined that additional work locations will be affected by the proposed layoff. A list of potentially-affected employees is attached. Briefly, the County is considering the abolishment of the Division of County Police. Some of the functions currently performed by the Division of County Police would be assumed by the Hudson County Sheriff and by the various municipalities in the County. The County is also considering the consolidation of the Department of Environmental and Public Health and the Department of Human Services into a single department to be known as Health and Human Services, the consolidations of the Department of Engineering and Planning into Public Resources and Finance & Administration. Some of the functions currently performed by the Department of Engineering & Planning would be performed by the Hudson County Improvement Authority. The Department of Public Safety would be consolidated into the Sheriff's Department.

> Some functions currently performed by the Department of Public Safety, such as Consumer Protection and the Youth House, would be consolidated into the newly-constituted Department of Health and Human Services.

The next day the Board of Chosen Freeholders adopted an ordinance (R-10) amending the Hudson County Administrative Code. The ordinance stated that the Board had reconsidered the County's administrative structure in light of the strident economic realities of the day, and was therefore abolishing both the Division of Police Services and the Division of Corrections and returning control of the Hudson County Correctional facility to the Sheriff.

With respect to the police department, several of the functions performed by its 88 police officers overlapped with functions performed by police officers employed by other entities. For example, police officers in municipalities also patrolled county roads and served as school crossing guards and the State Police also operated weigh stations. Thus, the County did not need to provide these services and could economize in light of its budgetary difficulties by laying off police officers. Some other functions that had been performed by the department - - e.g., work in the detective bureau, motorcycle squad, and tactical and specialized units - - were not subsequently performed by the Sheriff's Office.

The record thus supports the ALJ's findings that the County

faced severe economic problems and had a genuine desire to continue reducing its payroll and curtailing duplicate services. The County had a legal motivation for abolishing its police department.

The evidence concerning the arbitration award does not warrant overturning the ALJ's conclusion that hostility towards the PBA's success in that proceeding was not a substantial or motivating factor in abolishing the police department.

The ALJ properly found that the timing of the abolishment was suspicious since it came soon after the award was issued. But he ultimately concluded that this suspicion did not warrant finding that hostility towards the PBA's victory was a

substantial or motivating factor in the decision.[3/] We accept that conclusion.

Our Supreme Court has recognized that interest arbitration awards may impose costs requiring or warranting layoffs. New Jersey State PBA Local 29 v. Town of Irvington, 80 N.J. 271 (1979); City of Atlantic City v. Laezza, 80 N.J. 255 (1979). These decisions stress that employers have a non-negotiable right to determine in good faith whether layoffs are necessary in the aftermath of an award. Thus, it should not automatically be assumed that layoffs occurring soon after an award were motivated

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3/ The ALJ's analysis confuses the Bridgewater standards. The ALJ found a prima facie case of illegal motivation based on the suspect timing of the decision and then appears to have shifted the burden of proof to the County before determining whether the unions had proved that the illegal hostility was a substantial or motivating factor in the decision. This method of analysis put the horse before the cart - - under Bridgewater, the trier of fact must determine whether the charging party has proved, by a preponderance of the evidence in the entire record, that an illegal motive actually existed before the burden of proof is shifted to the respondent. Perhaps the ALJ's confusion stemmed from the words "prima facie" in Bridgewater which might be incorrectly read to suggest that a charging party need not actually persuade the trier of fact that an illegal motive existed, but simply that it has to produce evidence which, if uncontradicted, would be sufficient to sustain a judgment in its favor. Because of the ambiguous nature of the phrase "prima facie," we eschew this phrase in applying the Bridgewater standards. See, e.g., East Brunswick Bd. of Ed., P.E.R.C. No. 97-35, 23 NJPER 181 (¶28091 1996). In any event, regardless of whether the charging party produced evidence of hostility to the arbitration award, the ALJ found that any such hostility was not a substantial or motivating factor in the abolition of the police department.

by an impermissible hostility toward the prevailing party or the award.

The award itself (R-7) stresses the County's right to eliminate or restructure its police department in light of the costs of the increment system. We add these facts about that award. The arbitrator noted that he had just been informed that the County's bond rating had been lowered (p. 24). Observing that fewer than 25% of New Jersey counties had their own police departments since municipalities provided similar services, the arbitrator stated that County officials could elect to address that issue and his function was not to be an advocate as to whether it should continue its police department now or in the future (p. 25). He cited as an important consideration in his award of the increment system the County's flexibility "such as doing away with the County bargaining unit totally or to change or adjust the focus or mission of the present bargaining unit (p. 26)." He noted that other local police departments did not have this flexibility (p. 26). Later in his award, he reemphasized that "flexibility in the scope of operations of the County's police force as compared to municipal police forces in the County is a clear and unique reality to be considered"; he then stated: "[t]he financial impact of awarding a step system would be of little to no consequence or financial impact on the County since the employer through its management rights has the ability to

greatly change the police duties of such a unit (p. 28)." Given the arbitrator's analysis and the ALJ's findings, we will not assume by virtue of timing alone that the decision to eliminate the County police department was illegally motivated by a desire to retaliate against the PBA's success in obtaining an increment system.

We add two more facts relevant to the issue of the County's motivations. The first fact is that the County's Personnel Director testified at an August 1995 interest arbitration proceeding that he was not aware of any plans to lay off County police officers (R-13). That the County did not have such plans at that time does not mean that such plans could not have been developed over the next ten months in response to changing circumstances, including the need to get a new budget adopted and the lowering of the County's bond rating to the lowest investment grade in February 1996 (2T83-2T84). The second fact is that the County Administrator/Director of Finance testified that the achievement of step increments caused a great concern because it "could have a domino effect with the other collective bargaining agreements that have the right to interest arbitration"; he did not think the increment system was good for the County; and the award of the system was not "welcomed news" (3T38-3T39). This testimony simply reiterates the Administrator's firm and forthright opposition to an automatic increment system in this

unit and in other units, including a unit six times the size of the one represented by PBA Local No. 51 (R-7, pp. 16-19). This testimony expresses honest disappointment with the result of the interest arbitration process, but does not necessarily prove that hostility towards the award motivated the layoffs. Again, we are not determining whether there was some evidence to support a conclusion that the layoffs were illegally motivated; rather, we are determining whether there is a sound evidentiary basis for independently rejecting the ALJ's determination, based on implicit credibility determinations, that the layoff decision was not infected by anti-union animus. N.J.S.A. 52:14B-10 (agency may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent, and credible evidence in the record).

For these reasons, we accept the ALJ's conclusion that anti-union animus was not a substantial or motivating factor in the decision to abolish the police department. We dismiss the allegation of illegal discrimination.

The unit work claim

We next consider the allegation that the County violated the Act by unilaterally transferring patrol division functions from

its police officers to employees in the Sheriff's Office. For the reasons that follow, we conclude that the County was not required to negotiate over the Sheriff's Office's assuming responsibility for this work.

With its underpinnings in private sector labor law, see Jersey City at 575 n.14, the unit work rule requires that a public employer negotiate before substituting non-unit employees for unit employees to do work traditionally performed by unit employees alone. See, e.g., Jersey City; Rutgers, The State Univ., P.E.R.C. No. 2003-70, 29 NJPER 158 (¶46 2003); Borough of Belmar, P.E.R.C. No. 89-73, 15 NJPER 73 (¶20029 1988), aff'd NJPER Supp.2d 222 (¶195 App. Div. 1989) (applying rule to unit of police officers). The doctrine promotes the public interest in having stable negotiations relationships and permits employees to seek protection of a variety of interests -- for example, ensuring that their jobs are not lost immediately or later; their salaries are not undercut; their benefits are not taken away; their overtime opportunities are not diminished, and their shift preferences are not negated.

However, negotiations over an alleged transfer of unit work will not be required if such negotiations would significantly interfere with governmental policymaking. Local 195, IFPTE v. State, 88 N.J. 393,404-405 (1982). Thus, subcontracting decisions are generally not mandatorily negotiable, even though

such decisions shift work to other entities and may result in job losses and elimination of negotiations units. Id. at 405-409. Whether governmental services are provided by government employees or by contractual arrangements with private organizations is a governmental policy determination. Id. at 407. Further, before Jersey City, we had held that a transfer of unit work was not mandatorily negotiable if it was entailed in a public employer's legitimate reorganization of its delivery of services. See, e.g., Nutley Tp., P.E.R.C. No. 86-26, 11 NJPER 560 (¶16195 1985) (replacement of police officers with civilians part of restructuring of traffic safety unit); Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (replacing police and fire officers with civilian dispatchers part of prerogative to consolidate operations so more police officers and firefighters would be available for line duties).

In Jersey City, our Supreme Court applied this reorganization exception in determining that the City was not required to negotiate before transferring non-police functions from police officers to civilian employees and then transferring the police officers to field positions to combat crime. Id. at 578-582.[4/] The Court also ruled that negotiability

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4/ In reviewing agency case law applying the reorganization exception, the Court cited two decisions involving transfers of work from County police departments to the Sheriff: the Hearing Examiner's decision in Essex Cty., H.E. No. 92-30, (continued...)

determinations must be made based on the particular facts of each case. Id. at 574-575. Applying the balancing test, the Court concluded that the transfer of unit work to civilian employees was not mandatorily negotiable.

Following Jersey City, we will first determine whether there was a transfer of unit work, next determine whether the County acted pursuant to a legitimate reorganization, and finally apply the balancing test to the facts presented.

The County police department had performed many functions. Some of these functions appear to have been eliminated; some are now performed by police officers working for municipalities; and some are now performed by police officers working for the State. Other functions that had been performed by the old patrol division in the County Police Department are now being performed by a new patrol division in the Sheriff's Office - - e.g., the patrolling of three County parks, investigating criminal activities and checking security inside County buildings, patrolling for parking violations outside County buildings, and investigating accidents involving County vehicles. We add to the

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4/ (...continued)
18 NJPER 289 (¶23124 1992), and the Commission designee's decision denying interim relief in this case. Hudson Cty., I.R. No. 97-6, 22 NJPER 383 (¶27204 1996). The Hearing Examiner in Essex Cty. recommended dismissing an unfair practice charge after finding that the county's decision to reassign 88 of its police officers to the sheriff's department involved a non-negotiable governmental policy decision to transfer work to a separate public employer.

findings of fact that former County Police Officer Andrew Conti testified that after his transfer to the Sheriff's Office, his salary was reduced by $11,000 and his uniform, weapon, car insignia and rank were changed; but the police cars, headquarters, and duties remained the same. We thus conclude that some patrol division functions were shifted from the County to the Sheriff.

The typical unit work case involves an employer shifting negotiations work from one group of its employees to another group of its own employees. By contrast, a typical subcontracting case involves an employer shifting work to a private entity that in turn controls the work performed by its own employees and determines their employment conditions during the life of the subcontract. This case is different from the typical unit work case and the typical subcontracting case because it involves two governmental entities that are neither the same employer nor unrelated employers. Compare Burlington Cty. Bd. of Social Services, P.E.R.C. No. 98-62, 24 NJPER 2 (¶29001 1997) (neither subcontracting nor unit work cases governed contracting with alleged joint employer to hire extra temporary help for seasonal work). It is also different in that the Sheriff is an elected official with constitutional and statutory powers and responsibilities separate from another set of elected officials -- the Freeholders.

In Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 169 (¶15083 1984), we severed a negotiations unit of sheriffs and correction officers employed jointly by Bergen County and the Bergen County Sheriff from a larger negotiations unit including other employees employed solely by the County. The County had objected to that severance. We recognized that both the Sheriff and the County had independent spheres of authority over negotiable matters. The Sheriff is elected to a constitutionally established office, N.J. Const. (1947), Art. I, ¶19, and has statutory control under N.J.S.A. 40A:9-117 over the daily operations of the Sheriff's Office and over non-economic employment conditions. See also CWA v. Treffinger, 291 N.J. Super. 336 (Law Div. 1996) (county's residency requirement did not apply to sheriff's employees since sheriff was exclusive employer and/or hiring authority); Prunetti v. Mercer Cty. Freeholder Bd., 350 N.J. Super. 72, 114-117 (Law Div. 2001) (sheriff had the power to hire, fire, and discipline). At the time we decided Bergen Cty. Sheriff, however, N.J.S.A. 40A:9-117 also directed that sheriff's employees "shall receive such compensation as shall be recommended by the sheriff and approved by the governing body." We read this statute as giving the county final control over negotiable compensation matters. Given these different lines of authority over separate aspects of negotiable matters, we concluded that an effective negotiations

process required the joint participation of the county and the sheriff and thus warranted a "joint employer" status and a separate negotiations unit. We cautioned, however, that the respective spheres of authority of the county and the sheriff must be honored in the negotiations and arbitration process. Id. at 171; cf. D.R. No. 92-18, 18 NJPER 151 (¶23070 1992) (amending certification to reflect change in name of majority representative of negotiations unit of superior officers jointly employed by Hudson County and the Hudson County Sheriff).

Two months after we decided Bergen Cty. Sheriff, the Legislature amended N.J.S.A. 40A:9-117. That statute now provides: "The sheriff shall select and employ the necessary deputies, chief clerks and other personnel. The sheriff shall fix the compensation they shall receive in accordance with the generally accepted county salary ranges and within the confines of the sheriff's budget allocation set by the governing body."

An earlier version of that bill provided simply that the "sheriff shall fix the compensation they shall receive in accordance with the county budget"; but the Senate County and Municipal Government Committee recommended adding the more specific language later adopted. The Committee stated that the bill "would transfer the power to fix the compensation of sheriff's officers and certain other sheriff's employees from the county governing body to the sheriff." In signing the bill,

Governor Kean stated that the legislation would change current law to permit sheriffs, rather than freeholders, to fix their employees' salaries. Thus, the sheriff now has enhanced statutory power over economic matters as well as complete control over non-economic matters.

Given the post-Bergen amendment to N.J.S.A. 40A:9-117, this case is more akin to one involving the transfer of work to another public employer than a transfer of work between employees of the same employer. Cf. Cacciatore v. Bergen Cty., 2005 U.S. Dist. LEXIS 37568 (D. N.J. 2005) (sheriff was not a county policymaker for purposes of holding county liable in civil rights action). We note that the Hearing Examiner's analysis in the 1992 Essex Cty. case cited in footnote 4 did not address the sheriff's enhanced power over compensation under the 1984 amendment to N.J.S.A. 40A:9-117.[5/]

5/ We also note that the holding of Bergen Cty. Sheriff – that the sheriffs and corrections officers were properly severed from a unit including County-only employees – remains good law. But see Ocean Cty. Sheriff, P.E.R.C. No. 99-70, 25 NJPER 117 (¶30051 1999), aff'd 26 NJPER 170 (¶31067 App. Div. 2000) (refusing to sever sheriff's officers and sheriff's superior officers from multi-employer units because of strong community of interest between sheriff's and corrections officers, long history of multi-employer negotiations, willingness of the employers and current majority representatives to continue present unit structure, and proliferation of units that could occur should severance be granted).

We next consider whether the alleged transfer involved a legitimate reorganization concerning the delivery of governmental services. It did. The County acted consistent with a pattern of reorganizing its operations to achieve economies and reduce duplication of services. Given its budgetary problems in 1996, the County looked at several ways to reorganize and economize, including abolishing its Division of Corrections and returning control of the jail to the Sheriff and abolishing its Division of Police Services and having the Sheriff assume responsibility for some of those services. It essentially determined that the County did not need an independent police department and that other governmental entities, including the Sheriff and local municipalities, could provide needed services. Under these circumstances, we agree with the ALJ that the transfer of police work was entailed in a legitimate reorganization. For these reasons, Jersey City's reorganization exception applies.

Even though the transfer involved a legitimate reorganization, Jersey City still requires that we apply the negotiability balancing test to the facts. The interests of the employees and their representatives are strong in this regard since those former County police officers who became Sheriff's officers suffered sizable salary decreases and since the unions'

negotiations units were eliminated.[6/] Nevertheless, as in Local 195, this case involves a fundamental governmental choice as to what services the governmental employer will provide and what services will be performed by another entity. Id. at 407. It entails a shift of managerial responsibility and political accountability from one set of elected officials to another elected official. We therefore conclude, on balance, that the County's governmental policy determinations about its police department's existence, organization, size, and services outweigh the employees' interests in negotiating over their employment conditions and we hold that the County was not required to negotiate before the Sheriff assumed responsibility for providing some of the patrol division services previously performed by the County Police Department. We dismiss the unit work allegation. Compare Cape May Cty. Bridge Commission, P.E.R.C. No. 92-8, 17 NJPER 382 (¶22180 1991) (bridge commission had a prerogative to enter into an Interlocal Services Agreement whereby the commission would discontinue its maintenance department and county employees would assume maintenance duties); Borough of Teterboro, P.E.R.C. No. 92-108, 18 NJPER 265 (¶23111 1992) (borough had a prerogative to enter into an Interlocal Services

6/ As part of the balance, however, we do not consider the interests of any employees who did not perform patrol functions and thus would have been displaced by the decision to abolish other functions or have them assumed by other employers besides the Sheriff.

Agreement whereby county would provide police coverage at night).

Given these rulings, we dismiss the unfair practice charges. We will transmit this case to the Merit System Board for its consideration of the good faith layoff appeal.

ORDER

The unfair practice charges are dismissed.

BY ORDER OF THE COMMISSION

Acting Chairman Branigan, Commissioners Joanis and Watkins voted in favor of this decision. Commissioner Buchanan voted against this decision. Chairman Henderson recused himself. Commissioner Fuller was not present.

ISSUED: January 24, 2008

Trenton, New Jersey