



STATE OF NEW JERSEY

**DECISION OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Policemen’s
Benevolent Association, Sheriff’s
Officers of Union County, Local
Number 108, Inc., Union County
Sheriff

Request for Interim Relief

CSC Docket No. 2021-2

ISSUED: JULY 20, 2020 (HS)

The Policemen’s Benevolent Association, Sheriff’s Officers of Union County, Local Number 108, Inc., represented by Brian J. Manetta, Esq., petitions for interim relief to preclude Union County and the Union County Sheriff’s Office (UCSO) from requiring that unit members screen temperatures or manually take the temperatures of any individuals.

By way of background, the UCSO issued a Standard Operating Procedure (SOP), effective June 15, 2020, concerning “COVID-19 Screening and Protective Procedures.” The purpose of the SOP is stated as follows:

This Policy will allow for the resumption of more normalized operations while taking reasonable measures to protect employees, staff, and visitors from the Covid-19 virus.

Due to the presence of the highly contagious Covid-19 virus within the community, it is necessary to integrate recommendations and best practices from the CDC and other qualified health authorities into existing security and screening policies. This order does not replace the policies outlined in *Volume VI, Chapter 1, Security Screening Procedures*, but rather, serves to supplement them with additional procedures to reduce the risk of exposure to and transmission of the Covid-19 virus.

These are adopted risk mitigation, not risk elimination strategies. It is important to recognize that these steps are helpful in reducing these risks but are not 100% effective. This policy does not provide for medical screening by officers, but rather to monitor passive thermal screening systems.

The policy of the SOP is stated as follows:

It is the policy of the [UCSO] that the highest levels of security, consistent with law and reasonableness, are provided to all persons having business in the Union County Courthouse and other facilities secured by the UCSO.

All officers will be provided with Personal Protective Equipment (PPE) as needed while in contact with employees, staff or the general public.

With respect to the procedure for temperature screening, the SOP states, in part:

A. **All employees, staff, officers, contractors, vendors, jurors, witnesses, and any other individuals** entering the Justice Complex or other facilities secured by the UCSO shall be subject to thermal screening using an approved “no touch” device provided by the UCSO.

...

F. All persons being screened will be advised to wear face coverings and whenever possible maintain appropriate social distancing while within the complex.

G. All persons shall be screened using the MES SEEK SCAN system, which provides passive infrared thermal screening. The SEEK SCAN system will provide near instant screening response to indicate outlier temperatures for an individual. Any person that presents an anomaly temperature will be eligible to receive a secondary screening using a no-touch medical grade infrared or similar thermometer. Persons who present with a temperature equal to or greater than 100.4 during the secondary screening shall be denied entry.

H. Any individual refusing temperature screening shall be denied entry.

I. Individuals refused entry will be removed from the queue and moved to a predetermined secondary location, away from others, where they will be provided with additional information based upon the purpose of their visit.

In this matter, the petitioner maintains that the SOP orders its members employed as Sheriff's Officers to manually take the temperatures of all individuals entering County buildings and courthouses, duties that are dangerous and outside the scope of the job specification for Sheriff's Officer and for which members have not been trained or certified to perform. According to the petitioner, the duties of a Sheriff's Officer consist of law enforcement functions, and taking temperatures is clearly outside the scope of those duties. It asserts that no member has ever been ordered to take the temperature of an individual entering County buildings or courthouses. The petitioner argues that members will be irreparably harmed as requiring them to manually take temperatures, which cannot be done while maintaining the proper social distance even with a touchless thermometer, places them at high risk of exposure to COVID-19. The petitioner further contends that the equities favor interim relief in this case as neither Union County nor the UCSO will be harmed by simply requiring employees with the appropriate title and job description to perform the manual temperature screening. In this regard, the petitioner notes, for example, that "takes and records temperature" is an example of work found in the job specification for Practical Nurse, and "[a]ssists in checking or checks and records vital signs such as temperature, pulse and respiration" is an example of work found in the job specification for Nurse's Aide. The petitioner also points out that Practical Nurses are required to possess a valid registration as a Licensed Practical Nurse, and Nurse's Aides are required to possess a valid New Jersey Nurse's Aide Certification. Another option, according to the petitioner, would be to temporarily deny entry to any individual who presents with an elevated body temperature during the initial infrared scan. Additionally, the petitioner contends that granting interim relief would foster the public interest by requiring the UCSO to comply with Civil Service regulations, which mandate that employers refrain from assigning duties outside the job specification for a particular title. Thus, the petitioner requests that the Civil Service Commission (Commission) enjoin Union County and the UCSO from ordering its members to perform the temperature screening.

CONCLUSION

N.J.A.C. 4A:2-1.2(c) provides the following factors for consideration in evaluating a petition for interim relief:

1. Clear likelihood of success on the merits by the petitioner;
2. Danger of immediate or irreparable harm;
3. Absence of substantial injury to other parties; and
4. The public interest.

N.J.A.C. 4A:3-3.4 provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform

duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or rule. *N.J.S.A.* 40A:9-117.6 provides:

The sheriff of each county shall, subject to the budget of the county, appoint such persons as may be necessary, to the position of sheriff's officer, pursuant to the provisions of [the Civil Service Act], where applicable, to perform the duties involved in attending the courts heretofore performed by court attendants, or in serving court processes, or in the investigation and apprehension of violators of the law, or in criminal identification, or in ballistics, or in any related work which the sheriff shall, from time to time prescribe and as shall be determined to be appropriate by the [Commission].

The definition section of the job specification for Sheriff's Officer states:

Under direction, performs one or more functions in the following areas: maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics, investigations, apprehension of violators of the law; forensics and other related assignments which may include Emergency Management. As required by the operational needs of the jurisdiction (County), may be assigned to perform other law enforcement or public safety related duties outside the parameters of a courtroom environment, which may include criminal investigations, patrol duties, dispute intervention/resolution, public safety/service assistance, traffic control and enforcement, motor vehicle accidents, etc., and/or other assignments as determined by the appointing authority.

In this matter, the petitioner argues that screening temperatures is beyond the scope of the job specification for Sheriff's Officer. The Commission is not persuaded. The job specification for Sheriff's Officer provides that an incumbent may be assigned to perform "public safety related duties" and "other assignments as determined by the appointing authority." Taking the temperatures of individuals entering a County building or courthouse screens for potential carriers of COVID-19. See New Jersey Department of Health, COVID-19 Fact Sheet, https://www.nj.gov/health/cd/documents/topics/NCOV/COVID-19_FactSheet.pdf (listing fever as possible symptom of COVID-19). According to the SOP, individuals who present with an elevated temperature of at least 100.4 during the manual, or secondary, screening by thermometer are denied entry to County buildings. Thus, the risk that these individuals will expose other members of the public present in County buildings to COVID-19 is reduced, and the safety of the public is promoted. That no member has allegedly ever previously been ordered to take the temperature of an individual entering a County building or courthouse does not render the work out-of-title. As the job specification for Sheriff's Officer states, incumbents may be

assigned to perform public safety related duties “[a]s required by . . . operational needs.”

The petitioner asserts that members have not been trained to manually take temperatures. This argument is not particularly convincing, however. Per the job specification, Sheriff’s Officers already may be required to administer appropriate first aid treatment, a duty that arguably calls for an application of medical knowledge greater than that required to take a temperature. Regardless, in this particular case, any argument that members have not been adequately trained to perform temperature screening duties, even assuming that is true, does not actually demonstrate that the duties themselves are out-of-title.

The petitioner also contends that its members lack the appropriate certification to conduct the manual temperature screenings. In furtherance of that argument, it cites the certifications Practical Nurses and Nurse’s Aides are required to hold, *i.e.*, registration as a Licensed Practical Nurse and a Nurse’s Aide Certification, respectively. The petitioner thus reasons that it would be more appropriate for incumbents in those titles to perform the manual temperature screenings. However, it should be noted that Practical Nurse and Nurse’s Aide are patient care titles. In this regard, the definition section of the job specification for Practical Nurse states:

Under direction of a Registered Professional Nurse in a health care facility, performs the duties required to care for clients; carries out medical orders prescribed by a licensed physician that require an understanding of elementary nursing, but not the professional service outlined in the definition of professional nursing; does related work as required.

The definition section of the job specification for Nurse’s Aide states:

Under the direction of a nurse or other supervisory staff member in a long term care facility (nursing home), performs the non-professional nursing duties involved in the routine care of hospitalized patients; does related work as required.

As such, the petitioner’s reference to the certifications that incumbents in these titles are required to hold is inapt as the petitioner’s members are not being asked to engage in patient care. The petitioner has hardly established that Sheriff’s Officers are unable to conduct manual temperature screenings absent possession of a nursing certification. Further, the petitioner has not established that only nurses can take and record temperatures. The mere fact that the duty appears in the job specifications for Practical Nurse and Nurse’s Aide does not render the duty out-of-title for a Sheriff’s Officer.

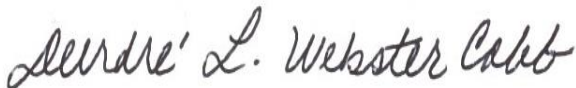
Based on the above discussion, the Commission finds that the petitioner has failed to demonstrate a clear likelihood of successfully establishing that screening temperatures is out-of-title for a Sheriff's Officer. Following from that finding, the petitioner has not established that its members would suffer irreparable harm within the meaning of *N.J.A.C.* 4A:2-1.2(c). Specifically, irreparable harm from performing certain duties cannot be persuasively established where the duties at issue have not been clearly demonstrated to be out-of-title, even though the performance of the duties may involve an element of risk to the employee. In fact, the petitioner's claim of irreparable harm from performing the specific duties at issue in this matter is undercut by the fact that Sheriff's Officers already may perform many duties involving an element of risk to themselves that could place them in close proximity to other individuals. For example, per the job specification, they may guard prisoners in a courtroom and subdue, restrain and physically remove unruly individuals from a courtroom; assist in removing dead or injured from wrecked or overturned vehicles by manually lifting them; apprehend and subdue suspects by chasing them on foot, in a patrol car or other means and by using physical force and applying handcuffs, if necessary, in order to take the suspect into custody and to prevent injury to the officer or others; and search the body and clothing of suspects for possible weapons, using visual and physical means in order to insure the safety of the officer and others.

Further, the petitioner contends that granting interim relief would foster the public interest by bringing the UCSO into compliance with *N.J.A.C.* 4A:3-3.4. However, as has been discussed in this decision, the petitioner has not clearly established that the UCSO has in fact assigned out-of-title duties in violation of that regulation. As such, the public interest does not compel interim relief in this matter.

ORDER

Therefore, it is ordered that this petition for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 17TH DAY OF JULY, 2020



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