

H.E. NO. 2007-10

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

In the Matter of

TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2006-025

PBA LOCAL 69,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission find the Township of Union violated sections 5.4a(1), (3) and (5) of the Act when it refused to supply the list of jobs-in-blue program vendors to the PBA, and conducted surveillance of off-duty PBA members in retaliation for their advocacy in favor of the program, and criticism of Township officials. The Hearing Examiner found that the list was potentially related to the PBA's conduct of collective negotiations, and the Township's refusal to supply it violated an employer's duty under section 5.4a(5) to supply a broad range of potentially relevant information to a majority representative. The Hearing Examiner found that the surveillance independently violated section 5.4a(1) because it was directly related to the PBA's appearance at a public meeting where it advocated for retention of the program and criticized public officials' handling of negotiations. Under these circumstances, the surveillance had the tendency to interfere with the PBA's protected rights to advocate for contract terms and criticize a public employer. Finally, because of the timing of the surveillance, and other attendant circumstances, the Hearing Examiner found that the surveillance was a retaliatory adverse action and, therefore, violated 5.4a(3) of the Act. The Hearing Examiner found that the Township's asserted business justification was a pretext.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro and Murphy, attorneys
(Robert J. Merryman, of counsel)

For the Charging Party,
Zazzali, Fagella, Nowak, Kleinbaum and Friedman,
attorneys
(Paul Kleinbaum, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On July 22, 2005 and January 11, 2006, PBA Local 69 filed an unfair practice charge and an amended charge with the New Jersey Public Employment Relations Commission (Commission) against the Township of Union (Township), alleging that the Township violated section 5.4a(1), (3) and (5)^{1/} of the New Jersey Employer-

^{1/} These sections 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 (continued...)"

Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

Specifically, the charge alleges that in the summer of 2005, the Township unilaterally discontinued a "jobs-in-blue" program without negotiations with the PBA, refused to provide the PBA the list of participating vendors, and conducted surveillance of PBA members in retaliation for their advocacy in favor of retaining the program.

The charge was accompanied by an application for interim relief^{2/} seeking an order that the Township be restrained from discontinuing the program. On August 23, 2005, the application was denied by a Commission designee in Tp. of Union, I.R. No. 2006-006, 31 NJPER 259 (¶102 2005). On April 10, 2006, the Director of Unfair Practices administratively dismissed the allegation contesting the Township's unilateral termination of the program, finding that the decision is a governmental policy determination not subject to mandatory negotiations. Union Tp. D.U.P. No. 2006-007, 32 NJPER 109 (¶53 2006).^{3/}

^{1/} (...continued)
in the exercise of the rights guaranteed to them by this act; and (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

^{2/} N.J.A.C. 19:14-9.2.

^{3/} Laezza v. City of Atlantic City, 80 N.J. 255, 267 (1979); State of New Jersey, P.E.R.C. No. 92-65, 18 NJPER 50,
(continued...)

On May 2, 2006, the Director issued a Complaint and Notice of Hearing on the remaining allegations. The Township filed an Answer, denying the allegations and that it had committed any unfair practices. On September 25, 2006, I conducted a hearing.^{4/} The parties examined witnesses and introduced documents. Both parties filed post-hearing briefs and reply briefs. Based on the entire record, I make the following:

FINDINGS OF FACT

1. The PBA and Township are parties to a series of collective negotiations agreements, the most recent of which expired on December 31, 2003 (CP-1). At the time of the hearing, the parties were in interest arbitration for a successor agreement (T35).

2. Frank Bradley is the Township Administrator. Andrew Giordano is the deputy police chief. From June to September 2005, Giordano was acting chief due to Police Chief Thomas Kraemer's illness (T49, T87-T88). Captain Rick Landolfi is in charge of internal affairs, staff services, and support services (T76-T77). Police officer Dave Dougherty is president of PBA

3/ (...continued)
(¶23021 1991), and Cape May Bridge Comm., P.E.R.C. No. 92-8, 17 NJPER 382 (¶22180 1991).

4/ Citations to the transcript of the hearing are referred to as "T" Commission exhibits are referred to as "C-"; Joint exhibits are referred to as: "J-"; Charging Party's exhibits are referred to as "CP-" and Respondent's exhibits are referred to as "R-", References to the DVD are "DVD".

Local 69, and Sergeant Robert Reiss is vice president of the Superior Officers Association (T20, T34).

3. Jobs-in-blue permits off-duty Township police officers to work at private security jobs at businesses in or near the Township, from a list maintained in the police administration office headed by Captain Landolfi (T35, T37-T38, T68). The businesses, or vendors, included Target and Wal-Mart stores, Vornado Realty, PSE&G, Verizon Communications, various construction sites, apartment complexes, and the Union Township Board of Education (T36). Vendors paid officers directly at rates set by Township ordinance: \$22 per hour and \$45 per hour (T36-T37). The program provided off-duty officers with significant supplemental income (T36). During 2004, hours of jobs-in-blue totaled 37,282, and the total number of jobs was 7,473 (CP-2; T38). Jobs-in-blue is referenced in the parties' expired agreement at Article 22, A:

The Township agrees that the existing work-in-blue program, as authorized by ordinance, shall be continued during the term of this agreement (CP-1; T37).

4. Sometime in June 2005, before the 24th of the month, while the parties were engaged in negotiations for a successor agreement, the PBA learned of changes in the legislation concerning private security services like jobs-in-blue: New Jersey Senate bill, S1516 (T41). The PBA asked the Township to suspend negotiations so that the department and vendors might

conform their program to the legislation. In reply, Township Administrator Frank Bradley informed PBA President Dougherty that the Township intended to discontinue jobs-in-blue (T40-T41). This was the first time Dougherty learned of the possible discontinuation of the program (T40-T41).

5. By letter to Lieutenant Scott Breslow, dated June 24, 2005, Dougherty requested a list of all jobs-in-blue vendors, their mailing addresses and contact persons, "to inform all current participants of legislature bill S1516," revising private security guard regulations, and to inform them that the Township intended to terminate the jobs-in-blue program (CP-4; T39-T40). The PBA did not know the names of the corporate-level officers or their representatives (T40).

I infer that the PBA's request for the vendors' names was also intended to assist it in conducting collective negotiations.^{5/} By informing the vendors of the proposed termination, the PBA hoped to elicit support for the retention of the program in the collective agreement.

6. Acting Chief Giordano instructed Lieutenant Breslow not to release the records (CP-5; T105). On June 28, 2005, Breslow responded to Dougherty:

^{5/} On cross examination, Dougherty stated that he had "more than likely" indicated in correspondence [to a Township official] that the information on jobs-in-blue was needed for collective negotiations (T70-T71).

I received your request made on behalf of PBA #69 in which you asked for a roster of all participants on the job in blue program. I consulted with Deputy Chief Giordano who later advised me not to release the requested records to PBA #69 at this time.
[CP-5].

After the Township refused the PBA's request for information the Union "did its best" to compile the contacts' names and addresses (T74).

Giordano testified that the officers who administered jobs-in-blue had contact with local, not corporate, managers of the participating companies, though he also stated he was only somewhat familiar with the program (T96-T97). Aside from Giordano's testimony, this record does not reveal any other reason, such as security or confidentiality, for the Township's refusal to give the information to the PBA.

7. On July 12, 2005, Acting Chief Giordano issued a memo (MO:2005-048):

Effective August 1, 2005, the Township of Union Police will no longer operate a "Jobs-in-Blue" program. Therefore, the last day of the "Jobs-in-Blue" program will be, Sunday, July 31, 2005. (CP-3; T42-T43).

The termination of the program was later postponed to August 30, 2005, when the Township learned that the security guard legislation would not take effect until September 1, 2005 (T50). The termination of the program was regarded as a major controversy within the department (T103-T104).

8. The PBA responded to the proposed termination of the jobs-in-blue by addressing the Township Committee at three regular meetings on July 12, 26 and August 23, 2005 (T43). The PBA wanted the Committee to reverse its decision to terminate the program (T43). The PBA President argued that it was a mistake to terminate the program; that it could jeopardize the safety of shoppers, and was unfair to terminate it without exploring other avenues (T43). The PBA also argued that police officers relied on the extra income (T36).

9. On July 12, 2005, Sergeant Reiss and about sixty other SOA and PBA members attended the Township Committee meeting to support the effort to keep jobs-in-blue (T20-T21). After the meeting, Reiss and 30 to 40 PBA/SOA members went to Joe's Place, a bar-restaurant in Union where police gathered after work or meetings (T22, T44). At a certain point, Reiss left Joe's Place to make a phone call and encountered Sergeant Capko, who was on duty (T23). Reiss accidentally hit Capko's shoulder radio microphone, so that when Reiss spoke his voice transmitted over the radio (T23). Reiss, joking with Capko, shouted: "headquarters, headquarters!", which was heard by other police officers (T30-T31, T80, T82-T83). Acting Chief Giordano heard about the transmission and assumed it had come from someone who had been drinking (T89, T96).

After receiving a report of the transmission, Captain Landolfi conducted an internal affairs investigation (T82). Upon obtaining reports from Reiss and Capko, Landolfi concluded that the incident was accidental, and he recommended that no discipline was warranted (T23, T82-T85, T99). No negative publicity resulted from the incident (T45).

10. On or about July 12, 2005, Giordano learned that two police officers had illegally parked their motorcycles on the sidewalk near Joe's Place (T90). Giordano spoke to the officers, who agreed not to park on sidewalks in the Township again (T90).

Normally, the department issues memos reminding officers to conduct themselves properly according to policies and procedures, but none were issued after the Reiss and motorcycle parking incidents (T44-T45, T100-T101). Despite his testimony that he was concerned about the public's image of police officers, Giordano did not issue any memos reiterating the high standard of conduct expected of them (T91-T92). I infer that he considered these incidents minor.

11. Dougherty also spoke at the July 26, 2005 Township Committee meeting, which was attended by about 50 or 60 other officers (T46). Acting Chief Giordano and Township Administrator Frank Bradley also attended this meeting (T48-T49, T97-T98). Dougherty repeated his earlier assertions about jobs-in-blue, and complained that the Township had spoken to the press about

collective negotiations, despite its agreement to refrain from so doing (T45). He also argued that the Township was using jobs-in-blue because the Union had refused to accept the Township's contract proposals (T45-T46). Township Administrator Bradley stated that since jobs-in-blue was in the contract, he would not address its termination in public (T46). After the meeting, many officers proceeded to Joe's Place and no incidents were reported (T46-T47). At the July 26th meeting, neither Giordano nor any other Township official cautioned Dougherty that the officers should behave appropriately (T47).

12. Dougherty's address to the Committee on August 23rd reflected the imminent termination of jobs-in-blue (T24, T47-T48). Dougherty was "looking for answers" from the committee, not merely advocating a position (T48). Speaking more aggressively, he remarked that salary ordinances had been passed increasing the pay of Township officials, including Mr. Bradley and that, in negotiations, the Township had discussed their agreement in public after saying they would not (T48, T51, T64 T74-75). At times, Dougherty spoke directly to Bradley (T51). Bradley became upset, approached and responded to Dougherty and then exited to the private council chambers adjacent to the public committee meeting room (T25-T26, T51-T52, T71).^{6/}

^{6/} Both Reiss and Dougherty testified that Bradley became upset or angry (T25-26, T51). Giordano denied that Bradley was
(continued...)

Meanwhile, Reiss was standing 3 or 4 feet from Acting Chief Giordano in the rear of the room (T25). Shortly after Bradley's exit, a man, unknown to Reiss, approached Giordano (T26, T101-T102). Reiss overheard him say that Frank Bradley wanted to see Giordano (T26, T31). Giordano rose and walked around the corner (T27, T107).

13. Bradley directed Giordano to insure that there would be no repeat of the improper radio transmission or illegal parking of motorcycles by police that evening, leaving the impression that Giordano would be held accountable for his officers' conduct (T92-T93, T107). Bradley had not warned Giordano after the July 26 meeting or anytime before the August 23rd meeting about inappropriate police officer conduct (T106-T107).

14. Dougherty encountered Giordano while exiting Town Hall (T52). Giordano told Dougherty to send a message to the union members to watch themselves that night at Joe's Place regarding their parking, drinking, carrying on, getting out of hand, etc. (T53). Dougherty was not aware of any other problems or incidents involving police conduct at Joe's Place (T53).

6/ (...continued)
upset. He testified that Bradley was "emphatic" (T92). Reiss testified that Bradley appeared flustered at Dougherty's remarks and said "Bradley abruptly left the meeting room" (T25-T26). I credit Dougherty's and Reiss' impressions of Bradley's emotional state. Giordano's use of the term "emphatic" is a euphemism for annoyed.

Dougherty agreed to pass the message on to the officers at Joe's Place, and proceeded to the bar, arriving at about 9:30 p.m., where he remained for two hours (T54).

15. Giordano also proceeded to Joe's Place to make sure there weren't going to be any problems and to personally carry out Bradley's orders (T55, T93-T94).^{2/} He restated his warning to Dougherty and SOA President William Jones (T94).

16. On August 23, 2005, Captain Landolfi worked his normal shift from 7:00 a.m. to 3:00 p.m. (T78). At about 8:00 p.m., Giordano ordered Landolfi to return from home to Union Township, contact and pick up Lieutenant Scott Breslow en route, stakeout Joe's Place and arrest any officer emerging from the bar who appeared drunk and disorderly (T79-T80). Landolfi learned from Giordano, who was agitated, that the PBA had been at the Township Committee meeting and had angered the Committee (T81). Giordano stated: "the war is on" (T81). Giordano did not reference the Reiss incident when he contacted Landolfi on August 23 (T83). Landolfi was not aware of any surveillance of Joe's Place after either of the two July 2005 Township committee meetings (T83). August 23rd was the first date that the internal affairs division

^{2/} Giordano testified that he advised Dougherty that internal affairs would be outside, but Dougherty did not corroborate this and stated he learned of the surveillance from other officers after Giordano left Joe's (T56, T94).

surveilled Joe's Place, though officers had surveilled there after fighting was reported (T60, T62, T83).

17. At around 10:00 p.m., Dougherty went out to speak to the internal affairs officers and learned they were ordered to surveil officers (T55-T57).^{8/}

18. Giordano attended all three Township Committee meetings but did not say anything to Dougherty about police conduct at Joe's Place on July 26 or anytime before August 23, 2005 (T97-T98, T100).

19. No officers were arrested or disciplined outside of Joe's Place because of their conduct on August 23, 2005 (T86, T95-T96).

ANALYSIS

The two issues raised by the charge are whether the Township violated the Act by refusing to provide the PBA with the list of jobs-in-blue vendors and by its surveillance of PBA unit members on August 23, 2005, after their attendance at a public Township Committee meeting. I find that the Township's refusal to supply the list violated section 5.4a(5) of the Act, and the surveillance violated sections 5.4a(1) and (3) of the Act.

^{8/} Dougherty testified that Landolfi was told to surveil members of the PBA (T57). Landolfi testified that he was not told to follow any particular officer, follow officers around or "single out PBA members." (T57, T85). Landolfi's testimony does not refute Dougherty's testimony. Most of the officers at Joe's Place on the evening of August 23, 2005, were also PBA unit members (T28).

The refusal to provide information

A public employer is required to provide information requested by the majority representative so that the latter can carry out its representational duties. See, UMDNJ and CIR, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996), State of N.J. (OER) and CWA, P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp.2d 198 (¶177 App. Div. 1988) ("State of N.J. (OER)"). An employer's refusal to supply relevant information is an unfair practice and violates N.J.S.A. 34:13A-5.4a(5). Morris Cty. and Morris Coun. No. 6, NJCSA, IFPTE, AFL-CIO, P.E.R.C. No. 2003-22, 28 NJPER 421 (¶33154 2002), aff'd 371 N.J. Super. 246 (App. Div. 2004), certif. den. 182 N.J. 427 (2005). An employer may not be required to produce potentially relevant information if it would compromise security or confidentiality. The employer's duty "turns upon the circumstances of the particular case."

Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235, 236 (¶12105 1981).^{9/}

9/ State of New Jersey (Dept. of Higher Ed.), P.E.R.C. No. 87-149, 13 NJPER 504, 505 (¶18187 1987); Burlington Cty. Bd. of Chosen Freeholders and CWA, P.E.R.C. No. 88-101, 14 NJPER 327 (¶18121 1988), aff'd NJPER Supp.2d 208 (¶183 App. Div. 1989); J.I. Case Co. v. NLRB, 253 F.2d 149, 41 LRRM 2679 (7th Cir. 1958); Kroger Co., 226 NLRB 512, 93 LRRM 1315

(continued...)

In State of N.J. (OER), the Commission held:

As majority representative, CWA has the statutory right to information in the employer's possession which is relevant to a grievance. In Shrewsbury Bd. of Ed., P.E.R.C. No. 81-119, 7 NJPER 235 (¶12105 1981), relying on federal precedent, we held that an employer must supply information if we find a probability that the information is potentially relevant and that it will be of use to the union in carrying out its statutory duties. Id. at 236. Relevance in this context is determined under a discovery-type standard, not a trial-type standard, see NLRB v. Acme Industrial Co., 385 U.S. 432, 437, 64 LRRM 2069 (1967), and therefore 'a broad range of potentially useful information should be allowed the union for the purpose of effectuating the bargaining process.' Proctor & Gamble Manufacturing Co. v. NLRB, 603 F.2d 1310, 1315, 102 LRRM 2128 (8th Cir. 1979). The rationale underlying this discovery policy is to enable the majority representative to have sufficient information to evaluate the merits of an employee's claim. We recognized, however, that the majority representative does not have an absolute right to obtain all requested information; rather, the duty to disclose 'turns upon the circumstances of the particular case.'

[Id. at 754]

It is undisputed that the Township denied the PBA's request for information by letter on June 28, 2005. The standard for judging whether information must be provided is a broad, discovery-type standard. The initial inquiry is whether there is a probability that the information is potentially relevant and will be used by

9/ (...continued)
(1976).

a union in carrying out its statutory duties. Shrewsbury. These duties include collective negotiations, processing grievances, and administering the collective agreement.

I found that the PBA's intended use of the vendor contact list was to elicit support for its conduct of collective negotiations and, thus, I find the information is relevant to its representational responsibilities. The PBA argued that the fact that jobs-in-blue was incorporated in the parties' agreement is of great significance to the question of relevance, that this fact alone creates relevance. I agree that a reference in the collective agreement strongly supports a finding of relevance to negotiations. The Township argued that since the program is not mandatorily negotiable, no information need be supplied because relevance to collective negotiations cannot be established. Considering the context in which this dispute arises, this is an overly-narrow application of the standard, which provides for the exchange of a broad range of information. Here, the issue (of the program's termination) arose during negotiations for a new contract. The PBA testified that it believed the issue was being used as a tactic in the Township's negotiations strategy.^{10/} The PBA is entitled to lobby to have the program reinstated, to seek support from the affected businesses, and to have the information

^{10/} I only credit this as the PBA's belief about the Township's tactics, not as a finding about the Township's tactics.

necessary to enable it to contact them. In these circumstances, the fact that the program itself is not mandatorily negotiable^{11/} does not dispose of the issue of what information must be supplied to the PBA.

The Township also argued that the PBA wanted the vendors contact information to falsely accuse the Township of disregarding their safety. The evidence does not support that contention. Whether the PBA has the ability to obtain the information in other ways is also not relevant here.

Based on all of the above, I recommend that the Commission find that the Township violated section 5.4a(5) of the Act by refusing to provide PBA Local 69 with the list of names and addresses of vendors who participated in the jobs-in-blue program.

The Alleged Violations of 5.4a(3) and (1) - Surveillance

The PBA argues that the surveillance of PBA members on the evening of August 23, 2005, at Joe's Place was both an independent violation of 5.4a(1), and a violation of 5.4a(3), and, derivatively, a(1).

The Township denies that it was hostile, and argues that the surveillance was not an adverse action. It also argues that it had a legitimate business justification for the surveillance: its concern about the conduct of police officers at Joe's Place

^{11/} Laezza v. City of Atlantic City, 80 N.J. 255, 267 (1979).

because of the past Reiss and motorcycle parking incidents (Respondent's brief pages 10-14).

The standard for deciding a(3) cases was established by the New Jersey Supreme Court in In re Bridgewater Tp., 95 N.J. 235 (1984). There the Court held: "no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that conduct protected by the Act was a substantial or motivating factor in the adverse action. This may be done by direct or circumstantial evidence showing 1) that the employee engaged in activity protected by the Act, 2) that the employer knew of this activity, and 3) that the employer was hostile toward the exercise of the protected activity." Id. at 246.

If the employer did not present evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has

proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action. Conflicting proofs concerning the employer's motives are for the hearing examiner, and then the Commission to resolve.

Applying Bridgewater to these facts, I find that union animus towards Dougherty's criticism of Township officials and advocacy for retention of jobs-in-blue was a substantial motivating factor in the internal affairs' surveillance outside Joe's Place in Union, on August 23, 2005. The PBA's more aggressive advocacy at the Township Committee meeting earlier that night angered Township Administrator Bradley. Bradley left the meeting during Dougherty's remarks, summoned Giordano and "emphatically" instructed Giordano that he would be held accountable for police conduct that evening. While Bradley did not specifically order the surveillance, his admonishment to Giordano set the surveillance order in motion. Giordano was also angered; Landolfi testified that he was "agitated" when he called Landolfi back to the Township.

I infer hostility from the timing of the surveillance, which occurred immediately after the PBA's speech urging retention of jobs-in-blue, and criticizing the Committee and Bradley. Bradley's reactions to Dougherty's remarks, his urgent summons of Acting Chief Giordano before the meeting ended, and the tone of his communication with Giordano are evidence of his anger at the

PBA and Dougherty. Giordano's cautionary advice to Dougherty at Town Hall and his pursuit of the PBA members to Joe's Place to repeat his warnings, his agitation when he summoned Landolfi and Breslow, and statement that "the war is on," all indicate hostility to the PBA's remarks earlier that night.

I further find that the Township would not have ordered internal affairs to surveil the police in the absence of the PBA's speech to the Township Committee at its August 23d meeting. The Township's attempt to tie the need for the surveillance to the Reiss incident or motorcycle parking incident is a pretext. At the time these prior incidents of police behavior were investigated and handled, Giordano regarded them as minor or accidental, not warranting either discipline, or a memorandum. These incidents were remote from the meeting on August 23, with an intervening July 26th meeting at which no admonishments to "behave properly" were made. The surveillance by internal affairs would not have been ordered in the absence of the PBA's address to the committee.

Under all these circumstances, I find that union animus motivated the decision to conduct surveillance of PBA members because of their criticism of the Township's negotiations tactics, and advocacy in favor of retention of jobs-in-blue at the Township Committee on August 23, 2005.

The Township argues that no adverse personnel action occurred because no officers were disciplined, but I disagree. Surveillance of off-duty employees with an intent to catch them engaging in misconduct prevents their legitimate enjoyment of off-duty time and carries an implied threat of discipline and criminal charges. It may be that police officers are held to a higher standard of conduct even while off-duty, but the Township's action was intended to increase the chances of finding something that would necessarily have led to a more traditionally-defined adverse personnel action.

Independent 5.4a(1)

An employer violates 5.4a(1) if its actions tend to interfere with activity protected by the Act and lack a substantial business justification. New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1979); New Jersey Sports & Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979). Here, the surveillance carried an implied threat of discipline. I have inferred from the timing of the surveillance that it was directly related to the PBA's appearance at the Committee meeting, and its criticism of Committee members and the Township administrator. The surveillance occurred during the period the parties were in collective negotiations. Under these circumstances, the implied threat would have a tendency to interfere with the PBA's

protected activity--the criticism of the employer's conduct of negotiations. The Township's actions lacked a substantial business justification. The previous incidents did not warrant the surveillance. Heightened scrutiny of employees' off-duty conduct should require more persuasive justification than that presented here. Accordingly, I find that the Township's surveillance violated section 5.4a(1) of the Act. Accord, Belvidere Bd. of Ed. and Belvidere Ed. Ass'n and Camarda, P.E.R.C. No. 81-13, 6 NJPER 381 (¶11197 1980), aff'd NJPER Supp.2d 100 (¶83 App. Div. 1981) (violation found where school Board warned leading Association activists to cease Association activities or their performance would be scrutinized with intent to discipline or terminate).

Based upon the above findings and analysis, I make the following:

CONCLUSIONS OF LAW

1. The Township of Union violated 5.4a(5) of the Act by refusing to give the PBA the names and addresses of contact persons of the vendors who participated in the jobs-in-blue program.

2. The Township of Union violated 5.4a(1) and (3) of the Act by conducting surveillance of off-duty PBA members in retaliation for their advocacy and criticism of the Township for discontinuation of the jobs-in-blue program on August 23, 2005

3. The Township of Union independently violated section 5.4a(1) of the Act by its surveillance on August 23, 2005.

RECOMMENDED ORDER

I recommend that the Commission ORDER that:

A. The Township of Union cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by conducting surveillance of PBA members who attended a meeting on August 23, 2005, to advocate for the retention of the jobs-in-blue program.

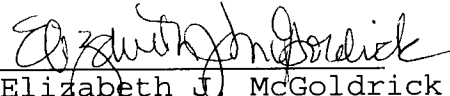
2. Discriminating with regard to hire, tenure or other terms or conditions of employment to discourage employees in the exercise of the rights guaranteed to them by this Act by conducting surveillance of PBA members for attending a Township Committee meeting and advocating for the maintenance of a jobs-in-blue program.

3. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative, particularly by refusing to give PBA Local 69 the names and contact information of the jobs-in-blue vendors.

B. That the Township of Union take the following affirmative action:

1. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof, and, after being signed by the Respondent's authorized representative, shall be 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.

2. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.


Elizabeth J. McGoldrick
Hearing Examiner

DATED: June 29, 2007
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will 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. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by July 9, 2007.



RECOMMENDED



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:

WE WILL cease and desist from interfering with, restraining or coercing its employees in the exercise of rights guaranteed to them by the Act, particularly by conducting surveillance of PBA members who attended a meeting on August 23, 2005, to advocate for the retention of the jobs-in-blue program.

WE WILL cease and desist from discriminating with regard to hire, tenure or other terms or conditions of employment to discourage employees in the exercise of the rights guaranteed to them by this Act by conducting surveillance of PBA members for attending a Township Committee meeting and advocating for the maintenance of a jobs-in-blue program.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative, particularly by refusing to give PBA Local 69 the names and contact information of the jobs-in-blue vendors.

Docket No. CO-2006-025

TOWNSHIP OF UNION
(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, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372