NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5205-99T1

JOHN PETERSON,

Petitioner-Respondent,

v.

BOROUGH OF ALPINE,

Respondent-Respondent,

and

BELL ATLANTIC,

Respondent-Appellant.

FILING DATE
APPELLATE DIVISION
JUN 20 2001
Clerk

Argued: June 6, 2001 - Decided: JUN 20 2001

Before Judges King, Lefelt and Axelrad.

On appeal from the Division of Workers' Compensation, Department of Labor and Industry, 99-6196.

Richard J. Riordan argued the cause for appellant (Thomas H. Green, attorney; Mr. Riordan, on the brief).

John H. Geaney argued the cause for respondent Borough of Alpine (Capehart & Scatchard, attorneys; Mr. Geaney, of counsel; LaTonya N. Bland, on the brief).

PER CURIAM

Sergeant John Peterson, a police officer employed by the Borough of Alpine, filed a claim petition against the borough for injuries he sustained on July 2, 1998. He was struck by a car during an off-duty assignment for Bell Atlantic (Bell), while directing traffic and protecting the safety of Bell's employees while they were laying new lines in the poles along Hillside Avenue. The borough moved to join Bell as a co-respondent and Workers' Compensation Judge Farrington granted the request. He heard the testimony of plaintiff, Police Chief William H. Grayson, Sergeant Michael Laviola, who was working with plaintiff at the time of the accident, and Philip Landolfi, who was a line foreman for Bell Atlantic. The judge found that Bell was a joint employer of Peterson and required Bell to pay half his compensation award.

Bell appeals and asserts that Peterson was solely an employee of the borough's police department and that Judge Farrington erred in his finding of dual employment. We disagree and affir substantially for the reasons set forth by the judge in his comprehensive oral opinion of May 23, 2000. We add the following comments.

"The question to be determined in the dual employment situation is whether, at the time of the injury, the petitioner

was, as a factual matter, the employee of one or the other or both of the employers." Domanoski v. Borough of Fanwood, 237 N.J. Super. 452, 456 (App. Div. 1989). In determining which among multiple employers are liable for workers' compensation, we consider the existence of a contract between the employer and employee; whose work is being done at the time of the injury; the relative nature of the work; whose interests are being served; who has the right to set the terms of employment and control the details of the work; and who pays for the services. Id; see also Santos v. Standard Havens, Inc., 225 N.J. Super. 16 (App. Div. 1988), and Blessing v. T. Shriver & Co., 94 N.J. Super. 426 (App. Div. 1967).

In the instant case, the borough has an ordinance which precludes a party from dealing directly with or engaging the services of a borough police officer. Instead, for example, utility companies such as Bell, who wish to use officers for traffic detail in connection with projects in the borough, must contact the police chief who assigns available officers on a seniority basis. The police department submits an invoice to Bell based upon the officers' grade in the department and the time spent on the job, which Bell pays, and the borough pays the officers' overtime.

Laviola and Peterson were assigned to this particular detail. In accordance with department procedures, they reported to the police station in uniform for inspection and arrived on the scene in a police cruiser. The police department, however, did not supervise this job; rather, Bell set the hours and scope of work. As Landolfi testified, he decides, based on his assessment of a project, whom to hire for security purposes. Bell has the option of using flagmen for the job, but as it conceded, a flagman does not command as much respect as a uniformed police officer. The officers were provided with on-site instructions by Bell's line foreman, started work with Bell's employees, took breaks and ate lunch when they did, and stopped work when Bell's employees were finished for the day.

We find there was an implied-in-fact contract of hire between Bell and Peterson. See Kelly v. Geriatric and Med. Servs., Inc., 287 N.J. Super. 567 (App. Div.), aff'd, 147 N.J. 42 (1996). Whether we apply the "interests served" test of Domanoski, or the "right to control" test of Santos and Blessing, we are convinced that under the totality of the circumstances Judge Farrington properly found that Peterson was a dual employee of Bell and the borough.

As Judge Farrington recognized, "[Peterson] was furthering the interest of protecting the Bell Atlantic employees as his first

function when he was hired" and "both the Bell Atlantic employees and the general public at large were being benefitted by the use of a police officer on this particular street at this particular time."

We are not troubled by the fact that Peterson was not paid directly by Bell. The policy of the ordinance assures against corruption and fraud, and eliminates any delay in payment to officers from special employers. Bell still controls and receives the benefit of the officers' services. We cannot justify shifting the cost of Bell's operation to the public by absolving Bell of its obligation to share the cost of Peterson's workers' compensation award.

Affirmed.