

appearances, those functions would be assumed and staffed by employees of the Union County Sheriff's Office (Sheriff's Office) through the operation of a smaller transitional facility known as the "Hub."

Union County, noting that both it and Essex County were Civil Service jurisdictions, indicated that Essex County would serve as the "host" county and assume the governmental function of housing inmates on Union County's behalf. Union County noted that since it was the existence of the SSA that permitted it to abolish the UCDOC and effect the layoffs, an employment reconciliation plan pursuant to *N.J.S.A. 40A:65-11*⁴ was required. By way of reconciliation, Union County was taking the following steps: attempting to assist in placing through intergovernmental transfer (IGT) every impacted employee who would be laid off; planning a job fair; widely publicizing the availability of IGTs; approving intragovernmental transfers of approximately 53 current UCDOC employees to the Sheriff's Office in connection with the operation of the "Hub;"⁵ and engaging in impact bargaining with unions representing affected employees.

Union County noted that it had implemented a hiring freeze for all UCDOC positions effective January 1, 2021. It also held meetings with union leadership on January 7, 2021, February 11, 2021, February 17, 2021, and March 16, 2021 to discuss the reason and rationale for the proposed layoffs as well as alternatives to layoff and pre-layoff actions, including the retirement of eligible officers, intragovernmental transfer, intergovernmental transfers, and development of an employment reconciliation plan. Union County indicated that in accordance with *N.J.A.C. 4A:8-1.1, et seq.* and *N.J.S.A. 40A:65-11*, it was requesting Agency Services' approval of the layoff plan. On April 30, 2021, Agency Services approved the layoff plan and directed Union County to issue 45-day notices to affected employees no later than May 15, 2021. Agency Services advised that upon its receipt of the 45-day notices, it would determine the seniority, displacement rights, and special reemployment rights of the affected employees and notify the employees of these determination prior to the effective date of the layoff. The petitioners are among those copied on Agency Services' approval letter.

In its initial submission, Local 199 asserts that Union County "seeks to merge its correctional services into the Essex County system, creating a unified correctional unit serving both counties." But while it is creating a single jail operation by paying Essex County to perform the services Union County's correctional staff currently perform, the layoff plan provides for layoffs of only Union County officers. In doing

⁴ *N.J.S.A. 40A:65-11* is a section of the Uniform Shared Services and Consolidation Act, which is codified at *N.J.S.A. 40A:65-1* to *-35*.

⁵ These positions would at least be two County Correctional Police Captains; five County Correctional Police Lieutenants; six County Correctional Police Sergeants; 37 County Correctional Police Officers; and three "civilians." Union County has indicated that the approvals for these transfers will be seniority-based.

so, according to Local 199, the counties have embarked upon a transparent effort to avoid the statutory requirement that any layoffs of Correctional Police Officers resulting from the SSA be shared equally by both counties through a “merged seniority list.” Local 199 contends that *N.J.S.A. 40A:65-8a* specifically requires that when two governmental entities decide to consolidate law enforcement services into a single unit, they must also prepare a merged seniority list to ensure officer layoffs are distributed equally by seniority. The legislative mandate is designed to ensure that in any shared services setting involving a merged unit of police or correctional services, the sending governmental unit cannot transfer the work of its staff to another county whose employees will then perform the former’s work without sharing equally in any resulting layoffs. For support, Local 199 points to *Fraternal Order of Police Camden Lodge #1, Inc. v. County of Camden*, Docket No. A-5588-13T2 (App. Div. October 21, 2015), where the court stated that the “shared services arrangement affords protection by preserving employment rights of officers currently employed by each participating entity, which are merged into one law enforcement body.” The court also noted that “an intent to merge resources or pool law enforcement personnel . . . is essential to triggering the provisions of the [Uniform Shared Services and Consolidation] Act.”

Local 199 also claims that Union County has not met the requirements for the reconciliation plan provided in *N.J.S.A. 40A:65-11a(1)* since it did not identify which, if any, correctional officers would be transferred to Essex County; which would be retained by Union County; and which would be terminated for reasons of economy or efficiency. Rather, Union County used “abstract numerical figures.” Union County allegedly also did not present this agency with a plan that “specifically set[s] forth the intended jurisdiction of the Civil Service Commission” as required by *N.J.S.A. 40A:65-11a*.

In addition, Local 199 argues that Union County provided no evidence to support the cost savings it anticipates will be realized; did not include an agreement governing the period after June 30, 2021 as the SSA expires on that date; never negotiated with it about alternatives to closure of the facility; and did not indicate an intent to comply with the collective negotiations agreement (CNA). Local 199 maintains that Union County cannot simply proceed to eliminate all provision of services at the Union County Jail without first entering into negotiations with it.

In its request for interim relief, postmarked May 24, 2021, Local 199A claims that it learned for the first time on May 21, 2021 that Union County failed to file the reconciliation plan as required by law and that this failure will negatively affect the many Local 199A members who will be demoted under the layoff plan. Local 199A maintains that they will not have the opportunity as required to decide to accept employment with Essex County at their current ranks and salaries or remain with Union County. In support, Local 199A submits the certified statement of Mark

Altmann, Correctional Police Sergeant, who complains that he does not have the benefit of having all his options before him.

In response, Union County, represented by Stephen J. Edelstein, Esq., initially contends that the petitioners' "so-called" requests for interim relief are procedurally deficient and are not, therefore, properly before the Commission. Noting that *N.J.A.C.* 4A:2-1.2 sets the standards for interim relief requests, Union County maintains that the regulation requires the petitioners to have first filed an actual appeal. In this case, the petitioners never filed a layoff appeal pursuant to *N.J.A.C.* 4A:8-2.6 and never, according to Union County, filed a request for interim relief. Thus, Union County proffers that the petitioners' arguments should be dismissed "out of hand" on procedural grounds. Union County also argues that Local 199A's request for interim relief is untimely since the time to file such request expired 20 days from Agency Services' April 30, 2021 approval of the layoff plan.

Union County argues that notwithstanding the above-noted procedural deficiencies, the petitioners cannot succeed in obtaining interim relief upon consideration of the pertinent factors. Union County maintains that the petitioners cannot prove that they are likely to succeed on the merits in any layoff appeal. Union County emphasizes that it had no obligation to negotiate with the petitioners prior to submitting the layoff plan but met its obligation to *consult* with the leadership of the relevant bargaining units through its meetings of January 7, 2021, February 11, 2021, February 17, 2021, and March 16, 2021. In any event, the question of whether it has a negotiations obligation would be for the Public Employment Relations Commission (PERC) to decide. As to the petitioners' arguments surrounding *N.J.S.A.* 40A:65-8, Union County notes that the SSA expires June 30, 2021 and it has entered into a Memorandum of Agreement (MOA) with Essex County for the July 1, 2021 through June 30, 2025 term for the provision of inmate services. Union County describes the MOA as dealing only with the housing of inmates and emphasizes that it does not in any way provide for or require Essex County to accept Union County's employees. Instead, Union County has been actively attempting to assist employees who were to be laid off with finding alternative employment in many locations, not just Essex County.⁶ To the extent that any of the other employees slated to be laid off do not retire or find IGTs, there is no obligation on Essex County to employ them. According to Union County, they will not, therefore, "merge" into Essex County's bargaining unit. Moreover, the MOA does not call for Essex County to share inmate services within the two jurisdictions pursuant to *N.J.S.A.* 40A:65-8, since Union County will simply be paying Essex County for the housing of inmates. As such, in Union County's view, *Fraternal Order of Police, supra*, does not help the petitioners' argument. There, the court found *N.J.S.A.* 40A:65-8 to be inapplicable where:

⁶ Union County reports that as of June 18, 2021, all but 36 County Correctional Police Officers have made decisions regarding alternative employment or retirement.

[T]he agreements ultimately adopted do not support an intent to merge resources or pool law enforcement personnel between [Camden] County and [the City of] Camden, which is essential to triggering the provisions of the [Uniform Shared Services and Consolidation] Act. Rather, [the City of] Camden contracted to engage the [Camden County Police Department] to provide law enforcement services after its uniformed force was dissolved.

Union County maintains that for the same reasons, *N.J.S.A.* 40A:65-8 does not apply here. As to the asserted lack of detail about the projected cost savings, Union County indicates that it engaged the accounting firm of Lerch, Vinci & Higgins, LLP to conduct a financial analysis regarding the Union County Jail. After a detailed analysis, that firm concluded: “Based on our financial analysis . . . it is projected that the budgetary savings over the next five years for Union County taxpayers will be approximately \$103.8 million[.]”

Union County further insists that it did file a reconciliation plan as part of the layoff plan and that the relationship between it and Essex County will now be governed by the MOA, which is a contract by which Essex County will house inmates who would otherwise have been housed in the Union County Jail. The MOA does not address staffing. Union County maintains that Local 199A is simply wrong to suggest that all of the Union County employees who formerly worked for the UCDOC will be hired by and somehow merged into the Essex County workforce because Essex County will be accepting Union County inmates. As to Altmann’s claim that he could not figure out his options, Union County proffers that others clearly were able to do so.

Union County also argues that there is no danger of immediate or irreparable harm in the absence of interim relief since the laid off employees would be entitled to back pay should they be successful. Union County maintains that it would be costly and time-consuming for the counties to be required at this very late date, following approval of the layoff plan, to reverse all the progress that has been made to timely effectuate the layoff. In addition, since the counties are public entities, the monetary harm to the public if the process is stopped and reversed would be high.

In support, Union County supplies, among other things, copies of the SSA and MOA. The SSA, which expires June 30, 2021, is titled “Shared Services Agreement by and between the County of Essex, New Jersey and County of Union, New Jersey for the Provision of Essex County Correctional Services.” The SSA recites that “Union County has a need to relocate Union County adult inmates” and that “Essex County agrees to house Union County inmates in the Essex County Correctional Facility.” The SSA describes the services as follows:

1. Consistent with the terms of this Agreement, Union County shall transport to the Essex County Correctional Facility and Essex County shall accept from Union County, Union County's inmates for housing at the Essex County Correctional Facility, in accordance with any and all applicable Federal and State statutes, rules and regulations for the maintenance and operation of New Jersey County jails.
2. Essex County reserves the right to deny any inmate for any reason at the discretion of the Director of the Essex County Correctional Facility.
3. Essex County shall provide all Union County inmates in the Essex County Correctional Facility all services that may be required by Federal and State law, and which Essex County provides to its inmates detained in the Essex County Facility in accordance with N.J.A.C. 10A:1.1, et seq.

Under the SSA, Union County agreed to pay Essex County a housing fee per day, or for any part of a day, for each Union County inmate housed at the Essex County Correctional Facility for the duration of the agreement.

The MOA, which takes effect July 1, 2021, is titled "Memorandum of Agreement by and between the County of Essex, New Jersey and County of Union, New Jersey for the Provision of Correctional Services by Essex County." The MOA recites that "Union County is closing its jail except for services necessary to comply with the terms of this Agreement and therefore has a need to relocate Union County adult inmates" and that "Essex County agrees to house Union County inmates in the Essex County Correctional Facility." The MOA describes the services as follows:

1. Consistent with the terms of this Agreement, Union County shall transport to the Essex County Correctional Facility and Essex County shall accept from Union County, Union County's inmates for housing at the Essex County Correctional Facility, in accordance with any and all applicable Federal and State statutes, rules and regulations for the maintenance and operation of New Jersey County jails.
2. Essex County shall provide all Union County inmates in the Essex County Correctional Facility all services that may be required by Federal and State law, and which Essex County provides to its inmates detained in the Essex County Facility in accordance with N.J.A.C. 10A:1.1, et seq.

Under the MOA, Union County will pay Essex County a housing fee per day, or for any part of a day, for each Union County inmate housed at the Essex County

Correctional Facility for the duration of the agreement in accordance with a specified fee schedule.

In reply, Local 199, relying upon its prior arguments, maintains that it does have a clear likelihood of success on the merits. In addition, in its view, few actions are more irreparable than an improper loss of employment. Local 199 further argues that there is an absence of substantial injury to Union County if interim relief is granted because Local 199 is not attempting to foreclose Union County's legitimate decision to close its jail or prevent the transfer of inmates to Essex County. Local 199 also asserts that a mere pause in the layoff so that statutory requirements may be honored serves the public interest. Thus, Local 199 asks that the layoff be enjoined until Union County submits a plan that is in compliance with *N.J.S.A. 40A:65-8* through creation of an "integrated seniority list" so that layoff rights may be properly determined.

In reply, Local 199A contends that Union County was required to produce the integrated seniority list between Union County and Essex County as part of the required reconciliation plan.

In reply, Union County counters that the correctional officers of the two counties are not being consolidated or merged. Given the number of employees who have transferred, or plan to transfer, to counties other than Essex, Union County argues that there can hardly be said to be a merger of its workforce with Essex County. Union County maintains that the requests for interim relief are "too little, too late" and must be flatly denied.

CONCLUSION

As a preliminary matter, the Commission will address Union County's contention that the instant interim relief requests are procedurally deficient and not properly before the Commission. Union County argues that *N.J.A.C. 4A:2-1.2* required the petitioners to have first filed actual appeals. Since, in this case, the petitioners never filed layoff appeals pursuant to *N.J.A.C. 4A:8-2.6*, Union County argues that the requests should be dismissed. The Commission is unpersuaded. Civil Service regulations contemplate that a request for interim relief from a scheduled layoff may be made when no layoff appeal pursuant to *N.J.A.C. 4A:8-2.6* has yet been filed. *See N.J.A.C. 4A:2-1.8(c)* (referencing requests for a stay or other interim relief that do not pertain to a pending appeal). That Local 199 may not have initially invoked the phrase "interim relief" is similarly not a fatal procedural deficiency. Essentially, Local 199's claim is that the layoff should not proceed until various asserted errors are corrected. It is appropriate to view such a claim within the framework of interim relief. To do otherwise would be to place form over substance. Assured that dismissing the instant requests "out of hand" on procedural grounds is unwarranted, the Commission will proceed to the substance of the requests.

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.S.A. 11A:8-4 and *N.J.A.C.* 4A:8-2.6(a)1 provide that good faith appeals may be filed based on a claim that the appointing authority laid off or demoted the employee in lieu of layoff for reasons other than economy, efficiency, or other related reasons. *N.J.A.C.* 4A:8-2.6(a)2 provides that determination of rights appeals may be filed based on a claim that an employee's layoff rights or seniority were determined and/or applied incorrectly.

When a county has abolished a position, there is a presumption of good faith and the burden is on the employee to show bad faith and that the action taken was not for purposes of economy. *See Greco v. Smith*, 40 *N.J. Super.* 182 (App. Div. 1956); *see also Schnipper v. North Bergen Township*, 13 *N.J. Super.* 11 (App. Div. 1951). As the Appellate Division further observed, "That there are considerations other than economy in the abolition of an office or position is of no consequence, *if, in fact, the office or position is unnecessary, and can be abolished without impairing departmental efficiency.*" *Schnipper, supra* at 15. (emphasis added). The question is not whether the plan or action actually achieved its purpose of saving money, but whether the motive in adopting a plan or action was to accomplish economies or instead to remove a public employee without following *N.J.A.C.* 4A:8-1 *et seq.* Thus, a good faith layoff exists if there is a logical or reasonable connection between the layoff decision and the personnel action challenged by an employee. Additionally, it is within an appointing authority's discretion to decide how to achieve its economies. *See Greco, supra.*

N.J.A.C. 4A:8-1.2(e) provides that appointing authorities should consult with affected negotiations representatives prior to offering alternatives to layoff. *N.J.S.A.* 11A:8-2b and *N.J.A.C.* 4A:8-1.3(c) provide that appointing authorities shall consult with affected negotiations representatives prior to initiating pre-layoff actions. *N.J.A.C.* 4A:8-1.3(a) provides that appointing authorities shall lessen the possibility, extent or impact of layoffs by implementing, as appropriate, pre-layoff actions, which may include, but are not limited to initiating a temporary hiring and/or promotion freeze; separating non-permanent employees; returning provisional employees to their permanent titles; reassigning employees; and assisting potentially affected employees in securing transfers or other employment.

N.J.A.C. 4A:8-2.2(c) provides that in local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

N.J.S.A. 11A:8-1c and *N.J.A.C.* 4A:8-1.5(c) provides that in local service, the layoff unit generally shall be a department in a county or municipality, an entire autonomous agency, or an entire school district.

Local 199 claims that Union County never negotiated with it about alternatives to closure of the jail. It must be noted that Civil Service law and rules do not require *negotiations* with affected bargaining units prior to implementing a layoff. Rather, *N.J.S.A.* 11A:8-2b, *N.J.A.C.* 4A:8-1.2(e) and *N.J.A.C.* 4A:8-1.3(c) require *consultations* with affected unions. The level of “consultation” contemplated by Civil Service law and rules governing layoffs does not require “negotiations” with affected collective bargaining units as that term is used in labor relations law. Rather, Civil Service law and rules contemplate that a meaningful discussion will occur between an appointing authority and affected negotiations representatives with a view toward a reduction in force altogether or lessening the impact of a proposed layoff on permanent employees and the provision of public services. However, the record shows that Union County consulted with union leadership, and the layoff plan submitted by Union County demonstrates that it considered the feasible pre-layoff actions and alternatives to the layoff. *See In the Matter of County of Morris Layoffs* (Commissioner of Personnel, decided February 28, 2007). As to Local 199’s claim that Union County cannot proceed to eliminate all provision of services at the jail without first entering into negotiations with it, the Commission lacks jurisdiction to decide this question. *See N.J.S.A.* 34:13A-5.4d (“[PERC] shall at all times have the power and duty . . . to make a determination as to whether a matter in dispute is within the scope of collective negotiations” (emphasis added)). Similarly, as to Local 199’s concern over whether Union County will comply with the CNA, the Commission generally does not enforce CNAs between employers and majority representatives. *See In the Matter of Jeffrey Sienkiewicz, Bobby Jenkins and Frank Jackson*, Docket No. A-1980-99T1 (App. Div., May 8, 2001). Again, the proper forum to bring such concerns is PERC. *See N.J.S.A.* 34:13A-5.3 and *N.J.S.A.* 34:13A-5.4c.

Local 199 proffers that Union County was required to create a “merged seniority list” encompassing the officers of both Union County and Essex County and that the layoff rights of affected Union County officers must be determined using such a list. Local 199 contends that these actions are compelled by *N.J.S.A.* 40A:65-8a and *Fraternal Order of Police, supra*. *N.J.S.A.* 40A:65-8a provides:

Whenever two or more local units⁷ enter into an agreement, pursuant to [*N.J.S.A.* 40A:65-4], for the shared provision of law enforcement services within their respective jurisdictions, the agreement shall recognize and preserve the seniority, tenure, and pension rights of every full-time law enforcement officer who is employed by each of the participating local

⁷ *N.J.S.A.* 40A:65-3 provides that “[l]ocal unit” means, among other things, a “contracting unit” pursuant to *N.J.S.A.* 40A:11-2. *N.J.S.A.* 40A:11-2, in turn, defines “[c]ontracting unit” to mean, among other things, “[a]ny county.”

units and who is in good standing at the time the ordinance authorizing the agreement is adopted, and none of those law enforcement officers shall be terminated, except for cause; provided, however, this provision shall not be construed to prevent or prohibit a merged law enforcement entity from reducing force as provided by law for reasons of economy and efficiency.

In *Fraternal Order of Police*, the Fraternal Order of Police, Camden Lodge #1 (Camden FOP), with other plaintiffs, challenged the creation and implementation of the Camden County Police Department (CCPD), which was contracted to provide law enforcement services to the City of Camden (Camden), contemporaneously with the layoff of Camden's police officers. Specifically, Camden approved a "Police Services Contract" and a "Metro Police Agreement" with Camden County, which detailed the contractual obligations of the parties, including the scope of services to be provided by the CCPD's Metro Division within Camden and Camden's payment obligation for delineated police services. Further, the Police Services Agreement licensed Camden's "Eyes-in-the-Sky System" to Camden County and leased Camden police vehicles, equipment, the Police Administrative Building, and the outdoor firing range to Camden County for a nominal annual payment, during the term of the agreement. Camden FOP maintained that the termination of all uniformed officers, who previously comprised Camden's city police department, was illegal and violated the Uniform Shared Services and Consolidation Act. Specifically, Camden FOP maintained that the agreements at issue provided the CCPD's sole police services were for Camden and not throughout Camden County; therefore, the relationship between these two governing bodies had to conform to the requirements of the Uniform Shared Services and Consolidation Act, which in turn required all Camden officers be transferred as members of the new CCPD force. Effectively, Camden FOP maintained that Camden and Camden County entered into a shared services plan but failed to preserve the employment rights of Camden's uniformed law enforcement officers mandated in *N.J.S.A. 40A:65-8a*. The court observed that under that section, a "shared services arrangement affords protection by preserving employment rights of officers currently employed by each participating entity, which are merged into one law enforcement body."

The court stated that Camden FOP sought to conflate the creation of the CCPD and the layoff of Camden's police force, suggesting the Camden Police Department effectively merged into the CCPD under a shared services agreement. In finding that Camden FOP's argument could not be sustained, the court observed:

[T]he agreements ultimately adopted do not support an intent to merge resources or pool law enforcement personnel between [Camden] County and Camden, which is essential to triggering the provisions of the [Uniform Shared Services and Consolidation] Act. Rather, Camden

contracted to engage the CCPD to provide law enforcement services after its uniformed force was dissolved.

The court was also unpersuaded by Camden FOP's contention that CCPD officers worked in Camden, using Camden's facilities and equipment, prior to the layoff of Camden's last officer. The court indicated that although the Police Services Agreement allowed the CCPD to lease and use Camden's "Eyes-in-the-Sky System" while retaining its own use of this system for general public safety, use of resources or equipment was not equivalent to merging personnel. When Camden used the system, it was not performing functions for the benefit of the CCPD and vice versa. Camden leased or transferred other facilities, equipment, and vehicles to the CCPD simply because Camden no longer had an immediate need for them. The documents at issue did not support evidence of a joint undertaking by way of shared services or joint meeting. No simultaneous policing services were provided and no Camden personnel manned the facilities or equipment. Thus, the use, lease, or sale of equipment could not be viewed as the functional equivalent of performing services. The court deemed *N.J.S.A. 40A:65-8a* inapplicable.

The Commission emphasizes that in ultimately finding *N.J.S.A. 40A:65-8a* inapplicable, the court in *Fraternal Order of Police*, notably, stated: "[T]he *agreements ultimately adopted* do not support an intent to merge resources or pool law enforcement personnel between [Camden] County and Camden" (emphasis added). Similarly, the Commission here has not been pointed to any provision in the agreements between Union County and Essex County evidencing "an intent to merge resources or pool law enforcement personnel." The agreements are for the "Provision of Essex County Correctional Services." Under them, Essex County houses or will house Union County's inmates in exchange for housing fees. The agreements are apparently silent on staffing and do not obligate Essex County to employ any of Union County's employees. The agreements do not evince an intent to create a "merged law enforcement entity" but rather are, in essence, contracts for services. It is also worth noting that while *N.J.S.A. 40A:65-8a* references agreements for the *shared provision of law enforcement services within the respective jurisdictions*, Union County and Essex County did not agree to any such arrangement. The agreements at issue do not reflect that Union County and Essex County agreed to provide correctional services within the two counties on a shared basis. Rather, the agreements are more circumscribed: Essex County provides correctional services, *i.e.*, the housing of inmates, to Union County in exchange for Union County's payment of fees to Essex County. In light of the foregoing considerations, the Commission is not persuaded that *N.J.S.A. 40A:65-8a* has any application in the instant matters. And since Local 199's sought-after remedy—determination of layoff rights using a "merged seniority list"—is predicated on the applicability of *N.J.S.A. 40A:65-8a* to the matters at hand, the Commission has no occasion to consider granting it.

While all parties agree that an employment reconciliation plan pursuant to *N.J.S.A. 40A:65-11* was necessary, the petitioners contend that Union County failed to submit a plan that conformed to that section. *N.J.S.A. 40A:65-11a* provides that when a local unit contracts, through a shared service, joint meeting, or regional service agency to have another local unit, joint meeting, or regional service agency provide a service it is currently providing using public employees and one or more of the local units have adopted the Civil Service Act, then the agreement shall include an employment reconciliation plan in accordance with the section that shall specifically set forth the intended jurisdiction of the Commission. The reconciliation plan must include a determination of those employees, if any, that shall be transferred to the providing local unit, retained by the recipient local unit, or terminated from employment for reasons of economy or efficiency, subject to the provisions of any existing collective bargaining agreements within the local units. *N.J.S.A. 40A:65-11a*. The Commission shall place any employee that has permanent status pursuant to the Civil Service Act that is terminated for reasons of economy or efficiency at any time by either local unit on a special reemployment list for any Civil Service employer within the county of the agreement or any political subdivision therein. *N.J.S.A. 40A:65-11a(3)*. Non-transferred employees may be laid-off in accordance with the provisions of *N.J.S.A. 11A:8-1, et seq.*, and the regulations promulgated thereunder. *N.J.S.A. 40A:65-11b*. The final decision of which employees shall transfer to the new employer is vested solely with the local unit that will provide the service and subject to the provisions of any existing collective bargaining agreements within the local units. *Id.*

Here, the layoff plan submitted by Union County was in fact titled, “Layoff *and Reconciliation Plan*,” (emphasis added) and Union County specifically indicated that it was seeking *Agency Services*’ approval of the layoff plan in accordance with *N.J.A.C. 4A:8-1.1, et seq. and N.J.S.A. 40A:65-11*. Moreover, both Union County and Essex County are Civil Service counties. Thus, there was sufficient information in the layoff plan to address the question of this agency’s intended jurisdiction and the status of Union County employees. Local 199A suggests that a properly filed reconciliation plan would have meant that its members could decide to accept employment with Essex County at their current ranks and salaries, but the record does not bear that out. *N.J.S.A. 40A:65-11* calls for the reconciliation plan to include a determination of those employees, *if any*, that shall be transferred to the providing local unit, retained by the recipient local unit, or terminated from employment for reasons of economy or efficiency. *N.J.S.A. 40A:65-11b* further provides that the *final decision* of which employees shall transfer to the new employer is *vested solely* with the *local unit that will provide the service* and subject to the provisions of any existing collective bargaining agreements within the local units. Moreover, as already noted, the agreements between Union County and Essex County do not obligate Essex County to employ any of Union County’s employees. *N.J.S.A. 40A:65-11* similarly does not support Local 199A’s call for an “integrated seniority list.” The statute makes no mention of any such list and in fact states that non-transferred employees may be

laid-off in accordance with the provisions of *N.J.S.A.* 11A:8-1, *et seq.*, and the regulations promulgated thereunder. *N.J.S.A.* 40A:65-11b. *N.J.S.A.* 11A:8-1c and *N.J.A.C.* 4A:8-1.5(c), in turn, provide, in relevant part, that in local service, the layoff unit generally shall be a department in a county.

Local 199 also takes issue with Union County's use of "abstract numerical figures," suggesting that it should have identified in the reconciliation plan the employees to be transferred, retained, or laid off. The Commission is unpersuaded. *N.J.S.A.* 40A:65-11a, it is true, specifies that the reconciliation plan must include a determination of those employees, if any, that shall be transferred to the providing local unit, retained by the recipient local unit, or terminated from employment for reasons of economy or efficiency, subject to the provisions of any existing collective bargaining agreements within the local units. However, the key context for this provision is *the SSA*. And in this case, as has been stated, the SSA by its own terms did not require Essex County to accept any employee transfers from Union County. Moreover, it would have been simply unrealistic to require Union County to have provided, in its reconciliation plan, the names of the employees who will transfer to the Sheriff's Office and of those to be laid off. Expecting Union County to have done so overlooks the various pre-layoff actions that may occur until the date of the layoff. In this regard, the record in fact reflects that many employees utilized the IGT program and more were planning to do so. Some employees may have been in the process of finding other employment through other means. Others were intending to retire. These actions could have an impact on which employees were available to transfer to the Sheriff's Office and which would ultimately be subjected to a layoff action. It is also worth noting that it is *this agency* that makes layoff rights and related seniority determinations, then sends affected employees a final written notice of their status. See *N.J.A.C.* 4A:8-1.6. These processes do not begin to occur until this agency has received the 45-day notices, *see id.*, rendering it all the more unreasonable to have expected Union County to produce specific names in its reconciliation plan.

In sum, by indicating that approximately 53 employees will transfer to the Sheriff's Office and that all UCDOC employees who do not retire or find other employment would be laid off, Union County in this case made "a determination" that substantially complies with *N.J.S.A.* 40A:65-11a. The Commission only adds that the permanent laid off employees of Union County will be provided with appropriate special reemployment rights.

Local 199 further claims that Union County produced no evidence to support its anticipated cost savings. Union County counters that a financial analysis it ordered projected budgetary savings of approximately \$103.8 million over the next five years for Union County taxpayers. The Commission need not delve into this dispute now since it presents a factual dispute that is better resolved after a hearing. See *N.J.A.C.* 4A:8-2.6(a)1. The Commission will not attempt to determine the merits

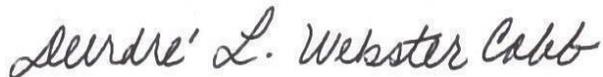
of such contentions on the written record without a full plenary hearing before an Administrative Law Judge who will hear live testimony, assess the credibility of witnesses, and weigh all the evidence in the record before making an initial decision.

Therefore, upon review of these matters, the Commission finds that the petitioners have failed to demonstrate that they are clearly likely to succeed in a layoff appeal. Additionally, while the Commission is cognizant of the impact of a layoff on affected employees, there is no danger of immediate or irreparable harm since the employees would be entitled to back pay should they be successful in an appeal. Further, Union County and, indirectly, the public taxpayers would be required to shoulder the financial costs of maintaining additional personnel on the payroll. It would not be in the public interest for the affected employees to remain in their positions where no sufficient basis has been found at this time to provide interim relief from the layoff.⁸

ORDER

Therefore, it is ordered that these requests for interim relief be denied.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

⁸ As such, whether Local 199A's request for interim relief is untimely, as Union County contends, is ultimately immaterial to the outcome in these matters.

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

- c. Robert A. Fagella, Esq. (2021-1676)
James M. Mets, Esq. (2021-1831)
Stephen J. Edelstein, Esq.
Division of Agency Services
Records Center