

P.E.R.C. NO. 99-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-H-97-220

PBA LOCAL 249,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission, under the unusual circumstances of this case, vacates the order in P.E.R.C. No. 98-122 and dismisses the Complaint as moot. The Complaint was based on an unfair practice charge filed by PBA Local 249 against the County of Burlington. The Complaint alleged that the County violated the Act by unilaterally transferring work historically performed by correction officers represented by the PBA to non-unit employees. The Commission ordered a restoration of the status quo pending negotiations over the transfer of the disputed duties. The County appealed. After a pre-argument conference, the Appellate Division issued an order of limited remand so that the Commission could consider a motion by the County to vacate the order in P.E.R.C. No. 98-122 in light of the Supreme Court's decision in City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998). The Commission grants the motion and, in light of the fact that the parties have resolved the underlying dispute, dismisses the Complaint as 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.

P.E.R.C. NO. 99-42

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BURLINGTON,

Respondent,

-and-

Docket No. CO-H-97-220

PBA LOCAL 249,

Charging Party.

Appearances:

For the Respondent, Evan H.C. Crook, County Solicitor
(Charles B. Castillo, Assistant County Solicitor)

For the Charging Party, Schneider, Goldberger, Cohen,
Finn, Solomon, Leder & Montalbano, attorneys (Kevin P.
McGovern, of counsel)

DECISION

On October 27, 1998, pursuant to an Order of Limited Remand from the Appellate Division, the County of Burlington moved to have the Decision and Order in P.E.R.C. No. 98-122 vacated in light of the Supreme Court's decision in City of Jersey City v. Jersey City POBA, 154 N.J. 555 (1998). On October 28, the PBA filed a letter opposing the motion and instead arguing that the case should be dismissed as moot. The County filed a reply urging that P.E.R.C. No. 98-122 be vacated and the underlying charge dismissed. A brief procedural history follows.

On January 8, 1997, the PBA filed an unfair practice charge against the County challenging the unilateral transfer of

work historically performed by correction officers represented by the PBA to non-unit employees. The parties stipulated the facts. On December 22, 1997, a hearing examiner recommended an order requiring the County to restore the status quo and negotiate before shifting unit work. H.E. No. 98-17, 24 NJPER 84 (¶29046 1997). The County filed exceptions. Among other things, it argued that any order to return to the status quo should be stayed pending issuance of the Supreme Court's decision in Jersey City. On March 27, 1998, we issued P.E.R.C. No. 98-122 and ordered restoration of the status quo pending negotiations over the transfer of the disputed duties to non-unit County employees. The County appealed.

On July 9, 1998, the Supreme Court issued Jersey City, reversing the Appellate Division which had upheld a Commission decision. Applying the negotiability balancing test detailed in Local 195, IFPTE v. State, 88 N.J. 393 (1982), the Court held that the City had a managerial prerogative to transfer police officers performing certain non-police duties into operational positions and to replace them with civilian employees.

As a result of a pre-argument conference held pursuant to the Appellate Division's Civil Appeals Settlement Program, Judge Robert E. Gaynor, J.A.D. (retired and temporarily assigned on recall) issued an order of limited remand. That order states, in part:

It appearing that appellant seeks a temporary remand to the Public Employment Relations Commission (PERC) for the purpose of enabling

appellant to move for the vacation of the order on appeal on the grounds of the application of the Supreme Court's decision in City of Jersey City v. Jersey City POBA and thereupon the dismissal of the underlying unfair practice charge filed against appellant by respondent, Policemen's Benevolent Association, Local 249; and

It further appearing that respondent has no objection to such temporary remand for the above-stated purposes; and

It further appearing that the aforesaid action by PERC will resolve all the issues presented in the within appeal;


It is, on the 5th day of October, 1998, ORDERED that this matter is hereby temporarily remanded to PERC for the limited purpose of enabling appellant to file and serve a motion for the aforesaid relief.

Pursuant to the Judge's order, we have jurisdiction to entertain the County's motion to vacate P.E.R.C. No. 98-122. Under the unusual circumstances of this case, we grant that motion. In addition, in light of the fact that the parties have resolved the underlying dispute, we dismiss the Complaint as moot.

ORDER

P.E.R.C. No. 98-122 is vacated. The Complaint in CO-H-97-220 is dismissed as moot.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn and Ricci voted in favor of this decision. None opposed.

DATED: November 23, 1998
Trenton, New Jersey
ISSUED: November 24, 1998