

I.R. NO. 97-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and-

Docket Nos. CO-97-308 and
CO-97-309

KEARNY SUPERIOR OFFICERS ASSOCIATION,
AND KEARNY PBA LOCAL 21,

Charging Parties.

SYNOPSIS

A Commission Designee declines to restrain the Town of Kearny from hiring civilian employees to serve as dispatchers, auto mechanics and administrators for the police department. These positions were formerly filled by police officers. The Town demonstrated that it had a substantial likelihood of success in proving that its actions were due to a legitimate reorganization of both Town and police personnel.

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Appearances:

For the Respondent,
Cifelli & Davie, attorneys
(Kenneth P. Davie, of counsel)

For the Charging Parties,
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys
(James M. Mets, of counsel)

INTERLOCUTORY DECISION

On March 12, 1997, the Kearny Superior Officers Association and Kearny PBA Local 21 filed unfair practice charges against the Town of Kearny alleging that the Town committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a)(1), (3) and (5)^{1/}

^{1/} These subsections 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

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when the Town announced its intention to hire civilians to do duties formerly performed by the uniformed members of the Police Department. It was also alleged that both PBA Local 21 and the SOA are engaged in interest arbitration. The Associations also filed applications for interim relief seeking to restrain the Town from transferring the unit work. The applications for interim relief were executed and a hearing was conducted on April 1, 1997. All parties filed exhibits and briefs and argued orally.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

1/ Footnote Continued From Previous Page

in the exercise of the rights guaranteed to them by this act. (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, or refusing to process grievances presented by the majority representative."

It is not disputed that in December 1996, the Town posted a notice for a Civil Service examination for a telecommunicator. The person or persons who fill that position will be performing the dispatching functions of the Police Department. For over 15 years, the dispatching duties have been performed exclusively by PBA and/or SOA members. On or about February 1, 1997, a police officer who functioned as a garage mechanic, Martin Rowe, resigned from the Police Department. The Town assigned a civilian employee to the Police Department garage to perform duties formerly performed by Officer Rowe.

In mid-January 1997, the Town notified the Associations that it intended to hire a civilian employee to perform administrative functions currently performed by Lt. King in the Chief's office.

The PBA and SOA advised the Chief of Police that the Town must negotiate with them prior to the implementation of such assignments. The Town refused to negotiate.

The Town contends that it has a managerial right to take these actions. The Certifications of Chief of Police Thomas Wilgus and Administrator/Clerk Robert M. Czech indicate that the Town currently maintains separate dispatching systems for police, fire and emergency 911. It is currently under contract to install a new telecommunications center and computer aided dispatch system. The Town intends to create a civilian position of public safety telecommunicator. The three separate dispatching operation will be consolidated in the new telecommunications system.

Upon the February 1, 1997 retirement of Officer Rowe, the Town assigned a civilian mechanic in the Police Department. The Town currently has a separate garage for civilian vehicles. Czech and Wilgus certified that the Town is taking bids on a contract to create a central garage. The Town will consolidate all mechanic duties at the new facilities. The assignment of a civilian mechanic is temporary pending the completion of the new facility.

Wilgus and Czech also certified that the Town intends to reorganize the Chief's office. The Lieutenant Kries will be reassigned to new duties and a sergeant will be assigned in his place. Currently there is a civilian employee in the Chief's office. Another civilian employee will be hired to perform clerical duties and administrative duties such as purchasing and payroll.

The Association argues that many of the plans of the Town have not yet materialized. Historically, police have done the work that the new civilian employees will be assigned.


In Top. of Maplewood, P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985), the Commission held that a reorganization consolidating various dispatching functions into one operation was a managerial prerogative and an employer has no obligation to negotiate concerning the implementation of such reorganization. See also City of Jersey City, P.E.R.C. No. 96-89, 22 NJPER 251 (¶27131 1996).

Here, it is apparent that the Town is undertaking such reorganization for auto mechanics and dispatchers. Further, there

is evidence that the Town is reorganizing the Chief's office. The Town is not simply eliminating a sworn officer from the Chief's staff but rather, is adding a second civilian employee.

While these plans are not yet complete, under the circumstances the SOA and the PBA have not met their heavy burden of showing that they have a substantial likelihood of success in prevailing on the law and facts in this matter before the full Commission.

The applications for interim relief are denied.



Edmund G. Gerber
Commission Designee

DATED: April 9, 1997
Trenton, New Jersey