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No. 13

In the Matter of County of Erie
and Erie County Sheriff,
Appellants,

v.

State of New York Public
Employment Relations Board &c.,
et al.,

Respondents.

Sean P. Beiter, for appellants.

David Pattison Quinn, for respondent State of New York
Public Employment Relations Board.

Ellen Mitchell, for respondent Civil Service Employees
Association, Inc., Local 1000, AFSCME, AFL-CIO, Erie County Unit
of Local 815.

Robert J. Reden, for respondent Teamsters Local 264 of
International Brotherhood of Teamsters, Warehousemen, and
Chauffeurs and Ronald Lucas.

PIGOTT, J.:

Respondents Civil Service Employees Association, Inc.,
Local 1000, AFSCME, AFL-CIO, Erie County Unit of Local 815 (CSEA)
and Teamsters Local 264 of International Brotherhood of
Teamsters, Warehousemen, and Chauffeurs (Teamsters) filed

improper practice charges against petitioners County of Erie and Erie County Sheriff for allegedly transferring exclusive bargaining unit work to nonunit employees in violation of Civil Service Law § 209-a (1) (d), which provides that "[i]t shall be an improper practice for a public employer or its agents deliberately . . . to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees."

Petitioners argue on this appeal that the Appellate Division's confirmation of the determination made by the New York State Public Employment Relations Board (PERB) that petitioners committed an improper employment practice should be reversed. We agree.

I.

CSEA is the authorized collective bargaining representative for corrections officers exclusively charged with guarding sentenced inmates incarcerated at the Erie County Correctional Facility. Teamsters is the authorized collective bargaining representative of deputy sheriffs who are exclusively charged with guarding pre-sentenced and pre-trial detainees (collectively referred to as "unsentenced inmates") housed at the Erie County Holding Center and the "Annex," a space adjoining the Correctional Facility which holds the overflow of inmates from the Holding Center. Petitioners do not dispute that corrections officers and deputy sheriffs have exclusively guarded sentenced

and unsentenced inmates, respectively, since 1995.

In August 2000, the Erie County Legislature voted to transfer control of the Correctional Facility from the Erie County Executive to the Erie County Sheriff, a measure county residents approved in a referendum, leaving the Sheriff in control of both detention facilities. The guarding duties of corrections officers and deputy sheriffs remained unchanged.

In early 2002, the Sheriff notified the unions that, due to this change in mission, it was necessary to implement a new classification system for the housing of inmates. The Sheriff initially prepared a unified classification plan that assigned housing based on risk without consideration of adjudication status, resulting in the commingling of sentenced and unsentenced inmates, but later withdrew that plan after resistance from the unions. In its place, the Sheriff implemented separate classification systems for the Correctional Facility and the Holding Center in order to maintain the separation of sentenced and unsentenced inmates.

Subsequently, the State Commission on Correction conducted an evaluation of the Holding Center and cited the Sheriff for overcrowding at that facility while the Correctional Facility had vacancies. The Commission found that the cause of the overcrowding was the Sheriff's failure to use a unified classification system for both facilities. In order to alleviate the overcrowding, the Commission directed the Sheriff to utilize

the criteria set forth in Correction Law § 500-b (7) (a) and (b) and 9 NYCRR part 7013. In response, the Sheriff promulgated a single classification instrument that resulted in the commingling of sentenced with unsentenced inmates at both facilities, and corrections officers and deputy sheriffs being assigned to guard both.

The unions thereafter filed improper practice charges alleging that petitioners violated Civil Service Law § 209-a (1) (d) by unilaterally transferring exclusive bargaining unit work to nonunit employees. The charges were consolidated and, after a hearing, an Administrative Law Judge ruled in favor of the unions and ordered that petitioners cease and desist in the assignment of sentenced inmates to the deputy sheriffs and the assignment of unsentenced inmates to corrections officers. After the ALJ's decision was affirmed by PERB, petitioners commenced this CPLR article 78 proceeding, challenging as arbitrary and capricious PERB's determination that their change in mission defense was inapplicable.

Supreme Court transferred the matter to the Appellate Division which confirmed PERB's determination, dismissed the petition and granted the unions' counterclaims seeking enforcement of the decision. We now reverse and grant the petition.

II.

A public employer's decisions are not bargainable as

terms and conditions of employment where "they are inherently and fundamentally policy decisions relating to the primary mission of the . . . employer" (Matter of Board of Educ. of City School Dist. of N.Y. v New York State Pub. Empl. Relations Bd., 75 NY2d 660, 669 [1990] citing Matter of West Irondequoit Teachers Assn. v Helsby, 35 NY2d 46 [1974]). Although such policy decisions are exempt from bargaining, the impact of those decisions is not (see Matter of West Irondequoit Teachers Assn., 35 NY2d at 51; see also Matter of Levitt v Board of Collective Bargaining of the City of N.Y., Off. of Collective Bargaining, 79 NY2d 120, 127 [1992]).

In West Irondequoit Teachers Assn. (35 NY2d 46), this court upheld a PERB determination that found the fixing of class size not to be a term or condition of employment (and therefore not negotiable), but rather a matter of educational policy. That fact alone, however, did not preclude the teacher's association from bargaining over the impact of the policy on the teachers' working conditions (id. at 49-50). Although we concluded in that case that PERB "articulated a rational basis for its determination in the [school board's] favor" (id. at 52), the same cannot be said, in this instance, about PERB's determination that the Sheriff was required to first negotiate with the unions before implementing a classification policy satisfactory to the Commission.

Correction Law § 500-b directs that the Sheriff "shall

exercise good judgment and discretion" and "take all reasonable steps to ensure that the assignment of persons" to housing units "fosters the safety, security and good order of the jail" while concomitantly ensuring that necessary precautions are made for the safety and welfare of those in custody (Correction Law § 500-b [7] [a] [1]-[2]; see 9 NYCRR 7013.1, 7013.2). As part of those responsibilities, the Sheriff is charged with "implement[ing] and maintain[ing] a formal and objective system of classification of all inmates" (9 NYCRR 7013.1), requiring "a procedure for determining an inmate's appropriate housing assignment which utilizes a point scale, decision tree or other method capable of quantifiable analysis or computation" (9 NYCRR 7013.2 [b]). Factors that the Sheriff must consider include, among other things, criminal history, prior escapes, mental/medical illness, history of hostile relationships with other inmates, and any other information the Sheriff deems necessary to ensure inmate safety (see Correction Law § 500-b [7] [b]; 9 NYCRR 7013.8 [c]). Significantly, none of those factors takes into account the adjudication status of the inmate or the allocation of work among collective bargaining units.

Given the statutory requirement that the Sheriff implement and maintain a formal and objective classification system, we conclude that PERB's determination that petitioners committed an improper practice by unilaterally transferring unit work to nonunit employees is not entitled to deference (see

Matter of Newark Val. Cent. School Dist. v Public Empl. Relations Bd., 83 NY2d 315, 320 [1994], citing Matter of Rosen v Public Empl. Relations Bd., 72 NY2d 42, 47-48 [1988]). Once having implemented such a system, the impact of that decision, if any, upon the contracts between the parties is subject to bargaining (see City School Dist. of New Rochelle [New Rochelle Fedn. of Teachers], 4 PERB 3060 [1971]; see also Matter of West Irondequoit Teachers Assn., 35 NY2d at 49-50); Matter of Amalgamated Tr. Union [Niagara Frontier Tr. Metro Sys.], 36 PERB ¶ 3036 [2003].

Accordingly, the judgment of the Appellate Division should be reversed, with costs, the petition granted, the August 9, 2006 determination of PERB annulled and the counterclaims for enforcement of PERB's determination dismissed.

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Judgment reversed, with costs, petition granted, the August 9, 2006 determination of the State of New York Public Employment Relations Board annulled and the counterclaims for enforcement of that determination dismissed. Opinion by Judge Pigott. Judges Ciparick, Graffeo, Read, Smith and Jones concur. Chief Judge Lippman took no part.

Decided February 19, 2009