

**IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF SAINT CROIX AT KINGSHILL**

**GOVERNMENT OF THE VIRGIN ISLANDS)
and V.I. POLICE DEPARTMENT,)**

Plaintiffs,)

vs.)

**ST. CROIX POLICE BENEVOLENT)
ASSOCIATION, et als.,)**

Defendants.)

CIVIL NO. 570/1999

**ACTION FOR BREACH
OF CONTRACT, TEMPORARY
RESTRAINING ORDER,
PRELIMINARY and
PERMANENT INJUNCTION**

NOT FOR PUBLICATION

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CABRET, J.

MEMORANDUM OPINION

(October 6 1999)

THIS MATTER is before the Court on Plaintiffs' Petition for a Preliminary Injunction prohibiting certain employees of the Virgin Islands Police Department from striking or attempting to strike. In response to Plaintiffs' motion, Defendants moved the Court to compel Plaintiffs to participate in the labor dispute impasse procedure established by title 24, section 376 of the Virgin Islands Code. For reasons which follow, the Court will grant a preliminary injunction and will deny Defendants' requested relief.

I. FACTS AND PROCEDURAL HISTORY

The Government of the Virgin Islands and the Virgin Islands Police Department (collectively the "Government") are "public employers" as the term is defined by title 24, section 362 (I) of the Virgin Islands Code. The individual defendants are police officers, recruits and corporals who are employed by the Government. These public employees are also members of a collective bargaining unit which is represented by the St. Croix Police Benevolent Association (the "Association").

The Government filed a verified Complaint alleging that on September 24 and 25, 1999, "approximately 39 of the 41 Police Recruits, Officers and/or Corporals on St. Croix who were scheduled to report for duty have not reported[.]" and that without intervention by the Territorial Court, it "is fully anticipated . . . that the Police Recruits, Officers and/or Corporals participating in the strike and/or work stoppage will continue to not report for duty as scheduled."¹ In the complaint, and in an accompanying motion, the Government asserted that the work stoppage was unlawful and requested that the Court temporarily and permanently enjoin the conduct. Upon considering the matter, the Court issued a Temporary Restraining Order requiring the employees to immediately return to work and ordered the parties to appear before the Court on October 4, 1999, to show cause why a permanent injunction should not be issued.

Only two witnesses testified at the hearing: Acting Chief of Police Novelle Francis, Jr. and Naomi Joseph, the Association's president. Chief Francis testified that between September 24

¹ Verified Complaint at paragraphs 12, 16.

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and October 1, 1999, numerous officers failed to appear for their schedule shifts as a result of what he characterized as a "blue flu." Specifically, Chief Francis stated that on September 24, 1999, 35 of the 57 officers scheduled to work either called in sick or otherwise failed to show up for work. On September 25, 1999, 40 of the 70 officers scheduled to work either called in sick or otherwise failed to show up for work. On September 26, 1999, 30 of the 67 officers scheduled to work either called in sick or otherwise failed to show up for work. And, on October 1, 1999, 25 of the 73 officers scheduled to work either called in sick or otherwise failed to show up for work. In comparison, on other days during September only two or three, if any, officers called in sick.

The evidence showed that these absences caused serious problems for the police department in staffing officers to patrol St. Croix and respond to emergency calls. Those officers that appeared for duty were forced to work shifts of up to 16 hours. In addition, zone captains who should have been supervising were required to be on patrol. Despite these efforts, there were still shortages which on occasion left no officers to respond to crime scene reports and those officers who did respond were often exhausted from working double shifts.

Although Chief Francis could not definitely state whether all of the absent officers were or were not actually sick, the surrounding circumstances led him to conclude that they were protesting their working conditions. Indeed, the testimony shows that the officers are seriously troubled by insufficient pay, lack of equipment and substandard workplace facilities.

Furthermore, it is generally known, and the Court takes judicial notice of the fact that numerous public employees planned on staying home from work on October 1, 1999 as part of an ongoing

job action.² Finally, considering that very few, if any officers usually call in sick, it is clear that most of the "sick" employees were absent from work as part of a concerted job action.

In her testimony, Naomi Joseph denied any knowledge of job action by the absent employees. Instead, Joseph attributed the absences to physical stress caused by poor working conditions. Joseph acknowledged that the employees had filed numerous grievances against the Government related to pay and working conditions, and stated that the Government's failure to respond to the grievances created stress that may have caused many of the officers to become ill.

II. DISCUSSION

The Government contends that a preliminary injunction is required because the employees are members of a Class III bargaining unit and are therefore prohibited from striking at any time. See V.I. Code Ann. tit. 24, §§ 371(b), 375(c) (1997). In response, the employees and their labor representative, the Association, assert that the employees did not strike and that in any event the "quid pro quo" for the Government's right to obtain immediate injunctive relief³ is the Association's right to force the Government to participate in the impasse procedure provided by title 24, section 376 of the Virgin Islands Code.

Public employee labor relations are governed by title 24, sections 361 through 383 of the Virgin Islands Code. These Code sections establish the rights of certain public employees to

² See Fed. R. Evid. 201 (authorizing Court to take judicial notice of facts that are not subject to reasonable dispute and are generally known within the jurisdiction).

³ Defendant's Memorandum in Support of Motion to Modify Injunction and Confirm Election to Submit Labor Dispute to Impasse Procedure at 2.

be represented by labor organizations and engage in collective bargaining with the Government. *See* title 24, § 363; see also §370 (authorizing police officers and other public safety employees to form collective bargaining units). In some circumstances, members of these labor organizations are permitted to "engage in lawful, concerted activities to enhance their collective bargaining position and promote their mutual well-being and protection, without interference, restraint, or coercion[.]" Title 24, § 363 (c). Such rights, however, and the entire collective bargaining procedure are ultimately subject "to the paramount right of the citizens of this Territory to keep inviolate the guarantees for their health, safety and welfare." V.I. Code Ann. tit. 24, § 361 (1997).

In protecting the rights of the citizens, the Legislature grouped collective bargaining units into three classes according to the effects that a work stoppage of a particular class would have on the public:

CLASS I. Units consisting of employees who perform services in which work stoppage may be sustained for extended periods without serious effects on the health and safety of the public.

CLASS II. Units consisting of employees who perform services in which work stoppage may be sustained for a limited period of time but not an extended period of time without serious effects on the health and safety of the public.

CLASS III. Units consisting of employees who perform services in which work stoppage may not be sustained for even the shortest period of time without serious effects on the health and safety of the public.

Title 24, § 371 (a). Collective bargaining units "consisting of police officers, corrections officers, firemen, prison guards, or other persons employed to protect the public safety and welfare and/or protect the property of a public employer . . . are classified Class III." Title 24, §371 (b). Due to the nature of their work, section 375 (c) prohibits employees in Class III bargaining units from

striking "at any time[.]" and further provides that "[a]ny strike or attempt to strike by employees in Class III units shall be immediately enjoined by a judge of the Territorial Court upon motion by the public employer. Title 24, § 375 (c).

It is clear to the Court that the Government is entitled to the requested injunction. The term "strike" is broadly defined as:

the deliberate and concerted action of public employees to neglect to perform their duties, their willful absenting of themselves collectively from their work stations, their collective stoppage of work, or their collective abstinence in whole or in part from the full, faithful and proper performance of their duties for the purpose of inducing or influencing a change in the condition, compensation, rights, privileges, or obligations of their employment[.]

Tit. 24, § 362 (o). In this case, the employees' partial, but collective absence from work clearly falls within this definition. Under the circumstances of the current labor unrest, it is beyond peradventure that this large-scale absence was intended to influence a change in the existing conditions of employment.

In addition to the statutory mandate for an injunction, the relief is compelled by application of the traditional four-part test for issuing preliminary injunctions. Under this test, "[a] preliminary injunction is appropriate when '(1) there is a likelihood that the moving party will succeed on the merits; (2) irreparable injury will befall the moving party if injunctive relief is withheld; (3) the grant of relief will not cause greater harm to the non-moving party; and (4) the public interest is furthered by the Court granting the request for injunctive relief.' The strength of any single factor reduces the necessary showing with regard to the others." Everett v. Schneider, 989 F.Supp. 720, 724 (D.V.I. 1997) (citations omitted).

Applying the test to the circumstances in this case, the Court concludes that the evidence clearly and convincingly supports the grant of a preliminary injunction. Again, the evidence shows that the employees did strike and the law is clear that the Government is entitled to an injunction prohibiting such conduct. *See* V.I. Code Ann. tit. 24, § 375 (c). It thus appears likely that the Government would ultimately succeed on its petition for permanent injunctive relief. In addition, irreparable harm would befall the Government if injunctive relief is withheld. The Government, which is responsible for protecting the safety and welfare of its citizens, could not perform this fundamental and essential task without those employees charged with enforcing the law. Furthermore, granting the preliminary injunction will not cause greater harm to the Association and its members. Although the striking employees have undoubtedly captured the attention of the Government and residents of St. Croix, they have another avenue to rectify their grievances. As explained below, title 24, section 375 (c) of the Virgin Islands Code allows the Association to force the Government to participate in the impasse procedure established under section 376. Finally, and perhaps most importantly, the public interest is furthered by the Court granting a preliminary injunction. The citizens of St. Croix are dependent on police department personnel to protect them from crime, and it is frightening to contemplate the consequences of any further work stoppages by those charged with protecting public safety. Accordingly, it is clear that the Court must prevent any further job action by these essential public employees.

As argued by the defendants, however, this does not lay to rest the grievances of the police officers. Attending the right of the Government to obtain an injunction is the right of the

Association, as the exclusive representative of the Class III employees, "to submit any dispute to the impasse procedure of section 376 . . . and the dispute shall be decided by such procedure whether or not the public employer has agreed to submit the dispute to such procedure." Title 24, § 375 (c) (emphasis added).⁴ The impasse procedure, which is administered by the Public Employees Relations Board and includes provisions for mediation and binding arbitration, provides an avenue of relief for Class III employees like the defendants in this case who are prohibited from engaging in job action to protect their interests. *See* title 24, § 376; V.I. R. & Regs. tit. 24, §§ 376.1-376.6 (1993).

Although the Association contends that it properly invoked the impasse procedure by filing pleadings in the Territorial Court, it cited no authority which authorizes a party to initiate the proceedings in this manner, and the Court's research has revealed none. Rather, section 376 and the accompanying rules and regulations require that the proceedings be initiated with a petition to Public Employees Relations Board. *See id.* Thus, despite the Association's contention that the Government failed to participate in the proceedings, there is no evidence that the Association properly initiated the proceedings. Therefore, the Court cannot, as requested by the Association, order the Government to participate in the proceedings.

III. CONCLUSION

For these reasons, the Court concludes that the Government is entitled to a preliminary injunction. The evidence clearly and convincingly shows that public employees who are members

⁴ Although employees in Class I and Class II bargaining units are authorized to strike, their labor organizations cannot, like Class III units, force the public employer to participate in the impasse procedure. *See* title 24, § 375 (a), (b).

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of a Class III bargaining unit went on strike, and the Virgin Islands Code requires the Court to enjoin such conduct. Furthermore, it is likely that the Government will ultimately succeed on its petition for permanent injunctive relief, and upon balancing the hardships, it is clear that the interests of the Government and the citizens of this community compel the relief. Finally, although the Association can force the Government to participate in impasse proceedings, because the Association has not properly invoked the procedure, the Court will not at this time order the Government to participate.


MARIA M. CABRET
Territorial Court Judge

A T T E S T:
YVONNE V. WESSELHOFT
Clerk of the Court

By: 
Deputy Clerk

Dated: 10/5/99