

P.E.R.C. NO. 2021-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF HUDSON,

Respondent,

-and-

Docket No. CO-2019-137

HUDSON COUNTY PBA LOCAL 334,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the PBA's motion for reconsideration of P.E.R.C. No. 2020-55, in which the Commission granted the County's motion for summary judgment and dismissed the PBA's unfair practice charge. The PBA's charge alleged that the County violated the Act, N.J.S.A. 34:13A-1, et seq., when it transferred a Sheriff's Officer from the Detective Bureau to the Cyber Crimes Unit and removed him from various overtime lists. Finding that no extraordinary circumstances exist, the Commission denies reconsideration. The Commission finds that P.E.R.C. No. 2020-55 distinguished between the extradition and non-extradition overtime lists and applied the facts to find that the Sheriff's Officer was appropriately removed from both overtime lists, consistent with the CNA and past practice, once he was no longer in the Detective Bureau. The Commission therefore finds no basis for the PBA's assertion that the removal from the lists was an adverse action in retaliation for protected union activity.

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, Donato Battista, Hudson County
Counsel (Nidara Y. Rourk, Assistant County Counsel)

For the Charging Party, Detzky, Hunter, and DeFillippo,
LLC, attorneys (Stephen B. Hunter, of counsel and on
the brief)

DECISION

On June 9, 2020, the Hudson County PBA, Local 334 (PBA) moved for reconsideration of P.E.R.C. No. 2020-55, 46 NJPER 586 (¶133 2020). In that decision, the Commission granted the County of Hudson's (County) motion for summary judgment and dismissed the PBA's unfair practice charge alleging that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (3),^{1/} by retaliating

^{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"; and "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage (continued...)"

against Sheriff's Officer Juan Mendoza (Mendoza) for engaging in protected activity when the County transferred him from the Detective Bureau to the Cyber Crimes Unit and removed him from various overtime opportunities. The Commission decision considered the PBA's exceptions to a Hearing Examiner's report that had granted the County's motion for summary judgment and denied the PBA's cross-motion for summary judgment. H.E. No. 2020-4, 46 NJPER 291 (¶72 2020). Although largely adopting the Hearing Examiner's report and reaching the same conclusion as to the motions for summary judgment and ultimate dismissal of the PBA's unfair practice charge, the Commission modified the Hearing Examiner's report to find that the portion of the PBA's charge challenging Mendoza's lost overtime opportunities was not untimely under the Act's statute of limitations. N.J.S.A. 34:13A-5.4(c). The Commission nonetheless concluded that the Hearing Examiner properly dismissed Mendoza's loss of overtime opportunities on substantive grounds.

The PBA asserts that reconsideration is warranted because the Commission decision "failed to acknowledge the substantial differences between (1) Mendoza's entitlements, based on clear contractual language, to receive overtime assignments relating, for example, to early start and late trips, as well as child

1/ (...continued)
employees in the exercise of the rights guaranteed to them by this act."

support and criminal warrant 'raids', and (2) the issue of Mendoza remaining on the separate extradition related overtime list." The PBA argues that the County's June 25, 2018 removal of Mendoza from the non-extradition overtime assignments list violated Article VIII(G) of the CNA because it provides that assignments that cannot be filled by Detective Bureau officers are offered as overtime assignments to other officers in the Operations Division, such as members of the Cyber Crimes Unit like Mendoza. The PBA asserts that Mendoza's June 25, 2018 removal from that overtime list had nothing to do with his subsequent August 21, 2018 removal from the extradition overtime list. It contends that the Commission confused the two overtime lists by relying on PBA President Hernandez's August 20, 2018 e-mail that pertained only to the extradition list, and concluding that Mendoza's removal from the non-extradition list would have occurred absent Mendoza's protected conduct. The PBA argues that Mendoza's August 21, 2018 removal from the extradition list was also retaliation for protected activity. It asserts a past practice permitting continued assignment to the extradition list after leaving the Detective Bureau.

The County asserts that reconsideration is not warranted. It argues that it adheres to the distribution of overtime opportunities as provided by Article VIII(G) of the CNA. It notes that while extradition assignments are given exclusively to

Detective Bureau officers, other overtime opportunities are offered to officers outside of the Detective Bureau (e.g., Cyber Crimes Unit) after first being offered to Detective Bureau officers. The County contends that Mendoza was properly removed from both the extradition and non-extradition lists when he was transferred from the Detective Bureau. It asserts that Mendoza can still apply for overtime opportunities if there is a need for more officers outside of the Detective Bureau unit. The County asserts that Mendoza's removal from the extradition list was consistent with the CNA and past practice. It disputes the PBA's evidence of a past practice of officers remaining on the extradition list while not in the Detective Bureau. The County argues that the CNA allows such extradition overtime assignments if they could not be fulfilled from within the Detective Bureau.

Reconsideration will be granted only in extraordinary circumstances. N.J.A.C. 19:14-8.4.

Having reviewed the Commission decision and Hearing Examiner's report in light of the PBA's arguments in support of its motion, we find no extraordinary circumstances warranting reconsideration. Contrary to the PBA's assertion, the Commission decision did not conflate the different overtime lists. The Commission's decision adopted and cited to the Hearing Examiner's findings of fact, which specifically distinguished between the extradition overtime list and the non-extradition overtime list.

P.E.R.C. at 3, 6-7; H.E. at 11-16. The Commission recognized that Mendoza was removed from different overtime lists on June 25 and August 21, 2018, and its summary of Mendoza's lost overtime opportunities relied on Finding of Fact ¶18, which referenced the applicable CNA provisions and past practice regarding both categories of overtime as certified by the County's Rolon and Laverde certifications. P.E.R.C. at 6-7; H.E. at 11.

The Commission also recognized that Mendoza, as part of the Cyber Crimes Unit, was still eligible for overtime opportunities from the Detective Bureau if additional officers were needed. P.E.R.C. at 7; H.E. at 11, 16. We note that the PBA's intervention demanding that the County restore the status quo and remove Mendoza from the Detective Bureau's extradition assignment list pertained only to the extradition list that Mendoza was removed from on August 21, 2018. P.E.R.C. at 9-11; H.E. at 41. However, the PBA did not need to intervene regarding Mendoza's removal from the other overtime list because he had already been removed from that list on June 25, 2018. The Commission and Hearing Examiner applied the facts concerning the non-extradition overtime list to conclude that Mendoza was properly "removed from the overtime lists for members of the Detective Bureau pertaining to early start trips, late trips, and criminal/child support raids." H.E. at 43, emphasis added. That is, even though Mendoza as a member of the Cyber Crimes Unit remains part of the

Operations Division and is eligible for overtime opportunities if additional officers are needed, "he would not receive the priority he was previously afforded as part of the Detective Bureau." P.E.R.C. at 7.

We find no support in the record for the PBA's suggestion on reconsideration, disputed by the County, that the County has prevented Mendoza from applying or being considered for these overtime opportunities when officers outside of the Detective Bureau are needed. The record supports the finding that the non-extradition overtime list Mendoza was removed from on June 25, 2018 is the Detective Bureau's list, not a general overtime list for the whole division or all officers. Indeed, count 8.3 of the PBA's charge labeled the non-extradition lists as such, stating (emphasis added): "Mendoza was also removed from the overtime list for members of the Detective Bureau on or about June 25, 2018 that included being removed from (1) early start trips; (2) late trips; (3) extradition related assignments and (4) criminal and child support raids." Mendoza's certification also described these as "other overtime lists for members of the Detective Bureau . . ." Mendoza Certification, ¶13.

Accordingly, as the record demonstrates that Mendoza's June 25, 2018 removal from the Detective Bureau's non-extradition overtime lists was consistent with the established priority given to Detective Bureau officers, we find no basis for finding that

it was an adverse action in retaliation for protected union activity. P.E.R.C. at 7-8. We similarly find no basis for determining that Mendoza's August 21, 2018 removal from the extraditions list was retaliatory because the record shows that was also an assignment for Detective Bureau officers consistent with the CNA and past practice, except in emergency situations. P.E.R.C. at 8-10.

ORDER

The Hudson County PBA, Local 334's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni and Voos voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Papero recused himself.

ISSUED: August 13, 2020

Trenton, New Jersey