

**STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of the Arbitration Between:

COUNTY OF MONMOUTH

-and-

PBA LOCAL No. 314

**OPINION
and
AWARD**

**Docket No. AR-2008-111
(Assign Unit Members to County Fair Jobs)**

**Before
Timothy A. Hundley
Arbitrator**

Appearances:

For the County:

**Matthew Giacobbe, Esq.
Scarinci & Hollenbeck**

For the PBA:

**Leonard Schiro, Esq.
Mets, Schiro & McGovern, LLP**

This matter was initiated in June 2007, when PBA Local No. 314 (“PBA”) filed a grievance alleging that Monmouth County (“County”) had violated the parties’ agreement by failing to assign unit members to jobs at the 2007 Monmouth County Fair. The grievance was denied and arbitration ensued. At the January 11, 2008 hearing, the parties argued orally, submitted exhibits, and examined and cross-examined one PBA witness. The County’s post-hearing brief was received in April 2008. The PBA’s brief was filed on October 27, 2008, at which time the record was closed.

ISSUE:

The stipulated issue is as follows:

Has the County violated the CBA, including but not limited to Article 24, by failing to assign unit members to County Fair jobs?

BACKGROUND

The PBA is the exclusive representative of all sheriff’s officers employed by the County and the Monmouth County Sheriff’s Office. These sheriff’s officers are law enforcement employees who are statutorily charged with providing court security; prisoner transportation; service of process and ballistics identification. *See N.J.S.A. 40A:9-117.6.*

The PBA, the County, and the Sheriff were parties to a negotiated agreement covering the period from January 1, 2005 through December 31, 2008. Article 24 of that agreement is a preservation of work clause that reads as follows:

The County will consult with PBA Local 314 prior to new assignments for uniform law enforcement services on County property, at County facilities and/or at County functions to any County law enforcement personnel. Unless extraordinary circumstances exist, such consultation will take place at least sixty (60) days prior to the assignment of such work.

In June 2007, the PBA invoked this clause in connection with a five-day Monmouth County Fair that was held in July 2007 and, indeed, has been held every summer for approximately 25 years. This annual event is sponsored by the Monmouth County Parks Commission (“Commission”), an entity that is comprised of commissioners appointed by the County, *see N.J.S.A. 40:12-1*. The Commission receives an annual appropriation from the County, *N.J.S.A. 40:12-7*, and is statutorily empowered to acquire property for recreation purposes; hire employees; and raise funds by sponsoring fee-based exhibitions and concerts on its premises. *N.J.S.A. 40:12-3* through *40:12-6*. The Commission has full control over all lands and recreation places that it acquires or leases, as well as the authority to adopt rules and regulations governing conduct on those premises. *N.J.S.A. 40:12-6*. For the 2007 County Fair, the Commission hired Freehold Township police

officers to perform traffic and law enforcement duties at the event, which was held on Commission property.¹

PBA President Kurt Kroeper testified concerning the PBA's objection to this Commission decision. Kroeper, a sheriff's officer for 13-14 years and a PBA official for over seven, maintained that the sheriff's officers could have performed the work for less cost. In addition, Kroeper asserted that all other employees at the fair were County employees, with the sheriff's officers being the only group excluded.

Kroeper also explained that, more than 60 days prior to the July 2007 event, the PBA discussed the possibility of unit members working at the fair with the County and Sheriff Oxley. According to Kroeper, Oxley agreed that sheriff's officers should work at the function and, therefore, Oxley offered to be an intermediary between the Commission and the PBA. At Oxley's request, Kroeper prepared a memo showing that the hourly overtime rate for seven sheriff's officers ranged from \$24.49 to \$54.39, with the eighth officer receiving \$59.38 (Exhibit U-1). Kroeper concluded that using sheriff's officers instead of Township police would save money because all of the Township officers who worked the 2006 fair were paid \$55 an hour (Exhibit U-1). Kroeper added that the 2007 rate might be

¹ The PBA does not dispute the County's statement to this effect (County brief at 5), and it is a logical inference from *N.J.S.A. 40:12-1 et seq.*, since County recreational commissions have authority to sponsor events only on their own premises. *N.J.S.A. 40:12-5.*

higher, depending on whether top-step Township officers had received a salary increase for 2007 (Exhibit U-1).

Exhibit U-3, an invoice from the Freehold Police Department to the Monmouth County Park System, shows that the park system was billed a total of \$14,728 (263 hours at a rate of \$56 per hour) for police work performed on July 26, 2006 through July 29, 2006. Exhibit U-2, the park system's payment voucher, confirms this \$14,728 payment for police services during the 2006 Monmouth County Fair. On cross-examination, Kroeper recognized that the Commission pays for the fair.

Also on cross-examination, Kroeper stated that he would not consider County Fair law enforcement work to be a "new" assignment within the meaning of Article 24. In this vein, the County's June 22, 2007 denial of the PBA grievance maintained that the County Fair assignment was not a new one, because "[t]he County Parks Department . . . [has] been utilizing the Freehold Township Police for law enforcement posts and traffic assignments at this event for approximately the last twenty-five (25) years." The PBA acknowledged this longstanding practice in its opening statement.

Finally, Exhibit U-4 suggests that off-duty work in general, and the county fair assignment in particular, has been a longstanding subject of discussion between the PBA and the County. This May 1998 "Memorandum of

Understanding” titled “Outside Work Opportunities” is signed the County Administrator and states that “[t]he County is proceeding to change its policy concerning law enforcement duties on County projects.” In the memo the County agrees that, when practicable, it will use sheriff’s officers on a priority basis for its Department of Public Works resurfacing, re-striping, and engineering intersection projections. In contrast, the County committed itself to simply advising the Board of Recreation Commissioners on the availability of sheriff’s officers to perform law enforcement functions at the Monmouth County Fair. Similarly, the County agreed to provide similar information to contractors working on County roads and bridges.

PBA’S POSITION

The PBA urges that the grievance must be sustained two counts. First, it contends that the County violated the parties’ agreement when it failed to meet with the union prior to assigning County Fair law enforcement work to the Freehold police. Second, it asserts that because the County Fair was held on County property and is a County function, law enforcement duties at the event must be performed by the County’s sheriff’s officers.

Based on the foregoing, it states that a contract violation must be found and make whole remedies ordered.

COUNTY'S POSITION

The County responds that the grievance must be dismissed because it is clear on both the law and the facts that it did not violate its agreement with the PBA. It cites for four separate grounds for dismissal.

First, the County underscores that the Commission is a semi-autonomous agency. It relies on *N.J.S.A. 40:12-1 et seq.* and a PERC decision, *Monmouth Cty. Board of Park Commissioners*, E.D. No. 76-36 (1976), which recognized that the County and the Commission are separate entities.² The County insists that the Commission is statutorily authorized to adopt its own rules and regulations and, further, is responsible both for organizing and funding the annual County Fair and for contracting for security and traffic details at the event. It stresses that the Commission is not subject to the agreement between the PBA and the County and, therefore, an arbitrator cannot find that the Commission violated that contract.

Second, the County reasons that even if the contract did apply to the Commission, Article 24 does not require that unit members receive any or all new law enforcement assignments on County property. Instead, it requires only that the County “consult” with the PBA on such new assignments. Further, the County asserts that the County Fair work is not a “new” assignment within the meaning of

² The decision held that the Commission and the County were each public employers under the PERC Act, and that they were joint employers of the park rangers, park interpreters and other workers at the Commission’s recreational facilities. The Hearing Examiner, whose recommendations were adopted by the Executive Director, concluded that the Commission appointed employees and controlled their working conditions but that the County had “final fiscal control” as a result of its appropriations authority, which it had asserted it by granting overall wage increases and by exercising veto power over certain employee increases.

Article 24, since the fair has been held for over 25 years, during which time the Commission has consistently hired Freehold Township police to perform law enforcement functions at the event.

Third, the County emphasizes that its agreement with the PBA precludes additions or modifications by an arbitrator. The County reasons that since it clearly consulted with the PBA about the County Fair assignment, any finding of a contract violation would impermissibly modify the agreement and impose an obligation to do something more than merely “consult.”

Fourth and finally, the County asserts that there is a longstanding 25-year binding past practice whereby the Commission has hired the Freehold Township police to perform security and traffic detail during the annual County Fair. The County stresses that the PBA has been aware of this clear, consistent and unequivocal past practice and has not introduced a scintilla of evidence to dispute its existence. The County concludes that the PBA cannot now decide to grieve this consistent practice.

DISCUSSION AND ANALYSIS

This is a contract interpretation case in which the PBA has the burden of showing that the County violated the parties’ agreement when Freehold Township police were hired to work at the 2007 Monmouth County Fair. I have carefully

reviewed the arguments, testimony and submissions in this matter and conclude that the grievance must be denied.

As a threshold point, I appreciate the PBA's interest in obtaining off-duty assignments for its members, especially since it believes that they could perform law enforcement services for less cost than the Freehold police. However, those understandable concerns do not entitle the PBA to the relief that it seeks.

The linchpin of this case is the fact that the County, the County Sheriff, and the PBA are the only signatories to the 2005-2008 negotiated agreement (Exhibit J-1, p. 24). Thus, the Commission, a separate entity from the County, is not bound by the terms of Article 24 or any other contract provision. When the circumstances surrounding the County Fair are viewed in light of this principle, it is evident that the PBA has not established a contract violation.

The Commission has the statutory authority to sponsor recreational events; has control over the property it owns or leases; and has been granted the right to appoint employees and make rules governing the conduct of persons on its property. There is no dispute that the Commission exercised these powers in sponsoring the 2007 County Fair on its own property. Kroeper acknowledged that the Commission pays for the annual function and the PBA's own exhibits show that the Freehold Township Police Department billed the Commission directly for law enforcement services in connection with the 2006 event. Since neither the

County nor the Sheriff had any responsibility for either organizing the fair or hiring employees to staff it, the event could not trigger their obligation to consult with the PBA about new assignments for law enforcement work on “County property, at County facilities and/or at County functions”. Stated simply, despite the appellation of “County Fair”, the event is in fact one that is within the control of a discrete entity, the Commission. In this vein, Exhibit U-4 reflects the longstanding recognition that, because the Commission operates the annual fair, the County can only advise that body of unit members’ availability to perform law enforcement services at the event.

Moreover, even if Article 24 did pertain to the 2007 County Fair, it appears that the County would have fulfilled any obligations it had under the provision. This is because the clause does not require that the County assign unit members when law enforcement services are required at County events: it simply directs that the County “consult” with the PBA about any “new” assignments along these lines.

Two points are noteworthy. First, the county fair is not a “new” assignment within the meaning of Article 24. The PBA has acknowledged the 25-year practice of Freehold police performing the work and Exhibit U-4, a 1998 document, refers both to the event and the issue of unit members working at it. Thus, even if the fair had been sponsored by the County itself, Article 24 would not have been triggered.

Second, if in fact the fair had been a new County assignment, the County
“consulted” with the PBA within the meaning of Article 24. Kroeper testified that
he met with the County and the Sheriff about unit members working at the event,
adding that the meetings occurred more than 60 days prior to the function. It even
appears that Sheriff Oxley agreed to advocate on behalf of the sheriff’s officers,
although those efforts were unsuccessful.

In light of the all foregoing, the grievance is denied. The County did not
violate Article 24 or any other provision in the negotiated agreement when
Freehold Township police were hired to work at the 2007 Monmouth County Fair.

AWARD

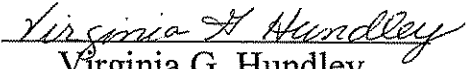
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Fair.

Dated: January 30, 2009
Princeton, N.J.

Timothy A. Hundley
Timothy A. Hundley
Arbitrator

State of New Jersey }
County of Mercer }ss:

On this 30th day of January 2009, before me personally came and appeared Timothy A. Hundley to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Virginia G. Hundley
Notary Public of New Jersey
My Commission Expires 6/22/2010