

P.E.R.C. NO. 97-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-H-95-15

FRATERNAL ORDER OF POLICE
LODGE NO. 39 (SOMERSET COUNTY),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that Chief Robert Petrone of the Somerset County Sheriff violated the New Jersey Employer-Employee Relations Act by threatening and intimidating cadets and sheriff's officers because of their affiliation with FOP Lodge 39 and by assigning undesirable work details and vehicles to cadets and sheriff's officers affiliated with FOP Lodge 39.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-H-95-15

FRATERNAL ORDER OF POLICE
LODGE NO. 39 (SOMERSET COUNTY),

Charging Party.

Appearances:

For the Respondent, Shanley & Fisher, P.C., attorneys
(Paul G. Nittoly, of counsel)

For the Charging Party, Brian M. Cige, attorney
(Brian M. Cige, of counsel)

DECISION AND ORDER

On July 15, 1994, Fraternal Order of Police Lodge No. 39 (Somerset County) ("FOP") filed an unfair practice charge against the Somerset County Sheriff. The charge alleges that the employer violated and continues to violate the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (3),^{1/} through the actions of Captain, now Chief, Robert Petrone. The charge alleges that Petrone continually allows

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

and encourages a hostile atmosphere toward FOP membership and has personally caused and exacerbated this hostility. In particular, the charge alleges that FOP members are assigned duties to distinguish them from non-members and are assigned the worst and most dangerous equipment.

On November 14, 1994, a Complaint and Notice of Hearing issued. On November 28, the employer filed its Answer denying the allegations and asserting that its actions were based on legitimate business reasons and that the charge is untimely.

On April 18 and 19 and June 15, 1995, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They argued orally and waived post-hearing briefs.

On September 29, 1995, the Hearing Examiner issued his report and recommendations. H.E. No. 96-5, 21 NJPER 373 (¶26234 1995). He found that Petrone violated the Act by threatening, intimidating and discriminating against FOP members and discriminatorily assigning them undesirable work and vehicles. He also found, however, that the FOP did not prove that promotions, detective bureau assignments, or overtime assignments were influenced by union affiliation.

On October 30, 1995, after an extension of time, the employer filed exceptions. It asserts that the Hearing Examiner erred by relying almost exclusively on events outside the six-month statute of limitations. It asserts that the Hearing Examiner also erred by unduly relying on vague and general allegations of

violations within the statutory period, unsupported by sufficient credible and competent evidence. In particular, the employer contends that there was insufficient evidence that any verbal abuse or threats took place within the six-month statute of limitations and that FOP President, Officer Carol Waechter, testified that she knew of no complaints regarding a hostile environment during that period. It also contends that the Hearing Examiner erred:

1. in crediting Officer Yeager's testimony about discriminatory job and vehicle assignments;
2. in finding that protected conduct motivated the assignment of a particular van to Officers Waechter and Yeager;
3. in finding that Officer Dima received better assignments due to his interest in a rival labor organization, the Sheriffs Officer Association ("SOA");
4. in relying on the testimony of Officer Casal about incidents in 1991 and 1992;
5. in finding that assignment to the court house magnetometer evidences hostility;
6. by stating that Chief Petrone did not deny that "loyalty" referred to not being an FOP member;
7. by concluding that it was common knowledge that FOP leaders and members were not being promoted;
8. by concluding that assignments given to Officer Alfieris in 1993 and 1994 were a form of harassment;

9. by concluding that SOA members and non-union members received better assignments and that FOP members received more magnetometer details;

10. by concluding that protected activity motivated Chief Petrone's response to Officer Casal's request for a bullet-proof vest; and

11. by ignoring the testimony of Officer Charles O'Neill, an FOP member, who testified that neither Chief Petrone nor any other superior officer ever spoke to him about union affiliation or membership and who refuted other officers' testimony about job and vehicle assignments.

On November 9, 1995, the FOP filed an answering brief asserting that the Hearing Examiner's recommendations were based largely on his evaluation of the credibility of witnesses and should thus be accepted. As for the statute of limitations, it contends that each officer testified that the threatening and coercive behavior continued through the time of the hearing.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 5-18). He made specific credibility determinations which we have no basis to displace. He found, among other things, that Petrone verbally abused and threatened sheriffs officers because of their FOP association; verbally abused and intimidated new officers for talking to or associating with FOP President Waechter; told FOP Vice-President Ronald Yeager, in a conversation about an unfair practice charge,

that Yeager was a liar who was never going to get a break from him again; told Yeager that problems with vehicle assignments would stop if Petrone stopped receiving letters from the FOP's attorney; talked to Officer Dima about doing the "right thing," that is joining the SOA; told Dima his career would go no further if he hung out with FOP members and joined the FOP; told Officer Casal that FOP members were a "bunch of scumbags, assholes, a bunch of fuck-ups" and to stay away from them; told Officer Cima he should join the SOA because FOP members were troublemakers and renegades; and told Officer Alfieris that he would not be promoted if he did not join the SOA or that he would be fired if he had already been promoted and did not join the SOA. The Hearing Examiner concluded that the witnesses' testimony demonstrated Petrone's consistently hostile conduct over a long time.

A major thrust of the employer's exceptions is that the FOP's allegations are untimely. N.J.S.A. 34:13A-5.4(c) provides that:

no complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

The FOP filed its charge on July 15, 1994. The Complaint must therefore be based on alleged unfair practices between January 15 and July 15, 1994.

The Hearing Examiner found that sufficient evidence showed that much of the hostile behavior from 1991 through 1993 continued into 1994 and that some new hostile behavior occurred in 1994. He found that intimidating, even outrageous, remarks about joining the FOP or associating with FOP members were made before and during 1994. He relied on the earlier misconduct to support his finding of a pattern of hostile conduct continuing into 1994.

Earlier misconduct may support a finding that unfair practices have been committed within the limitations period. See State of New Jersey (DEP), P.E.R.C. No. 93-116, 19 NJPER 347 (¶24157 1993); see also Local Lodge No. 1424, I.A.M. v. NLRB (Bryan Mfg. Co.), 362 U.S. 411, 45 LRRM 3212 (1960). While Bryan bars holding that statements outside the statute-of-limitations constitute independent unfair practices, Bryan permits considering such statements as evidence of discriminatory motivation infecting a personnel decision within the statute-of-limitations period. See Bloomfield Tp., P.E.R.C. No. 88-34, 13 NJPER 807 (¶18309 1987), aff'd NJPER Supp.2d 217 (¶191 App. Div. 1989), certif. den. 121 N.J. 633 (1990); Mechanics Laundry and Supply, Inc., 240 N.L.R.B. No. 40, 100 LRRM 1243 (1979); see also Hardin, The Developing Labor Law, at 1792 (3d ed. 1992).

The employer complains that the FOP's witnesses were permitted to recount a laundry list of mistreatment between 1990 and 1993 and then confirm that this mistreatment continued into 1994. This approach, however, does not preclude finding that the

mistreatment in 1994 violated the Act. As long as there were specific acts of illegal conduct during 1994, other acts of misconduct before 1994 can be used to place the 1994 acts in context. The Hearing Examiner found that:

intimidating, even outrageous remarks about joining the FOP, or associating with FOP members were made to Cima, Alfieris and other officers before and during early 1994. Petrone made his "loyalty" statement, and gave his opinion to employees about the FOP and its leadership, before and during 1994. Similarly, before and during 1994, FOP members were often not receiving the better work details or vehicle assignments. In early 1994, Petrone intimidated certain officers for talking to or associating with Waechter, and in May 1994, he assigned Yeager and Waechter an undesirable van for prisoner transport because of their exercise of protected activity.

These findings support the conclusion that the employer violated the Act during the six months before the filing of the charge. Had the witnesses testified that these illegal acts began in 1994, we would find a violation. The fact that similar illegal acts may have occurred before 1994 does not diminish their illegality. The earlier acts only highlight the pattern of misconduct and bolster the credibility of witnesses who testified about what happened in 1994.

The second major thrust of the employer's exceptions is that the complained-of actions during 1994 did not violate the Act. For example, in response to the Hearing Examiner's finding that FOP supporters were frequently assigned to the magnetometer and other "undesirable" work details, the employer asserts that desirability

of assignments is subjective and the Assignment Judge requested keeping officers assigned to the magnetometer for longer periods of time. It also points out that by the time of the hearing only five of thirty unit members were not FOP members. As such, FOP members had to staff the magnetometer far more often. As for the Hearing Examiner's finding that the assignment of a particular van to Officers Yeager and Waechter violated the Act, the employer asserts that the desirability of any particular vehicle is subjective. It further asserts that the charging party should have been required to come forward with more than mere net opinion testimony to support its allegations of disparate treatment.

We agree that the desirability of assignments is subjective. Yet the Hearing Examiner's findings demonstrate that assignments have been used to reward and punish based on union affiliation.

As for the particular assignments that the employer addresses in its brief, we agree with the Hearing Examiner's assessment. The magnetometer detail was originally rotated daily, then monthly. Presumably the decrease in frequency was in response to the Assignment Judge's request for more continuity. Yet after switching union affiliation to the FOP, Officer Cima was assigned to the magnetometer for five months. The FOP persuaded the Hearing Examiner that Cima's assignment was discriminatorily motivated by his FOP membership and the employer did not convince the Hearing Examiner that Cima's assignment was also motivated by legitimate

business reasons that would have resulted in the assignment even absent the hostility to Cima's FOP membership. As for Officers Yeager and Waechter, they were not simply assigned a more secure van to transport an inmate when they complained that their assigned vehicle did not have a protective screen. When Petrone invited Yeager into his office to discuss the matter, Petrone showed Yeager a letter from the FOP's attorney and said, "If this shit stops, that shit will stop" (meaning the car business).

We cannot examine these or any other assignments in a vacuum. Numerous witnesses testified that Chief Petrone threatened and intimidated cadets and officers because of their FOP affiliation. They also testified that certain assignments are viewed as undesirable. The Hearing Examiner did not credit the Chief's general denials and found that he did not deny many of the specific remarks and instances of misconduct attributed to him. Under all the circumstances of this case, we do not need further supporting proof to find that the Chief's anti-FOP conduct violated the Act. This is not to say that everything the Chief did was tainted by anti-union animus. We also adopt the Hearing Examiner's conclusion that the FOP did not prove that promotions, detective bureau assignments, or overtime assignments were influenced by union affiliation.

ORDER

Chief Robert Petrone of the Somerset County Sheriff is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees of the Somerset County Sheriff in the exercise of the rights guaranteed to them by the Act, particularly by threatening and intimidating cadets and sheriffs officers because of their affiliation with FOP Lodge 39.

2. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by assigning undesirable work details and vehicles to cadets and sheriffs officers affiliated with FOP Lodge 39.

B. Take this action:

1. Cease making any threatening or intimidating remarks to cadets and sheriff's officers regarding their right to affiliate with or support FOP Lodge 39.

2. Cease making any threatening or intimidating comments to employees on the quality of FOP Lodge 39 leadership.

3. Devise and implement a policy to make sure job details and vehicles are assigned to cadets and sheriffs officers irrespective of their union affiliation.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Acting Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Boose, Buchanan, Ricci and Wenzler voted for this decision. Commissioner Klagholz was not present. Commissioner Finn abstained from consideration.

DATED: July 25, 1996
Trenton, New Jersey
ISSUED: July 26, 1996



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

CHIEF ROBERT PETRONE OF THE SOMERSET COUNTY SHERIFF:

WILL cease and desist from interfering with, restraining or coercing employees of the Somerset County Sheriff in the exercise of the rights guaranteed to them by the Act, particularly by threatening and intimidating cadets and sheriffs officers because of their affiliation with FOP Lodge 39.

WILL cease and desist from discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by assigning undesirable work details and vehicles to cadets and sheriffs officers affiliated with FOP Lodge 39.

WILL cease making any threatening or intimidating remarks to cadets and sheriffs officers regarding their right to affiliate with or support FOP Lodge 39.

WILL cease making any threatening or intimidating comments to employees on the quality of FOP Lodge 39 leadership.

WILL devise and implement a policy to make sure job details and vehicles are assigned to cadets and sheriffs officers irrespective of their union affiliation.

Docket Nos. CO-H-95-15

SOMERSET COUNTY SHERIFF
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

H.E. NO. 96-5

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-H-95-15

F.O.P. LODGE NO. 39 (SOMERSET COUNTY),

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Somerset County Sheriff violated the New Jersey Employer-Employee Relations Act by the actions of Chief Robert Petrone who threatened and intimidated sheriffs officers, and discriminated against them because they affiliated with FOP Lodge No. 39. The Hearing Examiner also found that sheriffs officers were discriminated against by being assigned undesirable work details and vehicles.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 96-5

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY SHERIFF,

Respondent,

-and-

Docket No. CO-H-95-15

F.O.P. LODGE NO. 39 (SOMERSET COUNTY),

Charging Party.

Appearances:

For the Respondent, Shanley & Fisher, Esqs.
(Paul G. Nittoly, of counsel)

For the Charging Party,
Brian M. Cige, Esq.

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On July 15, 1994, Fraternal Order of Police Lodge No. 39 (Somerset County) (FOP), filed an unfair practice charge with the New Jersey Public Employment Relations Commission, alleging that the Somerset County Sheriff (Sheriff or Respondent) violated subsections 5.4(a)(1) and (3) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The FOP alleged, generally, that the Sheriff of Somerset County, and Captain, now Chief, Robert Petrone,

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

1) interfered with, restrained and coerced sheriffs officers employed by the Sheriff in the exercise of their right to be members of or participate on behalf of the FOP; 2) discriminated against FOP members regarding their terms and conditions of employment in order to discourage member, and non-member, sheriffs officers from exercising their rights under the Act; and, 3) discriminated against FOP members by the way they were treated, by their job assignments, and in the equipment they were provided because of their membership in and participation on behalf of the FOP.

The FOP seeks an order requiring the Sheriff and Chief to cease and desist such conduct, and to post a notice to all employees.

A Complaint and Notice of Hearing was issued on November 14, 1994 (C-1). The Respondent filed an Answer (C-2) on November 28, 1994 denying specific conduct, and denying it violated the Act. The Respondent asserted that the Sheriff's actions were based upon legitimate business reasons, and that the charge was barred by the statute of limitations.

Hearings were held on April 18 and 19, and June 15, 1995.^{2/}

Procedural History

Two matters arose during opening proceedings on April 18; an issue regarding certifications, and a motion for summary

^{2/} The transcripts will be referred to as 1T, 2T and 3T consistent with the hearing dates.

judgment, that had to be resolved prior to the receipt of testimony (1T11-1T16). In addition, the Respondent moved to dismiss the complaint on April 19, after the FOP rested (2T236-2T240), and I reserved on deciding that motion (2T244-2T248).

The certifications from six sheriffs officers were attached to, and in support of, the charge filed in this case. Most of those certifications were dated in September 1993 outside the statute of limitations period. Some of them were recertified in May 1994 within the limitations period. During opening remarks the FOP's counsel indicated that the FOP would rely on those certifications, at least in part, to prove a violation here. The Respondent's counsel, in his opening remarks, objected to the use of the certifications if they were being relied upon for the truth of their content. He argued that since the certifications could not be cross-examined they could not be used to prove their own content.

In its opening remarks, the Respondent also filed a motion for summary judgment (C-3) seeking dismissal of the charge. The Respondent argued, based upon the wording of the charge and the dates of the certifications, that the charge did not comply with the six month statute of limitations requirement in the Act, N.J.S.A. 34:13A-5.4(c).

With respect to the certifications, I held that they were admitted into evidence only because they were attached to the charge, and not for their truth or accuracy. I explained that the FOP had to make its case based upon testimony and other documents,

and that it could not rely on the certifications to make its case without calling the authors of those certifications as witnesses (1T22-1T23). Ultimately, I did not rely on the certifications in reaching my findings of fact.

I denied the motion for summary judgment. I held that I had no authority to consider that motion (1T24-1T25). Pursuant to N.J.A.C. 19:14-4.8, a motion for summary judgment must be filed with the Chairman, and a hearing examiner may only consider such a motion if it is referred by the Chairman. This motion was not filed with the Chairman, and not referred to me, thus, I could not consider it.

The Respondent moved to dismiss the Complaint at the close of the FOP's case on April 19, 1995. I reserved on deciding that motion at that time. On June 2, 1995, however, I issued a letter decision (C-4) denying the motion.

The hearing concluded on June 15, 1995. After the testimony had been completed the Respondent renewed its motion to dismiss. I reserved on that motion indicating that my decision on the motion would be subsumed within my decision on the whole case. The transcript from the last day of hearing was received by June 21, 1995. By letter of June 27, 1995, I notified the parties of a date for the receipt of post-hearing briefs. By July 10, 1995, both parties had notified me that they would not be filing briefs.

Based upon the entire record, I make the following:

Findings of Fact

1. FOP Lodge 39 is the majority representative for the approximately 31 sheriffs officers employed by the Sheriff. Sheriff Officer Peter Alfieris became President of Lodge 39 in January 1995 (1T226). The Sheriffs Officers Association (SOA) has been a rival labor organization seeking to represent sheriffs officers.

Superior officers employed by the Sheriff are represented in a separate unit by FOP Lodge 89. Sgt. Jeffry Thompson is the current President of that labor organization. Corrections officers employed by Somerset County are represented by PBA Local No. 177 (3T126-3T127).

2. Robert Petrone was first employed by the County/Sheriff in 1973 as a corrections officer. While in that position he became a member of PBA Local 177, eventually becoming President of that organization (3T6, 3T9). In 1981 he became a sheriffs officer, and became a charter member of Lodge 39 in approximately 1985 (3T10). Petrone was promoted to captain in 1991, and promoted to chief in December 1994 (3T7-3T8). But beginning as early as 1991, and continuing through 1994, Capt. Petrone, and superior officers under his direction, verbally abused and threatened sheriffs officers because of their association with FOP Lodge 39 (1T38-1T42; 1T76-1T77; 1T221-1T224; 2T28-2T29, 2T35; 2T169-2T172).^{3/}

^{3/} I used the words "threatened", "intimidated", and "harassed" in the findings of fact primarily because the witnesses used those words to describe how they felt after being verbally abused by Petrone.

3. Sheriffs Officer Carol Waechter was President of FOP Lodge 39 from 1990 through 1993 (2T154). In 1991 then Chief Perone (not Petrone) told Waechter that she would not be promoted because she would not run the union the way he wanted it run (2T147-2T148). Waechter has not been promoted, and currently, Chief Petrone is unaware if any FOP Lodge 39 members have been promoted since July 1993 (3T60).

Capt. Petrone generally avoided speaking with Officer Waechter (2T158), but before, and during 1994, he questioned, verbally abused and intimidated young or new sheriffs officers for talking to or associating with Waechter (2T169, 2T172). As a result, many of those new officers did not want to talk to, or be seen with Waechter because of her affiliation with the FOP (2T171). Although Petrone generally denied threatening Waechter (3T41), he did not deny making remarks to other officers about associating with her, thus I credit her testimony.

4. Sheriff's Officer Ronald Yeager has been a member of FOP Lodge 39 for over six years, and was vice-president of the union for several years beginning in 1990 (2T74, 2T79). In 1991 Capt. Petrone questioned Yeager about an unfair practice charge that had been filed. Yeager told him he could not discuss it, and Petrone said:

You are a liar. You are a fucking liar. Yeager, you are no damn good. You are never going to get a break from me again. You are finished. (2T82)

I credit Yeager's account of the incident. Petrone did not deny it; in fact, he admits using vulgarities, and cursing at all of the employees (3T63).

Yeager explained that vehicle assignments to sheriffs officers was the main morale booster or deflator within the Department (2T101). In early 1994, most of the more desirable vehicles and work details were assigned to non-FOP members (2T101-2T103).

A sergeant does most of the vehicle and work detail assignments (3T13, 3T110, 3T124, 3T134). The vehicle assignment policy is to put more miles on the older vehicles so they can be replaced. The older vehicles are used for trips, and higher mileage details, vans are used to transport inmates, and the new vehicles are used for low mileage work such as special assignments and warrants (3T14-3T15, 3T85, 3T134).

The sergeant generally gives out the work detail assignments. Although he tries to rotate people, he said the way he decides which officers get which assignments is to "pick and choose". (3T124-3T125). Although Petrone, his lieutenant and sergeant, denied making assignments based upon an employees union activity (3T15, 3T110, 3T126), I find that the sergeant and Petrone exercise considerable discretion in work and vehicle assignments, and given Petrone's history of harassing employees for associating with the FOP, I credit Yeager's testimony about the assignments in 1994.

In May 1994, Yeager and Waechter were assigned to transport an inmate in a van without a protective screen. The FOP had previously filed a grievance over the lack of screens and Yeager thought the FOP and Sheriff had agreed not to transport inmates without the screens (2T104). Since Capt. Petrone was observing the situation that day Yeager mentioned to Petrone that he thought inmates wouldn't be transported in vans without screens, and asked if they could use a car (2T104).

Petrone invited Yeager to his office to discuss the matter. Waechter attempted to join Yeager, but Petrone insisted she remain outside. Petrone and Yeager discussed the matter, then Petrone pulled from his desk a letter from the FOP's attorney and said:

If this shit stops, that shit will stop [meaning the car business] (2T105).

Yeager responded he couldn't do anything about it and Petrone said, "You are an active member. You can stop it." (2T106). The discussion continued and Petrone assigned Yeager and Waechter to a van which Yeager considered demeaning especially since several cars were available (2T106-2T107). Although Petrone denied assigning a van to Yeager (and Waechter) because of his (their) union activity (3T15), he did not deny that the above incident occurred nor the remarks attributed to him by Yeager. I found Yeager to be a sincere witness, and I credit his testimony.

Sergeant Thompson recalled the incident and testified that he had assigned Yeager and Waechter a particular van, but that Yeager wanted a car. Thompson knew that Yeager spoke to Capt. Petrone regarding the matter, but Thompson was not present during their conversation. When Yeager came out of his meeting with Petrone, he and Waechter were assigned an even older van than the one previously assigned (3T135-3T138).

Thompson was asked if he had the ability to change vehicles without Petrone's approval when Yeager first expressed concern, he responded:

"If I had an available vehicle, yes." (3T142) But Thompson said he had no other available vehicles under his control (3T142).

Thompson's testimony is insufficient to overcome Yeager's version of the incident. Thompson was not present during the meeting between Yeager and Petrone, therefore, he could not dispute Yeager's account of Petrone's remarks. Additionally, if Thompson had no other vehicle available to him when he assigned the first van, why were Yeager and Waechter assigned an even older van when Yeager left Petrone's office?

I believe Yeager that Petrone made the "car business" remark and, therefore, find that during the statutory period Yeager and Waechter were assigned a particular van because of their activities on behalf of the FOP.

5. From approximately 1991-1993, Theodore Dima was a Somerset County cadet training to be a sheriffs officer

(1T84-1T85). Beginning in 1992, Capt. Petrone had several conversations with Dima about doing the "right thing", which meant joining the SOA (1T86). Petrone continued to make similar remarks to Dima through the time he was promoted to a sheriffs officer in July 1993 (1T87-1T88). Petrone was concerned about Dima joining the FOP, and on at least one occasion in 1993 he told Dima that his career would go no further if he hung out with FOP members, and if he joined Lodge 39 (1T89). Petrone solicited Dima's promise to join the SOA, and told Dima his life wouldn't go easy if he crossed him (1T92-1T93). Dima then promised to join the SOA prior to his appointment to the police academy (1T92). Dima believed SOA members received preferential treatment and were not harassed (1T93).

Dima was sent to police academy in August 1993 (1T89). In November 1993, Petrone learned that Dima had attended the wedding of a sheriffs officer who was an FOP member. Petrone told Dima that going to the wedding could be detrimental to his career (1T91). Dima felt threatened by the remark, and attempted to avoid speaking to FOP members (1T91).

After graduating from the academy in late 1993, Dima inquired into receiving a bullet proof vest. Petrone told him that if he did the right thing he would receive it, if not, he would end up like Officer Chris Casal, an FOP supporter, who did not receive a vest for a long time (1T94). Casal had joined the FOP while at the academy, and Dima observed Petrone verbally abusing Casal thereafter (1T95).

In early January 1994, Dima was given an application to join the SOA. Capt. Petrone asked him why he was hesitating joining, and told Dima he trusted him to be part of the SOA (1T97). In another conversation between Petrone and Dima in early January 1994, while Dima was considering whether to join the FOP, Petrone told him not being an FOP member would be better for his career (1T100), and he added that if he didn't join the SOA he would end up like those "miserable fucks", referring to Yeager and Waechter (1T101).

On direct examination Petrone was asked if he ever harassed Dima in any way. He said "no". Then he was asked:

Did you ever purposely assign him certain vehicles or certain equipment for any reason whatsoever other than what you told us with the policy?

His answer was not responsive to the question. He said:

He was in the academy, basically, from the day he started, and then after he graduated he was only there two or three weeks before he left. (3T35).

I credit Dima's testimony. He was actually the beneficiary of some better assignments due to his expressed interest in the SOA (1T99-1T100), and the inference I draw from Petrone's unresponsive answer supports that finding. But Dima, nevertheless, recognized the intimidation associated with FOP affiliation.

As a result of the union harassment Dima felt and observed in Somerset over union affiliation he sought a job in Roselle Park (1T93-1T96). When he knew he was going to be hired in Roselle Park,

he joined the SOA in Somerset to avoid getting bad recommendations from Petrone (1T98).

6. Christopher Casal became a sheriffs officer in December 1991. In 1992 Capt. Petrone had several conversations with Casal regarding his union affiliation, and he told him to stay away from the FOP members. Then detective, now Lieutenant Bird, and Sgt. Thompson, told him not to talk to Officers Waechter and Lessing who were FOP officers (1T134-1T138). In late 1992, in a conversation with Casal, Petrone referred to FOP members as a "bunch of scumbags, assholes, a bunch of fuck-ups," and to stay away from them (1T136-1T137).

Casal was in the police academy during the first half of 1992. He had joined the FOP before going to the academy, and while still attending the academy Capt. Petrone questioned him about the FOP, called him a rebel and cursed him for joining the FOP (1T141, 1T149, 1T197). Casal feared for his job as a result of joining the FOP (1T141-1T142).

I credit Casal's account of these incidents. Petrone denied threatening Casal, and denied telling him to stay away from FOP members and leaders, but did not deny referring to FOP members as a bunch of scumbags etc., and did not deny referring to Casal as a "rebel" (3T63-3T64). Petrone has acknowledged he frequently uses profanity, neither Bird nor Thompson denied telling Casal to stay away from Waechter, and Casal's testimony was consistent with other sheriffs officers.

7. Prosper Cima was hired as a cadet by Somerset County in June 1992, and was hired or promoted to a sheriffs officer position in late December 1992 or early 1993 (2T6, 2T8). While a cadet, in October 1992, Cima asked Petrone which union should he join and Petrone responded it should be the SOA because FOP members were troublemakers and renegades (2T7-2T8). In December 1992, when Petrone offered Cima a sheriffs officer position he told Cima he could have the position as long as he was "loyal", that is, not being a member of FOP Lodge 39 (2T8-2T9). As a result, Cima joined the SOA in early 1993, but changed his mind and joined the FOP in September 1993 (2T14, 2T21). After switching unions Casal was verbally abused (2T28). In late 1993, Capt. Petrone told him if he followed another FOP supporter he would "go down in flames", his career would be over (2T24).

In early 1994 Cima believed he was being harassed because he was assigned to the court house magnetometer (a machine used to check people for weapons) for five months (2T29-2T30).

I credit Cima's testimony. Although Petrone generally denied harassing or intimidating Cima (3T41), and denied telling him it would be better if he didn't join the FOP (3T70-3T71), he admitted having many conversations with him (3T54, 3T70, 3T74-3T75), admitted calling him to offer the sheriffs officer job (3T71), admitted using the word "loyal" to employees, even in 1994, who were seeking his opinion about joining unions (3T76-3T77), and did not deny referring to FOP Lodge 39 leaders as "losers" (3T76).

Petrone said what he meant by loyal:

Was you got to be loyal to your job, you have to give it your all, don't attack any job, you know, in a lackadaisical manner, be loyal to your job, be loyal to yourself (3T77).

While that statement might convey one kind of loyalty Petrone hoped to see from his officers, I do not credit his testimony to support a finding that it was the kind of loyalty he referred to in his conversation with Cima. Petrone did not deny loyalty referred to not being an FOP member, and his definition of loyalty would not fit the context within which that term was used.

8. Petrone acknowledged that both before and during 1994 Cima, Alfieris and other officers often sought his opinion about union affiliation, the FOP and its leadership (3T19-3T20; 3T48-3T52; 3T54; 3T76). He developed a policy on how to respond to requests for his opinion; he told them:

...all I require is that people keep an open mind, that they do whatever they feel is right for them, not to jump into anything, and try to pattern themselves after the people that are moving in the department, not that are stagnated staying in the same spot for 20 years, try to pattern themselves after people that are moving ahead (3T20) (emphasis added) (see also 3T89).

Petrone made this same remark to cadets who asked him his opinion about joining the SOA or FOP. But when he was asked on cross-examination whether any FOP members were moving ahead at that time Petrone's answer was not responsive (3T58). Petrone was first asked "Now, were the people who were moving ahead in the

organization", and he responded "No". He was then asked "Were the people who were moving ahead at that time in FOP 39?" and he responded:

If they were members of the department, some of them I didn't even know where they were. What I would tell the cadets was, you have to make up your own mind, be open minded, whatever you do, it does not matter. (3T58-3T59).

I find Petrone's response to that question was intentionally evasive, and that the emphasized portion of his policy statement was intended to convey to cadets and new officers that they should not align themselves with the FOP. The evidence produced in this case shows it was common knowledge that FOP leaders, in particular, but members as well, were not being promoted, thus, were not "moving in the department". They were stagnating. Petrone intended his policy remark to convince undecided cadets and officers to avoid the FOP.

The record also shows that Petrone summoned officers to come see him to discuss issues relating to FOP Local 39 and its leadership (3T54-3T55), and in conversations with Cima and other officers Petrone gave the following opinion of FOP leadership:

My opinion of FOP 39 at the time is what I stated before, is that I didn't feel that they were looking out for the best interests of all the officers, the majority of the officers, that's my opinion (3T76) (see also 3T51).

9. Peter Alfieris became a cadet in the Somerset County Sheriff's Department in June 1992, and was promoted to sheriffs

officer in January 1993 (1T204-1T205). While Alfieris was a cadet, Capt. Petrone encouraged him to join the SOA and not to associate with the FOP (1T207). Just prior to Alfieris being elevated to a sheriffs officer, Petrone told him that if he did not join the SOA he would not be promoted (to sheriffs officer), or if he had already been promoted, and did not join the SOA, he would be fired (1T209).

After completing the academy in mid-1993, Alfieris joined the SOA (1T212). Several days later Petrone questioned Alfieris about being seen with FOP supporters. Petrone told him not to associate with FOP members, particularly Yeager, Casal and Lessing (1T213-1T214).

In August 1993 Alfieris resigned from the SOA and joined the FOP. Subsequently, he was harassed and his assignments were changed (1T222). Shortly after Alfieris switched unions Capt. Petrone told him his job was in jeopardy, and that he would never go anywhere and had no future in the department as long as he remained an FOP member. The same type of harassment continued into 1994 (1T223). For example, in early 1994 Alfieris was always assigned the more undesirable vehicles (1T224-1T225)

I credit Alfieris' testimony and find that Petrone interfered with his right to associate with the FOP. At one point on cross-examination, Petrone was asked whether he recalled using certain specific threatening language to Alfieris and he responded: "I don't recall ever saying that to him" (3T55). Given my previous credibility findings regarding Petrone, I find his answer

intentionally misleading. He did not deny making the remark attributed to him by Alfieris, and I infer that it was made.

10. Sheriffs Officer Donald Potts has been employed by the Sheriffs Ddepartment for over twenty-two years, but is not a member of the FOP (1T31). In the early 1990's Potts heard Capt. Petrone threaten other officers that if they joined the FOP, or associated with FOP members such as Yeager and Waechter, that their jobs would be "on the line", and their careers would be over (1T41-1T42, 1T67, 1T69).

During 1994, FOP members were treated differently within the Department than SOA members, or non-members (T42, 1T47). The SOA members and non-members received better assignments. They got assigned to road and warrant details, extraditions, better vehicles, and received promotions (1T43, 1T49). FOP members received more magnetometer details (1T49-1T51).

11. Chief Petrone generally denied discriminating against any employee because of their membership in or affiliation with FOP Lodge 39, and denied harassing or treating Waechter, Yeager, Dima, Casal, Cima, Alfieris and Potts differently because of their union affiliation (3T40-3T43). But I do not credit his denials. The Chief did not deny many of the specific remarks and conduct attributed to him by those employees (3T35, 3T50, 3T55, 3T70-3T71, 3T75-3T76) and admitted making remarks to employees about union affiliation and the quality of union leadership (3T20, 3T54, 3T76-3T77, 3T89). I credit the testimony of those seven officers.

Their testimony was given in Petrone's presence, and although some of them were nervous, their testimony was delivered in a determined and sincere manner. Despite testimony on some different events, the witnesses testimony demonstrated a consistent pattern of conduct that Petrone engaged in over a long period of time.

Petrone also denied making any job or vehicle assignments based upon employee union activity (3T13, 3T15). He claimed that sergeants (and lieutenants) made most assignments, and the record supports that statement (3T109, 3T124-3T125). But Petrone acknowledged that he could have been involved in making such assignments if he wanted to (3T12), and given his intimidating remarks to employees I cannot rely on his denials regarding assignments.

The sergeants were also responsible for distributing equipment, but Petrone had similar authority (3T132-3T133, 3T139, 3T140). Officer Casal had been asking for a bulletproof vest, but it was not provided to him for almost one year. Petrone would not direct the sergeant to issue the vest until Casal made a written request (3T140-3T141). Petrone had the ultimate control over the distribution of that equipment.

Analysis

The Somerset County Sheriff, particularly through the actions of Chief Petrone, harassed, coerced, intimidated and interfered with the right of cadets and sheriffs officers to join

the FOP and associate with FOP members, and discriminated against those same employees because they exercised their rights under the Act.

Statute of Limitations

Subsection 5.4(c) of the Act requires that an unfair practice be based upon events occurring within the six months prior to the filing of the charge. Since this charge was filed on July 15, 1994, the six month period extends back to January 15, 1994. Events occurring prior thereto cannot be the basis upon which a violation is found, but such events are admissible as background, and to demonstrate a pattern of conduct with events occurring within the statutory period. Lodge Lodge No. 1424, I.A.M. v. NLRB (Bryan Mfg. Co), 362 U.S. 411, 45 LRRM 3212, 3214 (1960); State of N.J., P.E.R.C. No. 93-116, 19 NJPER 347, 351 (¶24157 1993).^{4/}

The Respondent sought dismissal of the charge essentially arguing that there was insufficient evidence within the statutory period to support the FOP's allegations. I reject that argument. While the evidence demonstrated unlawful Employer behavior from 1991 thru 1993, there was sufficient evidence that much of that behavior continued into 1994, and that some new unlawful behavior occurred in 1994.

^{4/} See also NLRB v. MacMillan Ring-Free Oil Co., 394 F2d 26, 68 LRRM 2004 (CA 9, 1968); NLRB v. Lundy Mfg. Corp., 316 F2d 921, 53 LRRM 2106 (CA 2, 1963); Axelson Mfg. Co., 88 NLRB 761, 25 LRRM 1388 (1950).

The evidence shows intimidating, even outrageous remarks about joining the FOP, or associating with FOP members were made to Cima, Alfieris and other officers before and during early 1994. Petrone made his "loyalty" statement, and gave his opinion to employees about the FOP and its leadership, before and during 1994. Similarly, before and during 1994, FOP members were often not receiving the better work details or vehicle assignments. In early 1994, Petrone intimidated certain officers for talking to or associating with Waechter, and in May 1994, he assigned Yeager and Waechter an undesirable van for prisoner transport because of their exercise of protected activity. Consequently, I conclude that there was sufficient evidence of Employer misconduct within the statutory period to support the charge. I relied, therefore, on the earlier misconduct to support the finding of a pattern of conduct over a long time period.

The 5.4(a)(1) Violation

The Act at 34:13A-5.3 provides in part that:

...public employees shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity.

Any interference with those rights violates the Act.

A public employer independently violates §5.4(a)(1) of the Act if its actions tend to interfere with an employee's statutory rights and lacks a legitimate and substantial business

justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No 79-11, 4 NJPER 421, 422 (¶4189 1978); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550, 551 (Note 1) (¶10285 1979). See also Jackson Tp., P.E.R.C. No. 88-124, 14 NJPER 405 (¶19160 1988); UMDNJ-Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986).

In N.J. College of Medicine and Dentistry, the Commission also held:

In determining...whether particular actions tend to interfere with, restrain or coerce a[n]... employee...we will consider the totality of evidence proffered during the course of a hearing and the competing interests of the public employer and the employee organization and/or affected individuals.
Id. at 422-423.

Here, there were no legitimate or substantial business reasons for Petrone's intimidating, and "opinion" remarks to employees in 1994. They were intended to have a coercive effect on employee rights. His admonitions to employees to avoid talking to Waechter; his remark to Yeager connecting union activity with vehicle assignments; his remarks to Dima to join the SOA and not the FOP; his remarks to Cima and other employees about being "loyal" and criticizing FOP leadership; and his threatening remarks to Alfieris for joining the FOP, easily met the tendency to interfere standard. In fact, those remarks were intended to punish employees for having associated with FOP Lodge 39, and had the desired effect. It was

obvious that the officers who testified before me had felt threatened, coerced and intimidated by their Captain (now Chief) because of their union activity.

The 5.4(a)(3) Violation

A public employer violates §5.4(a)(3) of the Act if a charging party proves by a preponderance of the evidence 1) that the employee(s) engaged in protected activity, 2) the employer knew of the activity, and 3) the employer was hostile toward the exercise of the protected activity. Bridgewater Tp. v. Bridgewater Public Works Ass'n., 95 N.J. 235, 242, 246 (1984). If a charging party satisfies those tests, the burden shifts to the employer to prove that the adverse action would have occurred for lawful reasons even absent the protected conduct. Id. at 242. If the employer fails to satisfy its burden a violation will have been established.

The FOP's (a)(3) charge encompassed several allegations. It argued that the Respondent failed to promote a number of officers, failed to allow them to become detectives, and discriminated against officers by the nature of their job and vehicle assignments and the equipment they were provided, all because of their exercise of protected activity. The FOP proved some, but not all, of those allegations.

I credited Yeager, Cima, Alfieris and Potts that FOP members and supporters were given less desirable job and vehicle assignments than other sheriffs officers. FOP supporters Yeager,

Waechter and Alfieris, in particular, were assigned the least desirable vehicles, and Cima and other FOP supporters were frequently assigned to the magnetometer and other work details which they considered undesirable. Petrone knew of their support for the FOP, and he, or others under his direction, intentionally made those assignments in reprisal for that support. The latter element was the hostile act, which together with the former elements, satisfied the FOP's Bridgewater burden.

The Respondent did not present sufficient business justification for its actions, nor establish that it would have taken the same actions absent the employees involvement with the FOP. Petrone and the other superior officers denied making job and vehicle assignments based upon union affiliation, but I could not rely on their testimony. Petrone stated that there were "no better assignments" (3T82). While he may personally believe that, the officers considered certain details undesirable (like the magnetometer), and Petrone, knowing that, disproportionately assigned FOP supporters to those details. The issue here is not whether the magnetometer and other details were important and had to be done--the issue is why were FOP supporters assigned to them more frequently than other officers? I find it was because of their union activity.

The result is the same with respect to vehicle assignments. Petrone knew the officers considered the older vans to be less desirable vehicles to use; nevertheless, Yeager, Waechter

and Alfieris were assigned those vehicles more frequently than non-FOP supporters. The intent was to punish employees for affiliating with the FOP. Those actions violated the Act.

The FOP, however, did not establish that the Respondent violated the Act with respect to promotions, sending officers to the detective bureau, or overtime assignments. The FOP failed to present evidence that particular officers would have been promoted or sent to the detective bureau but for their union affiliation. In addition, the Respondent established that it has a rotating overtime procedure which was not adequately disputed by the FOP.

Accordingly, based upon the above findings and analysis, I make the following:

Conclusions of Law

The Respondent violated subsections 5.4(a)(1) and (3) of the Act by threatening, coercing and intimidating sheriffs officers, and discriminating against them because of their affiliation with FOP Lodge 39.

Recommended Order

I recommend the Commission ORDER:

A. That the Sheriff of Somerset County, particularly Chief Robert Petrone, cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the

Act, particularly by the remarks of Chief Petrone threatening and intimidating cadets and sheriffs officers because of their affiliation with FOP Lodge 39, and criticizing its leadership.

2. Discriminating in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by assigning undesirable work details and vehicles to cadets and sheriffs officers affiliated with FOP Lodge 39.

B. That the Sheriff take the following action:

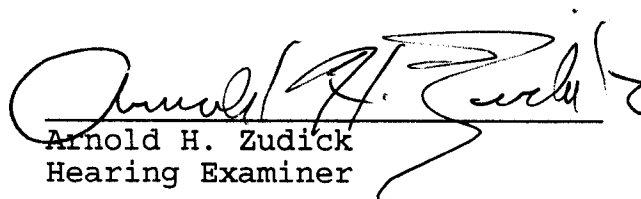
1. Direct Chief Petrone to cease making any remarks to cadets and sheriff's officers regarding their right to affiliate with or engage in activities on behalf of FOP Lodge 39 or any other labor organization of employees under his authority.

2. Direct Chief Petrone to cease commenting to employees on the quality of FOP Lodge 39 leadership or any other labor organization of employees under his authority.

3. Direct Chief Petrone to devise and implement a policy which assigns job details and vehicles to cadets and sheriffs officers irrespective of their union affiliation.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.


Arnold H. Zudick
Hearing Examiner

Dated: September 29, 1995
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE, the Sheriff and Chief Robert Petrone, WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by the remarks of Chief Petrone threatening and intimidating cadets and sheriffs officers because of their affiliation with FOP Lodge 39, and criticizing its leadership.

WE WILL NOT discriminate in regard to the tenure of employment to discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by assigning undesirable work details and vehicles to cadets and sheriffs officers affiliated with FOP Lodge.

I (the Sheriff) WILL direct Chief Petrone to cease making any remarks to cadets and sheriffs officers regarding their right to affiliate with or engage in activities on behalf of FOP Lodge 39 or any other labor organization of employees under his authority.

I WILL direct Chief Petrone to cease commenting to employees on the quality of FOP Lodge 39 leadership or any other labor organization of employees under his authority.

I WILL direct Chief Petrone to devise and implement a policy which assigns job details and vehicles to cadets and sheriffs officers irrespective of their union affiliation.

Docket No. CO-H-95-15

Somerset County Sheriff

(Public Employer)

Dated _____

By _____

(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.