

H.E. No. 2002-7

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

In the Matter of  
CITY OF NEWARK,

Respondent,

-and-

Docket No. CO-H-2000-192

NEWARK POLICE SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Joanne Y. Watson, corporation counsel  
(William Schwartz, first assistant corporation counsel)

For the Charging Party, Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On January 24, 2000, and by amendment on February 28, 2000, the Superior Officers Association, Newark Police Department ("SOA" or "Charging Party") filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Newark ("Respondent") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The charge alleges that the City of Newark, through its police department, unlawfully failed to promote Richard Luongo to the position of captain; and unlawfully filed charges against Luongo ostensibly as discipline related to an automobile accident, because of his union activities

and his position as SOA president, in violation of 5.4a(1) and (3).<sup>1/</sup>

A Complaint and Notice of Hearing was issued on June 7, 2000. No Answer was filed on behalf of respondent. A hearing was held on November 20, 2000.<sup>2/</sup> The charging party filed a post-hearing brief by January 26, 2001. The respondent did not file a post-hearing brief. The record closed on January 29, 2001. Based upon the entire record, I make the following:

FINDINGS OF FACT

(1) The Newark Police Department is organized as follows: police director, police chief, deputy chief, captain, lieutenant, sergeant, and police officer (R-2; CP-4). The Superior Officer's Association is the majority representative of sergeants, lieutenants and captains employed by the City of Newark Police Department (1T38). Joseph Santiago has been the Director of Police in the City of Newark since July 2, 1996 (1T13).

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<sup>1/</sup> These provisions 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."

<sup>2/</sup> The Transcript in this matter will be referred to as 1T. "C" refers to the Commission exhibits received into evidence at the hearing. "CP" and "R" refer to Charging Party's and Respondent's exhibits, respectively.

Promotions Generally

(2) The New Jersey Department of Personnel issued a promotional list for captain, effective January 23, 1997 to January 22, 2000 (R-1; 1T13-1T14, 1T26). There were forty-nine names on the list of eligibles. Richard Luongo was number 16 on the list (R-1).

(3) There are two types of departmental vacancies in the Newark Police Department. The first is the operational vacancy, where the employee is on payroll, but is absent, i.e., on long term sick leave or terminal leave. In an operational vacancy, a second individual cannot occupy the position. The second type of vacancy is the budget vacancy, in which budget dollars are available to pay an additional employee (1T21). When an employee leaves the payroll in the middle of the month, the budget vacancy does not trigger until the first day of the next budget cycle. For example, if an individual left the payroll on September 18, the budget vacancy would become available on December 1 (1T23). The number of budget vacancies primarily controls the department's ability to make promotions (1T22).

(4) In order to determine the number of budget vacancies available for promotion, the director of police, who reports to the business administrator, presents a request to the business administrator to make a number of promotions, supported by budget projections and calculations of the number of dollars available for promotions (1T17).

(5) When the City contemplates filling a budget vacancy by promotion, a promotion review committee for the applicable rank is established (1T16). The promotion review committee is generally composed of deputy directors, deputy chiefs and the chief of police (1T16). The promotion review committee creates a package containing reviews of all relevant information about the candidates identified as possibilities to fill the vacancy, including disciplinary, attendance, and performance records, and handwriting samples. At Police Director Santiago's direction, the committee interviews the candidates and makes a recommendation to the director concerning whether the individual should be promoted, and the director makes the final decision (1T16, 1T18).<sup>3/</sup>

(6) In December 1999, as a result of meetings between the director of police, the director of budget, and the business administrator, it was determined that one deputy chief, one

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<sup>3/</sup> Richard Luongo testified that the mayor makes the final decision on promotional recommendations (1T84-1T85). Director Santiago, to the contrary, claimed an extensive role in the promotional process, explaining that he, as director, typically works with the business administrator to identify budget vacancies which could be filled by promotion; initially decided to promote one captain; subsequently decided to promote two others; directed the promotional committee to interview the candidates he chose; and made the final decision on the committee's recommendation (1T16, 1T18, 1T28). Considering all of the testimony concerning the police director's involvement in the promotional process, it seems more logical that the final decision is made by the police director, rather than the mayor. Therefore I find that the police director has the final authority concerning promotional recommendations within the Police Department.

captain, approximately twenty lieutenants and three sergeants could be promoted (1T17). By memorandum dated December 31, 1999, the director announced that a promotion ceremony would be held on January 12, 2000 for the following promotions: one captain would be promoted to the rank of deputy chief; one lieutenant would be promoted to the rank of captain, seven sergeants would be promoted to the rank of lieutenant, and ten police officers would be promoted to the rank of sergeant (R-2; 1T18-1T19). Subsequently, between December 31 and January 12, authorization was provided for the promotion of two more captains for a total of three, additional lieutenants resulting in the exhaustion of the lieutenant's promotional eligibility list, and up to thirty sergeants (1T17, 1T19). The director issued an addendum to the original memorandum setting forth that a total of three lieutenants would be promoted to captain (R-3; 1T31-1T32). These individuals - Dario Rizzitello, Kenneth Rox, and Barry Colicelli - were certified as eligible for appointment by the Department of Personnel (R-1). The addendum also provided that a total of twenty-two sergeants would be promoted to lieutenant, fifteen more than the original memorandum; and a total of thirty police officers would be promoted to sergeant, twenty more than the original promotional memorandum (R-2, R-3).

(7) To determine the number of individuals who would be promoted, the director tried to identify the budget vacancies that would become available in January 2000 (1T22-1T23, 1T24). The

budget for 2000 was approved a few weeks prior to the hearing (1T17, 1T23). The director also tried to get the administration to fund a total number of promotional positions for the year in the 2000 budget (1T32). There were a number of operational vacancies which would not become available budget vacancies until the budget quarters beginning in March or June of 2000 (1T23, 1T34).

(8) The record is unclear concerning the number of captain positions budgeted for the year 2000:

Q Do you know how many captain positions you budgeted for the year 2000?

Santiago: I believe it was somewhere 29 or 30. There was some discussion or I -- I mean we initially had 30, but there might have been only 29. As a matter of fact I'm not clear even now (1T33).

\* \* \*

Q Oh, so to the best of your recollection in January 2000, there was some operational vacancies and there was a lesser amount probably two or three budgeted vacancies?

Santiago: That's correct (1T34).

(9) The eligibility roster for promotion to captain was effective on January 23, 1997 through January 22, 2000 (R-1). There were forty-nine names on the list. Prior to January 12, 2000, eleven of the first twelve individuals on the list had already been promoted to captain (with the exception of James Walsh, who was on indefinite suspension). Dario Rizzitello was number thirteen on the list; Kenneth Rox was number fourteen; Barry Colicelli was number fifteen; and Richard Luongo was number sixteen (1T14-1T15, 1T25-1T26). Rizzitello, Rox and Colicelli were promoted to captain (R-1; 1T14, 1T25). Rox was a former SOA president (1T36).

(10) Dario Rizzitello had been acting as a captain and commanding officer in one of the four police districts for the better part of six months when he was promoted (1T28, 1T94). Initially, Rizzitello was the only individual who went before the promotion board (1T28). When authorization was provided to promote two additional lieutenants to captain, the Director directed the promotional board to review and interview Rox and Colicelli, the additional two candidates, in January, just prior to the promotions (1T17, 1T29). Rox and Colicelli had never been interviewed before. According to Santiago, the City is conservative in interviewing candidates for promotion in order to avoid disappointing the candidates if a promotional vacancy does not become available (1T30). However, the director testified, "in some cases we were actually interviewing more people than they actually promoted because we have to go by what the controlling budget number is" (1T29). Luongo was not among the candidates interviewed.

(11) In fall 1999, another promotional exam was given for the position of captain (1T, 1T27, 1T57, 1T70). The written portion of the exam was given at the end of September 1999, and the oral portion in November 1999 (1T57). When a promotional list issued by the New Jersey State Department of Personnel is about to expire, the employer has the option of asking for the list to be extended (1T26-1T27). At the time that promotions were made in January 2000, Santiago was aware that promotional testing had occurred in the latter part of 1999 and that a new list was expected to be issued by

the Department of Personnel as soon as the current list expired (1T27). Santiago decided not to extend the then-current list, and explained his reasoning:

Santiago: I don't know the exact dates, but I was aware of the fact there was a new list going to be forthcoming as soon as this one expired.

Q Because of that you didn't choose to extend the list?

A I choose not to extend it because at the time I had budget vacancies and also, of course, you had -- you had a new list coming. And obviously I take that into consideration. I want to see what a new list looks like (1T27).

(12) The new list was issued later than the City expected (1T35). On January 26, 2000, Detective Steven O'Donnell of the director's office sent an e-mail to the Department of Personnel asking when the results of the captain's examination would be available (CP-6; 1T58). On January 31, Mary Ann Suarez of the Department of Personnel responded that the list was expected to be issued in February 2000 (1T59). In April 2000, after the list from which the January 2000 promotions was made expired, the new promotional list was issued by the Department of Personnel.<sup>4/</sup> By memorandum dated August 31, additional promotions were made on September 7, 2000 from the April list, including sixteen lieutenants' promotion to captain (1T24). Those promoted included Joseph Reilly, who was promoted to lieutenant, and John Huegel, who was promoted to captain (1T36). Reilly is the secretary of the SOA, and Huegel is the current SOA president (1T36).

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<sup>4/</sup> The record does not show whether Richard Luongo was on the eligibility list issued in April 2000.



Richard Luongo

(13) Richard Luongo began employment with the City of Newark Police Department on October 15, 1973 as a patrolman (1T38). He was promoted to sergeant on February 13, 1989, and to lieutenant on August 2, 1994 (1T38). Luongo became the president of the Superior Officers Association in April 1995 (1T38).<sup>5/</sup> Luongo retired effective June 1, 2000 (1T37).

(14) Luongo was the chief spokesperson for the SOA in the negotiations for the collective agreement in effect between the Association and the City between January 1, 1996 through December 31, 1999, as well as for the successor agreement effective January 1, 2000 (CP-1; 1T39-1T40).

(15) In 1997, the Fraternal Order of Police (FOP) sponsored a march in front of Newark City Hall in support of a police officer who was involved in a shooting in Newark's south ward ("the Bobby Leaks incident") (1T43). Approximately 300 police officers attended (1T43). Luongo attended the march on behalf of the SOA as president because he felt he should support a brother union and his fellow officers (1T43, 1T44). The mayor, the business

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<sup>5/</sup> During Luongo's examination, reference was made to an unfair practice charge filed by the SOA against the City. Pursuant to N.J.A.C. 19:14-6.6, I take administrative notice that on November 16, 1998, the SOA filed an unfair practice charge alleging that the City violated N.J.S.A. 34.13A-5.4(a)1 and 5. A hearing examiner recommended that a violation be found against the City. Pursuant to N.J.A.C. 19:14-8.1, the hearing examiner's report became a final decision of the Commission. City of Newark, H.E. 2001-3, 26 NJPER 407 (¶31160), aff'd by silence, (September 4, 2000).

administrator and the director of police were also present at the march (1T43, 1T84). The business administrator later told Luongo that he and the mayor were "livid" to see Luongo at the march. According to Luongo, from that point on, Luongo's relationship with the administration "kept going down the hill" (1T43). I credit Luongo's testimony concerning this incident.

(16) During the 1998 mayoral election, after the mayor of Newark "confronted" Luongo, who was driving another mayoral candidate, Luongo's relationship with the mayor "went down quite drastically" (1T76, 1T84). I credit Luongo's testimony concerning this event as well.

(17) Negotiations for the successor agreement effective January 1, 2000 resulted in a tentative agreement in December 1999, and concluded at the end of January 2000 (1T39, 1T40). As in previous years, the chief negotiators for the City were Greg Franklin and Personnel Director John D'Auria (1T40). However, after the tentative agreement was reached, according to Luongo, the Director objected to not having been included in the negotiations (1T40). Two or three additional meetings were held between the second week of December and January 2000, with the director's participation, resulting in the parties reaching a second memorandum of agreement which was "almost the same agreement" (1T41).

(18) In January 2000, about one week before promotions scheduled for January 12, 2000, Luongo was attempting to get the second memorandum of agreement signed by all the parties. Luongo

called the director's office and was told by Deputy Director Lisa Taylor that the director was not available. Luongo then went to the business administrator's office "to get that end signed, so we could get the ball rolling and get this done" (1T42). While Luongo was in the business administrator's office, Director Santiago walked in. According to Luongo, the director "blew up" at Luongo, saying, "What are you doing going over my head?" (1T41). Luongo responded that he had notified the deputy director that he was going to the business administrator's office (1T42). Santiago then told the City's representatives, who were waiting to sign the memorandum, to follow him and stormed out of the office (1T40, 1T42, 1T79). I credit Luongo's version of these events.

(19) After this incident, Luongo says there was "word" that the scheduled promotions were cancelled for "approximately one day", or that one captain and fewer lieutenants and sergeants would be promoted; then an addendum was issued showing that one captain would be promoted; then subsequently the number "went back up to the original amount that (Director Santiago) wanted" (1T42, 1T43, 1T76, 1T79).<sup>6/</sup>

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<sup>6/</sup> Luongo testified that after the incident in the business administrator's office, the promotions scheduled for January 12 were rumored to be "cancelled" or reduced in number. While I credit Luongo's unrefuted testimony of the events surrounding the incident in the business administrator's office, I draw no inference of hostility to Luongo's protected activity from the alleged rumors.

(20) On December 17, 1999, while driving a City vehicle assigned to the SOA, Luongo was involved in an automobile accident (1T47). When a police officer is involved in an automobile accident with a City vehicle, typically a sergeant conducts an initial investigation at the scene and makes a recommendation to the captain (1T47). Sergeant Felipe Gonzalez conducted an initial investigation at the accident scene. On January 14, 2000, Sergeant Gonzalez submitted an investigative report concluding that Luongo was not at fault in the accident and recommending that the investigation be closed (CP-2, CP-3; 1T47, 1T50). Sergeant Gonzalez forwarded the report to Division Commander Captain Robert Bauer (1T51). Luongo received a copy of the report signed by Captain Bauer indicating that the recommendation was approved (CP-3). Subsequently, Luongo received another copy of the report indicating that the recommendation to close the investigation had been disapproved (CP-2; 1T52). On January 28, 2000, disciplinary charges were issued against Luongo stemming from the automobile accident. The charges were dropped approximately one week prior to Luongo's retirement, but after the filing of this unfair practice charge (1T54).

#### ANALYSIS

The City failed to file an answer to the Complaint. Procedurally, N.J.A.C. 19:14-3.1 provides in pertinent part that if an answer is not filed:

all allegations in the complaint...shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown.

Since the City failed to file an Answer, I must conclude, in accordance with the allegations of the Complaint, that Luongo was not promoted to captain, and was disciplined following an automobile accident, due to his union activities and his position as SOA president.

In addition to my finding of a procedural violation, I reach the same conclusion on the merits.

Although the Charging Party alleged both 5.4a(1) and (3) violations, the real issue is whether the City of Newark Police Department discriminated or retaliated against Richard Luongo for engaging in protected activity, by failing or refusing to promote him to police captain, in violation of 5.4a(3).

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 union animus was a motivating or substantial reason for the personnel action. Id. at 244.

Conflicting proofs concerning the employer's motives are for the hearing examiner, and then the Commission to resolve. The decision on whether a charging party has proved hostility in such cases is based upon consideration of all the evidence, including that offered by the employer, as well as the credibility determinations and inferences drawn by the hearing examiner. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

Luongo easily has met the first two Bridgewater elements. He engaged in protected activity through his position as SOA president and chief representative for the SOA in the latest contract negotiations. It is undisputed that the City knew of this activity. My focus is on whether the City was hostile towards Luongo's protected activity, as Bridgewater requires.

There is no direct evidence that Luongo's protected activity was a substantial or motivating factor in the City's

failure or refusal to promote him to the position of captain. Consequently, the charging party must rely on circumstantial evidence.

At least two of the incidents to which Luongo credibly testified reasonably support a finding of union animus -- the "Bobby Leaks march" incident in 1997, and the incident in the business administrator's office in January 2000. Luongo attended the "Bobby Leaks" march as a representative of the SOA and so was engaged in protected activity at that time. While Luongo's assertion that his relationship with the administration "kept going down the hill" after the march is a subjective, self-serving statement, Luongo's credible testimony that the business administrator said that he and the mayor were "livid" to see Luongo at the march is an unrefuted factual assertion that demonstrates hostility toward Luongo's exercise of protected activity.<sup>2/</sup>

Luongo's testimony provides sufficient circumstantial evidence to establish a prima facie case of union animus, and was unrefuted. A trier of fact can credit a witness' testimony, particularly when it is unrefuted. Compare, City of New Brunswick, P.E.R.C. No. 83-26, 8 NJPER 555 (¶13254 1982); Clark Tp. and Xifo, P.E.R.C. No. 80-117, 6 NJPER 186 (¶11089 1980), aff'd NJPER Supp.2d 91 (¶75 App. Div. 1981).

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<sup>2/</sup> While I have credited Luongo's factual testimony, there is no evidence in the record that Luongo's driving a mayoral candidate leading to an alleged subsequent "confrontation" with the mayor involved Luongo's exercise of rights protected by our Act. Therefore, I draw no inference of hostility from that alleged event.

Based upon the foregoing, I find that the circumstantial evidence surrounding the City's relationship with Luongo supports a finding that his protected activity was a substantial or motivating factor in the City's failure to promote him to the position of captain prior to the expiration of the eligibility list on January 22, 2000.

By contrast, the City provided little evidence in support of a legitimate nondiscriminatory motive for its failure to promote Luongo to captain. Specifically, I find that the City failed to prove by a preponderance of the evidence on the entire record that Luongo would not have been promoted absent his protected conduct.

The record shows that between December 31, 1999, when the original promotions were announced, and January 10, 2000, when the promotional addendum was issued, two additional captains, fifteen additional lieutenants and twenty additional sergeants, for a total of thirty-seven additional candidates, were interviewed and approved for promotion. Despite Santiago's testimony that "surplus" candidates in other categories were interviewed in cases where no promotional vacancy existed at the time of the interview, no additional candidates for promotion to captain were interviewed in the event an additional budget vacancy arose.

When the promotional list was enlarged due to the identification of two additional captain vacancies, sometime between December 31, 1999, and January 10, 2000, Santiago directed that Rox and Colicelli be interviewed. Luongo was the next candidate on the



list. In the interim, between the first and second promotional memoranda, a conflict between Luongo and Santiago occurred in the business administrator's office; Luongo was never interviewed for promotion. I infer that the fact that Luongo was never interviewed suggests that, particularly after the conflict in the business administrator's office, Santiago had no intention of promoting Luongo even if a budgeted vacancy became available.

This conclusion is supported by the vague character of the director's testimony concerning the number of budgeted vacancies available for the position of captain:

Santiago: I believe it was somewhere 29 or 30. There was some discussion or I -- I mean we initially had 30, but there might have been only 29. As a matter of fact I'm not clear even now.

In fact, although the City apparently asserts that Luongo was not promoted because there was no available vacancy, the City never clearly established the number of budgeted vacancies which were available in January 2000. Therefore, the City never established that there was no budgeted vacancy available to which Luongo could have been promoted.

Coupled with these facts is the director's significant testimony on cross-examination, which bears repeating here, concerning his decision not to extend the eligibility list which was set to expire on January 22, 2000:

Santiago: I don't know the exact dates, but I was aware of the fact there was a new list going to be forthcoming as soon as this one expired.  
Q Because of that you didn't choose to extend the list?

A I choose not to extend it because at the time I had budget vacancies and also, of course, you had -- you had a new list coming. And obviously I take that into consideration. I want to see what a new list looks like (1T27) (emphasis added).

Timing is an important factor in assessing motivation and may give rise to an inference that a personnel action was taken in retaliation for protected activity. Bor. of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517 (¶17193 1986); Dennis Tp. Bd. of Ed., P.E.R.C. No. 86-69, 12 NJPER 16 (¶17005 1985); Downe Tp. Bd. of Ed., P.E.R.C. No. 86-66, 12 NJPER 3 (¶17002 1985).

The director's testimony clearly establishes his awareness that the then-current list was about to expire and that a new eligibility list was about to be issued by the Department of Personnel; a list on which Richard Luongo's name might not appear as an eligible candidate. A new eligibility list was in fact issued by the Department of Personnel in April 2000. I infer that Luongo was not interviewed as a possible candidate for promotion because Santiago was aware that the list was about to expire and that a new eligibility list would be issued, possibly eliminating Luongo as a candidate. I find that a suspicious timeline is illustrated by the decision not to interview Luongo as a candidate for promotion to captain, coupled with the director's admitted awareness of the impending expiration of the eligibility list on which Luongo's name was next in line for promotion.

The Charging Party also presents Luongo's testimony that the recommendation to close the investigation into Luongo's

automobile accident with a City vehicle was reversed. The eligibility list which is germane to Luongo's charge that he was not promoted due to protected activity expired on January 22, 2000. Disciplinary charges were not filed as a result of the accident until January 28, after that list had expired. The events surrounding the reversal of the recommendation to close the investigation, and the subsequent disciplinary charges, occurred after the eligibility list expired, and so do not appear to have affected Luongo's chances for promotion by January 22, 2000. However, I infer that the reversal represents another occasion upon which the City evidenced its hostility to Luongo due to his protected activity, constituting a violation of 5.4(a)1 of the Act.

#### REMEDY

The purpose of a remedial order in a(3) cases is, whenever possible, to place the affected employee into the position he or she would have been absent the employer's unlawful action. In a(3) cases where employers have refused to promote, the Commission has ordered the promotions, back-pay and other benefits. Willingboro Tp. Board of Education, P.E.R.C. No. 98-113, 24 NJPER 171, (¶29085 1998), aff'd and rem'd on remedy, 25 NJPER 322 (¶30138 1999) (June 17, 1999); Bloomfield Tp. and Pross, et. al., 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) (Commission ordered the charging party's promotion even though that limited promotional opportunities for other employees, because the specific promotional

opportunity would not have continued to exist had the employer not violated the Act).

Since Luongo is now retired, I cannot recommend that he be promoted to the position of captain; therefore, the remedy I recommend will not displace any of the employees who were promoted. See Bloomfield.

I recommend that Luongo receive back-pay from January 22, 2000, the date on which the eligibility list expired and the last date he could have been promoted to captain, until his date of retirement, at the rate of pay he would have earned had he been promoted, plus interest at the Court rate, pension and other benefits allowed or required by law.

I further recommend that the 5.4(a)1 violation be remedied by an appropriate posting.

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

#### CONCLUSIONS OF LAW

1. The City of Newark violated subsections 5.4a(3) and derivatively 5.4a(1) of the Act by failing to promote Richard Luongo to the position of police captain, and by filing disciplinary charges against him, because he exercised his rights under the Act.

2. The Board independently violated subsection 5.4a(1) of the Act by interfering with, restraining and coercing Luongo and other unit members because they exercised their rights under the Act.

RECOMMENDATIONS

I recommend the Commission ORDER:

A. That the City of Newark cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to promote Richard Luongo to the position of police captain because he exercised rights protected by the Act.

2. Engaging in conduct which has the tendency to interfere with, restrain or coerce employees from engaging in conduct protected by the Act, particularly by refusing to promote Richard Luongo to police captain because he exercised rights protected by the Act.

3. 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 failing and refusing to promote Richard Luongo to police captain before January 22, 2000, because he exercised rights protected by the Act.

B. That the City take the following action:

1. Pay Richard Luongo back-pay from January 22, 2000, until his retirement on June 1, 2000, at the rate of pay he would have earned had he been promoted to police captain, plus interest at the Court rate, pension and other benefits allowed or required by law.

2. 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.

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

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Patricia Taylor Todd  
Hearing Examiner

DATED: November 26, 2001  
Trenton, New Jersey

!!@GH0!!!@BT0!!!/120!!!@LN20!

**WE WILL NOT** interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by refusing to promote Richard Luongo to the position of police captain because he exercised rights protected by the Act.

**WE WILL NOT** engage in conduct which has the tendency to interfere with, restrain or coerce employees from engaging in conduct protected by the Act, particularly by refusing to promote Richard Luongo to police captain because he exercised rights protected by the Act.

**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 failing and refusing to promote Richard Luongo to police captain before January 22, 2000, because he exercised rights protected by the Act.

**WE WILL** pay Richard Luongo back-pay from January 22, 2000, until his retirement on June 1, 2000, at the rate of pay he would have earned had he been promoted to police captain, plus interest at the Court rate, pension and other benefits allowed or required by law.