

P.E.R.C. NO. 2000-82

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. CO-H-98-231

PBA LOCAL 205,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Hillsborough violated the New Jersey Employer-Employee Relations Act when it disciplined the president of PBA Local 205. The Commission concludes that the filing of disciplinary charges against the president alone had a tendency to interfere with the exercise of protected rights and discriminated against him in regard to a term and condition of employment based on his holding union office. The Commission concludes that the Township did not violate the Act when it initiated an investigation based on a police officer's complaint. The Commission further concludes that the Township did not violate the Act when it removed the PBA president from his supervisory position of corporal.

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

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. CO-H-98-231

HILLSBOROUGH POLICEMEN'S BENEVOLENT  
ASSOCIATION, LOCAL NO. 205,

Charging Party.

Appearances:

For the Respondent, Frank N. Yurasko, attorney

For the Charging Party, S.M. Bosco Associates, consultants  
(Simon M. Bosco, Ed.D., consultant)

DECISION

On December 23, 1997 and January 21, 1998, Hillsborough  
Policemen's Benevolent Association, Local No. 205 filed an unfair  
practice charge and amended charge against the Township of  
Hillsborough. The PBA alleges that the Township violated the New  
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,  
specifically 5.4a(1), (2), (3) and (5),<sup>1/</sup> when, as part of an

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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. (2) Dominating or  
interfering with the formation, existence or administration  
of any employee organization. (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. (5)

internal affairs probe focused on PBA President Trevor Oldenburg, it questioned PBA members and asked them to provide a written account of certain events at a PBA meeting; warned them not to discuss or give their statements to the PBA; removed Oldenburg from a corporal position; did not allow him representation during an investigatory interview; and initiated disciplinary action against him in retaliation for his activities as PBA president, primarily for a letter he wrote in that capacity.

On July 28, 1998, a Complaint and Notice of Hearing issued.<sup>2/</sup> On August 10, 1998, the Township filed a detailed Answer setting forth its reasons for the challenged actions and denying that its conduct violated the Act.

On February 25, May 3 and 5, 1999, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses, introduced exhibits, argued orally, and filed post-hearing briefs.<sup>3/</sup>

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1/ Footnote Continued From Previous Page

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/ The Complaint did not include an allegation that the employer violated the Act because it did not give Oldenburg enough time to find a representative to accompany him to an investigatory interview. See Hillsborough Tp., D.U.P. No. 98-34, 24 NJPER 253 (¶29120 1998).

3/ Before the hearing began and again at the commencement of testimony, the PBA moved for summary judgment. The motions were referred to and denied by the Hearing Examiner.

On October 26, 1999, the Hearing Examiner issued a report and recommended decision. H.E. No. 2000-2, 26 NJPER 1 (¶31000 1999). He concluded that the Township violated N.J.S.A. 34:13A-5.4a(1) and (3) by determining that Oldenburg had violated departmental rules and should be suspended because of a letter he sent as PBA president. However, the Hearing Examiner found that the Township did not violate the Act by conducting an internal affairs investigation into the source of the letter; restricting employees from discussing their statements with the PBA during the investigation; removing Oldenburg from his corporal position; or using the internal affairs procedure it did.

The Hearing Examiner recommended that the Township be ordered to cease and desist from its violations; withdraw disciplinary charges sustained after a hearing, and expunge references to the sustained charges from his record; withdraw any suspension imposed resulting from the charges; and make Oldenburg whole for any wages and benefits lost during any suspension.

On November 9, 1999, the Township filed exceptions. On November 17, the PBA filed a response asserting that the exceptions should be dismissed because they do not conform to N.J.A.C. 19:14-7.3(b), do not contain citations, and repeat arguments made to the Hearing Examiner. The PBA "cross-moved" for approval and enforcement of H.E. No. 2000-2.

The exceptions do not challenge any factual findings, but instead question whether the Hearing Examiner properly applied

case law. We find no ground to reject the exceptions based upon their form or brevity.

We adopt and incorporate the Hearing Examiner's findings of fact. We summarize the relevant facts here.

On Sunday, October 12, 1997, Officer Stephen Gonzalez investigated a motor vehicle accident in a supermarket parking lot and issued a summons to the mother of Joseph Yanicak, a police officer and PBA member in Montgomery Township, a municipality which borders Hillsborough.

Three times that same day, Yanicak telephoned Gonzalez about the accident. The record indicates that Yanicak was irate about his mother having been ticketed and threatened to give summonses to Gonzalez' relatives. Yanicak also telephoned a Hillsborough police sergeant about the incident.

On October 20, 1997, Hillsborough Police Sergeant Paul Kaminsky had a chance meeting with Yanicak who threatened that his PBA (Montgomery) would issue a ticket to Hillsborough PBA family members and officers for every dollar his mother was fined. Kaminsky cautioned Yanicak not to start a border war over the incident. Kaminsky also told Yanicak that many Hillsborough members did not support what Gonzalez had done.

At the PBA's October 21, 1997 meeting, many members were upset with what they thought was the manner in which Gonzalez handled the situation and felt that the incident made the entire local look bad. Derogatory comments and descriptions of Gonzalez

were made. A motion to send a letter of apology to the Montgomery PBA was approved. Officers then shouted out statements they wanted Oldenburg to put in the letter.

Oldenburg drafted the letter. He tried to reflect the PBA's sentiments but to tone down the members' characterizations of Gonzalez.

After receiving a copy of the letter, Gonzalez gave Chief Robert Gazaway a memorandum describing the incident and an internal affairs complaint he was making against Oldenburg alleging official misconduct. Gazaway responded by starting an internal affairs probe based on Gonzalez' complaint.

Interviews of officers and PBA members were conducted over the next several days. Gazaway concluded that Oldenburg had used his own words in the letter. He called Oldenburg into his office and told him he had lost faith and confidence in his ability to perform corporal duties and that he was removing him from those duties. After losing his corporal's rank, Oldenburg stepped down as PBA president. In late November 1997, the captain conducting a departmental investigation recommended to Gazaway that a number of charges be filed against Oldenburg.

On October 2, 1998, a departmental hearing officer upheld two charges against Oldenburg. He found that Oldenburg violated these rules:

5.2.1 - Standard of Conduct. Members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the Department into disrepute.

7.1.6.11 - Conduct unbecoming an employee in the public service.

No recommendation of a disciplinary penalty was made in the decision, but it is undisputed that the Township sought to suspend Oldenburg for as much as 30 days. However, Oldenburg invoked his right to appeal the discipline to the Superior Court, N.J.S.A. 40A:14-147 et seq., so no penalty had yet been imposed when the record closed.

In the absence of exceptions, we adopt the Hearing Examiner's conclusions that the Township did not violate the Act by initiating an investigation based on Gonzalez's complaint or by removing Oldenburg from his corporal assignment. As the Hearing Examiner found, the investigation was precipitated by Gonzalez's filing an internal affairs complaint against Oldenburg. Departmental rules require investigations of all allegations of misconduct. Under these facts, the Township had a legitimate business justification for initiating the investigation. Similarly, it had a legitimate business justification for removing Oldenburg from his supervisory position of corporal. The Hearing Examiner found that the chief needed to restore order in the Department, repair the chain of command, and place in positions of authority officers in whom he had faith to do the job. We agree that those reasons outweighed any interference with protected rights.

We reject the employer's exception that it did not violate 5.4a(1) or (3) when it disciplined Oldenburg. The

Township does not challenge the findings showing that the majority of the PBA members who attended the October 1997 meeting voted to send the letter of apology and outlined what it should say. The record includes the minutes of the meeting identifying the officers who made and seconded the motion to send the apology. Those officers were not disciplined. While the chief testified that the internal affairs investigation showed that the "words" used in the letter were Oldenburg's, the PBA president's references to Gonzalez were more temperate than descriptions used by other PBA members. While Oldenburg may have also believed that Gonzalez did not handle the incident properly, he did not take it upon himself to send the letter. He did so at the direction of the majority of the members who were present at the meeting. The message was the PBA's, but only the messenger was punished.

We agree with the Hearing Examiner that the filing of disciplinary charges against the PBA president alone had a tendency to interfere with the exercise of protected rights and discriminated against Oldenburg in regard to a term and condition of employment based on his holding union office. Absent his status as PBA president, Oldenburg would not have been singled out for discipline. We conclude that the employer had no operational reason for disciplining only Oldenburg, nor would it have imposed discipline absent his status as PBA president. Even if the contents of the letter are viewed as unprotected, Oldenburg did not take a leadership role in suggesting that the letter be



sent or in deciding what its contents would be. He reported to the PBA regular membership meeting about the Yanicak incident and the membership voted to send a letter of apology to the Montgomery PBA. Oldenburg used considerably more temperate language and sent the letter on behalf of the PBA. Under these circumstances, seeking to discipline Oldenburg as an employee violated N.J.S.A. 34:13A-5.4a(1) and (3). Compare Metropolitan Edison Co. v. NLRB, 460 U.S. 693 (1983) (imposing more severe discipline on union officials who did not take leadership role in lawful strike than on other striking employees is inherently destructive of protected rights because it discriminates solely on the basis of union status; disciplining union officials discriminatorily may deter employees from seeking union office); contrast Midwest Precision Castings Co. and Local 160, Leather Goods, Plastics and Novelty Workers Union, AFL-CIO, 244 NLRB No. 63, 102 LRRM 1074 (1979) (permissible to single out for greater discipline a union steward who actively led and directed an unauthorized, illegal work stoppage).

ORDER

The Township of Hillsborough is ordered to:

A. 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 singling out Trevor Oldenburg for discipline based upon his status as PBA president.

2. Discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by singling out Trevor Oldenburg for discipline based upon his status as PBA president.

B. Take this action:

1. Withdraw all disciplinary charges imposed against Trevor Oldenburg based on the October 2, 1998 department hearing officer report and expunge them from his record.


2. Lift any suspension imposed on Trevor Oldenburg based on the October 2, 1998 departmental hearing officer report and make Oldenburg whole for any resulting loss of pay, seniority and benefits.

3. 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.

4. Notify the Commission Chair 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  
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner Madonna abstained from consideration. None opposed.

DATED: April 27, 2000  
Trenton, New Jersey  
ISSUED: April 28, 2000

H.E. NO. 2000-2

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

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

Respondent,

-and-

Docket No. CO-H-98-231

PBA LOCAL 205,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Township of Hillsborough violated the New Jersey Employer-Employee Relations Act by imposing disciplinary charges and suspension on Trevor Oldenburg because of a letter he sent as PBA President. However, the Hearing Examiner found that the Township did not violate the Act by conducting an internal affairs investigation into the source of the letter; restricting employees from discussing their statements with the PBA during the investigation; removing Oldenburg from his corporal position and duties; or by the language contained in the internal affairs procedure.

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 Chair 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. 2000-2

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

In the Matter of

TOWNSHIP OF HILLSBOROUGH,

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PBA LOCAL 205,

Charging Party.

Appearances:

For the Respondent, Frank N. Yurasko, Esq.

For the Charging Party, S.M. Bosco Associates  
(Simon M. Bosco, Ed.D., labor consultant)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On December 23, 1997, the Hillsborough Policeman's Benevolent Association Local No. 205 (PBA), filed an unfair practice charge (C-1A), which was amended on January 21, 1998 (C-1B), with the New Jersey Public Employment Relations Commission alleging that the Township of Hillsborough violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A:5.4a(1), (2), (3) and (5).<sup>1/</sup> The charge and amendment

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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. (2) Dominating or

contained several counts. In the original charge, count one alleged that the Township refused to provide police officer/PBA President Trevor Oldenburg with sufficient time to have a union representative with him during a disciplinary interview. Count two alleges that the Township violated the Act by conducting an internal investigation of the PBA meeting of October 21, 1997, interrogating employees present at that meeting; ordering those employees to provide a written account of certain events at that meeting; and ordering those employees not to discuss or provide their statements to the PBA. Count three alleged that the Township discriminated against Oldenburg by removing him from a corporal position because of his activities as president of the PBA. Count four alleged the Township violated the Act by ordering employees not to speak or provide reports to the PBA regarding the internal investigation that was conducted by the police administration.

In the amended charge, count one alleged that on December 23, 1997, the Township violated the Act by initiating disciplinary

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1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization. (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. (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."

charges against Oldenburg for allegedly violating Department rules and regulations in retaliation for a letter he wrote as PBA president. Count two of the amended charge alleged the Township discriminated against Oldenburg by including in his disciplinary or internal affairs file a copy of a cover letter from the PBA's labor representative accompanying the instant charge to the Commission. Count three of the amended charge alleged that a Township regulation unlawfully restricts an employee's right to choose a representative to attend an internal affairs interview.

In its original charge the PBA sought a cease and desist order, reinstating Oldenburg's corporal authority, and presumably allowing employees to speak with PBA officials about their internal affairs interviews.

In its amended charge the PBA sought to have Oldenburg's alleged rule and regulation violations dismissed and his records expunged; removal of certain materials from Oldenburg's files, and to have any departmental regulation limiting an employees right to choose a representative declared void; and sought dismissal of any actions brought against Oldenburg resulting from the internal investigation.

On April 23, 1998, the Director of Unfair Practices issued a decision refusing to issue a complaint on count one of the original charge, but noted that a complaint would issue on all other allegations. Township of Hillsborough, D.U.P. No. 98-34, 24 NJPER 253 (¶29120 1999). A Complaint and Notice of Hearing was issued on the other allegations on July 28, 1998 (C-1).

The Township filed a lengthy answer on August 10, 1998 (C-2), detailing its defenses to the allegations. In sum, it denied that any of its actions violated the Act. That same day the PBA filed a motion for summary judgment which was referred to me for consideration. N.J.A.C. 19:14-4.8. Briefs on the motion were received by September 22, 1998. On November 18, 1998, I issued a letter decision denying the motion (C-3). Plenary hearings were held on February 25, and May 3 and 5, 1999.<sup>2/</sup> At the commencement of the hearing, the PBA renewed its motion for summary judgment which was again denied (1T15-1T20).

Both parties filed post hearing briefs by August 17, 1999. The Township filed a reply brief on September 10, 1999.<sup>3/</sup>

Based upon the entire record, I make the following:

#### FINDINGS OF FACT

1. Trevor Oldenburg and Steven Gonzalez are police officers employed by Hillsborough Township and are members of the negotiations unit represented by the PBA. Joseph Yanicak is a police officer employed by Montgomery Township which borders Hillsborough, and is a member of the Montgomery PBA.

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<sup>2/</sup> Transcripts will be referred to as 1T, 2T, and 3T respectively

<sup>3/</sup> The Township attached a copy of an arbitration decision to its reply brief. Since that decision was not presented for or admitted as evidence at hearing it was not considered in reaching this decision.



Prior to November 1997, Oldenburg was President of the Hillsborough PBA and held the rank of corporal which placed him in a position to occasionally supervise Gonzalez. Pursuant to the parties collective agreement (J-25), a corporal position is held for a limited time and is subject to the chief's discretion.

Article XXIX Section C of J-25 provides:

The Corporal, and administrative assignment, will be for a period of one (1) year. A Corporal can be relieved of his duties sooner by the Chief of Police.

2. On Sunday, October 12, 1997, Officer Gonzalez investigated a motor vehicle accident in a supermarket parking lot. Geraldine Yanicak, Officer Yanicak's mother, was involved in the accident. After conducting the investigation Officer Gonzalez issued Mrs. Yanicak a motor vehicle summons (J-24-1; J-24-8; J-24-9). Officer Yanicak told Sgt. Mikus of Hillsborough that his (Yanicak's) mother was at fault (J-24-8).

Later that same day Officer Yanicak telephoned Officer Gonzalez about the accident. Gonzalez explained what occurred, but said Yanicak was irate and threatened to give summonses to Gonzalez's relatives (J-21 p.4; J-24-1; J-24-9). Apparently, Officer Yanicak then spoke to Sgt. Mikus about the accident. Mikus supported Gonzalez's actions, but suggested Yanicak speak to Gonzalez again to see if the charges could be downgraded (J-24-8). Yanicak spoke to Gonzalez two more times later on October 12 and he (Yanicak) became more upset over the incident (J-21 p.4). Subsequently, their contact ceased (J-24-1 - J-24-9).

After contacting Sgt. Mikus, Yanicak called other Hillsborough officers to explain his unhappiness over his mother's summons. Some Montgomery officers became upset over the incident (J-24-8).

Sometime during the week of October 12, Sgt. Paul Kaminsky of Hillsborough overheard Officer Gonzalez tell other Hillsborough officers that Officer Yanicak had called him (Gonzalez) several times but that he (Gonzalez) would not return the messages. Although Kaminsky thought the summons to Mrs. Yanicak was appropriate, he suggested to Gonzalez that he return Yanicak's calls (J-24-3; 3T11).

On approximately October 20, 1997, Sgt. Kaminsky had a chance meeting with Officer Yanicak who expressed being upset because his mother had been issued a summons, and because neither Gonzalez nor Oldenburg had returned his telephone calls. Kaminsky apologized to Yanicak on behalf of the Hillsborough PBA, but Yanicak threatened that his PBA (Montgomery) would write as many tickets as possible to Hillsborough PBA family members and officers for every dollar his mother was fined. Kaminsky cautioned Yanicak not to start a border war over the incident, and Yanicak agreed to tell his PBA Local not to overreact (J-24-3; 3T12-3T13; 3T15-3T16). Kaminsky also told Yanicak that many Hillsborough members did not support what Gonzalez had done (J-24-3).

Although there may appear to be a discrepancy over whether Gonzalez spoke to Yanicak, I find that Gonzalez's failure to return

Yanicak's telephone calls occurred after their discussions on October 12. Since neither Gonzalez nor Yanicak testified at this hearing, I relied primarily on joint exhibits, and some of Kaminsky's testimony, to reconstruct the events. I credit statements from Officer Lewis (J-24-1), Sgt. Mikus (J-24-8), and Sgt. Merkler (J-24-9) that Gonzalez spoke to Officer Yanicak about the incident, but I also credit Sgt. Kaminsky's statement (J-24-3) and much of his testimony (3T9-3T16) about Gonzalez not returning Yanicak's messages. I believe those messages were left after Gonzalez's earlier conversations with Yanicak.

Officer/PBA President Oldenburg did not read the accident report involving Mrs. Yanicak's accident. In a recorded statement he gave on November 18, 1997, regarding the matter (J-8), however, Oldenburg said he believed, and knew other PBA members believed, that Gonzalez did exactly what he was required to do in issuing the summons to Mrs. Yanicak (J-8 pp 5-6; 11).

I do not credit those remarks. In a disciplinary hearing held on March 31, 1998, Oldenburg testified: "I just didn't feel a summons was necessary, but she was issued a verbal warning. She was advised that on the Accident Report that it would be labelled as she was at fault in the accident" (J-13, p.641). Based on that testimony, I do not find that Oldenburg believed that Gonzalez was required to issue a summons. Rather, I find Oldenburg believed Gonzalez could have just given Mrs. Yanicak a verbal warning and not issued a summons.

Officer Yanicak spoke to Oldenburg shortly after the accident and told him that when he tried to talk to Gonzalez about the incident he was treated disrespectfully (J-8 p.6). Oldenburg spoke to Gonzalez about the matter, but it is not clear what was said (J-8 p.9).

3. The Hillsborough PBA monthly meeting was held on October 21, 1997. Sgt. Kaminsky attended the beginning of the meeting and spoke to PBA President Oldenburg about the Yanicak incident. Kaminsky told Oldenburg about his conversation with Yanicak, the threat he (Yanicak) had made, and about Gonzalez's failure to return Yanicak's calls. Kaminsky suggested that he (Oldenburg) contact Montgomery's PBA or Yanicak and attempt to defuse the situation (1T41-1T43). Kaminsky also suggested the incident be discussed at the Hillsborough PBA meeting that night (1T41, 1T49). Oldenburg told Kaminsky he would discuss the matter at the meeting (J-24-3; 3T16-3T17).

Gonzalez was not present at the meeting on October 21 (J-24-1; J-24-2; 1T125-1T127; 1T131). Oldenburg discussed the Yanicak incident with the members present. Many members were upset with what they thought was the manner in which Gonzalez handled the incident, including what they thought was his failure to return telephone calls (1T30; 1T52; 2T34-2T35). They felt that the incident made the entire local look bad (1T59). The membership voted to send a letter of apology to the Montgomery PBA (1T54, 1T57, 2T9-2T10; J-26; R-1). Members began shouting out statements they

wanted Oldenburg to put in the letter, such as, make sure you let them know that he (Gonzalez) is not representative of all of us, that we don't all act that way (1T58; 2T13, 2T38). One member said, "make sure to let them know the guy is a real asshole" (1T58; 2T38). Other members asked that the letter contain some language saying "if there is anything we can do to help...let us know" (1T60). No one suggested that Gonzalez reconsider having issued the ticket or that he be influenced to not carry out his duties (2T14-2T15, 2T38-2T39). Although the members offered information to include in the letter, they did not dictate the letter to Oldenburg (2T38). He wrote the letter and chose the words himself (J-8 p.4-5, 8). The local president usually writes such letters and is not required to present them to the members for approval (2T13-2T14).

Later that day, Oldenburg, at home and off-duty, wrote and sent the following letter (J-1 or C-1A-1) to the Montgomery PBA (1T67).<sup>4/</sup>

It is with sorrow and embarrassment that I am writing this letter. As you are aware an incident has happened that involves one of your officers and one particular officer on our police department, a fellow PBA member. Most of us are aware of the honor code that is bestowed upon us when we become police officers, it is one that is stronger than any other co-worker can experience in any other profession. But at times this honor code is broken by a few fellow brothers. Unfortunately this has happened in our Local. A brother officer has shown his true colors and has broken this honor.

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<sup>4/</sup> Although the letter was addressed to the Montgomery PBA, it was actually mailed to Officer Yanicak (1T70).

As president of PBA Local #205, I am expressing my sincere apologies to Joe, and the Montgomery PBA. As you are aware in every group there are bad apples, and apparently we have uncovered one. PBA #205 would just like to express by way of this letter, that our one bad apple does not show a representation of our local, and hope that we can continue the brotherhood bond that most of us strive to make work.

If there is anything that we can do to help rectify this unfortunate incident, please let me or any of our true brothers know, and I can assure you that we will do anything we can do to help.

Once again on behalf of Hillsborough Twp. PBA Local #205, I express my sincere apology to Joe, and the entire Montgomery PBA.

Oldenburg did not believe J-1 would be made public (1T143), and, apparently, he did not intend to give a copy to Gonzalez. He (Oldenburg) attributed specific meanings to the terms "honor code", "bad apple", and "true brothers." He testified that "honor code" referred to the courtesies and respect shown between PBA members, such as returning telephone calls (1T61-1T62; 1T134; 1T142; J-8 p.8). He further testified that he did not intend it to mean refusing to charge another member or a member's relative with certain offenses (1T142), or that members or their relatives should be treated more favorably than other citizens (1T157-1T158).

I only partially credit Oldenburg's explanation of the meaning of "honor code." I believe he intended that term to include courtesies and respect shown between PBA members, but I find Oldenburg also intended the term to mean PBA members and their close relatives might be treated more favorably than other citizens and might not be charged with certain offenses in certain circumstances.

In his disciplinary hearing testimony on March 31, 1998, Oldenburg said:

Q Now, when you made the determination that you personally would not have written the ticket, was it also a factor in your mind that Mrs. Yanicak was Joe Yanicak's mother?

A. Are you asking if I was put in that situation, would that sway my decision?

Q. I guess that's the same question, yes.

A. I think in a minor parking lot accident like that, sure. We, as Police Officers, we honor PBA cards at times for various things. Certainly would not be the ultimate goal or determining factor. If I knew that and it was a serious accident or something, then I would do what I had to do, I would issue a summons. But if I knew that the party, I may not issue a summons.

I think in something like that, I would excuse myself from the situation where I may say, "I'm going to remove myself" and I could tell both the parties that "If they wished to sign a complaint against each other."

I don't know. Again, it would depend on the situation. I wasn't there, but that's probably what I may do.

Q. Probably what you would have done if you were there?

A. Yes.

Q. And that would have been because, one, it was a private parking lot?

A. Correct.

Q. Two, it was a minor fender bender?

A. Right. With no injuries.

Q. No injuries. And you didn't witness it?

A. Correct.

Q. And number four, perhaps you would have taken into account who Mrs. Yanicak was?

A. I may have.

Q. Would you have also taken into account, then, perhaps who Tammy Pinel was?

A. Sure.

Q. Is that the kind of thing that Police Officers do on a regular basis?

A. Sure.

Q. That you do on a regular basis?

A. Yes, sir.

Q. If you stop somebody in a situation where it's discretionary whether to issue a ticket or not, does the driver's character have something to do with it?

A. I think they use the word "totality of the circumstances." I think everything comes into play.

Yes, driver's character, statements, everything would, that's how I ultimately base my decision on the entire, again, using the word totality of the circumstances.

Q. For example, if the driver's a local person as opposed to a person that's not local, does that ever come into play?

A. Sure. Again, these would be, for something minor, that may have a bearing on my decision.

Q. Have you ever been instructed that you have to issue a ticket to everybody?

A. No.

Q. Is there any policy that you were familiar with at the time of this accident that would have required you or Officer Gonzalez to



issue a ticket in that circumstance?

A. Not that I'm aware of.

Q. So one of the things you could have done and what you would have probably done is tell the two different parties that they could issue tickets against each other and how to go about doing that?

A. Yes.

Q. Is that frequently what's done when you investigate an accident where you haven't actually witnessed it?

A. Yes. I would say -- the majority of the accidents we do not witness, it's based on our investigation.

But a good example would be when you have two parties that are giving totally conflicting statements; one says he was doing this and the other party states that she, he or she was doing that. And I can't come up with a determination, or I may just again remove myself and have both parties sign the complaint. Because that is an option that we can do.

(J-13 p.643 line 7 - p.646 line 22)

That testimony demonstrates that being the relative of a PBA member might sway Oldenburg's exercise of discretion in carrying out his duties. More significantly, his testimony that "We, as Police Officers, we honor PBA cards at times for various things" (J-13, p.643 lines 15-16), shows that Oldenburg's use of the term "honor code" is related to honoring PBA cards which, I believe, includes the possibility that he might treat PBA card holders more favorably when possible.

Oldenburg used the term "bad apple" in reference to Gonzalez to represent a toned down version of the word "asshole"

that the membership had called Gonzalez as a result of the incident. Oldenburg did not want to include profanity in his letter (1T65; 1T133-1T134; J-8 pp. 9 & 10). Finally, Oldenburg could not explain what he meant by the phrase "true brothers" (J-8 p.10).

Officer Kenneth Pryor, the PBA's vice president at the time, and now its president, doubted he would have referred to an honor code, or a bad apple (2T47).

4. On or about October 24, 1997, Officer Pryor told Gonzalez that the Hillsborough PBA members had decided to send a letter to the Montgomery PBA to calm feelings due to the Yanicak matter. Pryor acknowledged that the letter "kind of" demeaned Gonzalez, and Gonzalez asked for a copy of the letter. Pryor told him to speak to Oldenburg (J-21 p.6).

On October 27, 1997, Gonzalez asked Oldenburg for a copy of the letter (J-1) but he did not have a copy at the time and told Gonzalez to get one from Officer Yanicak (J-8 p.7, J-21 p.7). Then, in an irate manner, Oldenburg told Gonzalez he had been taking a lot of heat regarding the matter (J-21 p.7). On October 31, 1997, Gonzalez made a written request for a "copy" of the letter (J-2). Subsequently, Oldenburg found a copy of J-1 and placed it in Gonzalez' work mail box on or about November 13, 1997 (J-8 p.7). Oldenburg attempted to talk to Gonzalez about J-1 on November 13, but Gonzalez would not speak to him (J-8 p.8). Later on November 13 Gonzalez showed the letter to Sgt. Kaminsky who felt the wording was harsh and improper (3T18; J-21 p.10).

Because of J-1, Gonzalez, still on November 13, 1997, went to see Chief Robert Gazaway about the incident. He gave Gazaway a memorandum explaining the incident along with his (Gonzalez') internal affairs complaint filed against Oldenburg alleging official misconduct (J-19). Chief Gazaway's initial reaction was concern over two issues, 1) how would J-1 impact on the public, and 2) how would it impact on the operation of his Department (2T62).

Gazaway believed that the public's perception of J-1 would be that Oldenburg and the PBA were unhappy that Gonzalez issued the Yanicak summons. He further believed the language used in J-1 was unethical, and destroyed the Department's high standards. Gazaway interpreted the term "honor code" to mean that you don't write a fellow officer a summons (2T62-2T66).

With respect to its impact on the Department, Gazaway believed that for a corporal to write those words about someone he supervised was improper and ineffective communication. He could not imagine how Gonzalez could take orders from Oldenburg again. Gazaway further believed that Department rules and regulations were violated because the letter damaged the Department's chain of command (2T66-2T67). I credit his testimony. There was no contrary evidence.

Although J-1 had not been made public by November 13, 1997, Gazaway explained:

Well, based on my years of experience as a police officer, ... I felt there was a very good likelihood that it would eventually become public. And even if it didn't, I don't think my

job as chief of police is to put something that I feel is wrong aside and hope that it never becomes public (2T63-9 - 2T63-14).

Gazaway also explained his perception of J-1:

My perception of that letter, anyone, without knowing the circumstances, I feel that anyone who was -- the officer, a fellow officer and certainly a person who was a supervisor, to write a letter with those type of remarks about a fellow officer for any reason was wrong. And it certainly violated the code of ethics of our department. It violated the rules and regulations. And knowing the circumstances behind the letter, that in fact the root of this was a summons issued to a relative of a fellow officer, regardless of what the intent is, the face value of that letter spoke volumes. And that the face value in my opinion spoke that hey, we're unhappy that a ticket was issued.

As a result of Gonzalez's formal complaint, Gazaway, on November 13, notified Gonzalez that he (Gazaway) had initiated an internal affairs investigation (J-20). That same day Gazaway directed Capt. Roscoe to conduct the investigation and first find out who actually wrote the letter. Chief Gazaway realized Capt. Roscoe would be investigating what occurred at a PBA meeting and he (Gazaway) sought to limit the scope of the investigation. He said:

I believe what we did, I directed Capt. Roscoe to first find out who in fact wrote the letter. I realized that I was in an area of great concern. I truly believe that PBA business should normally be private. I have no interest in what goes on in the PBA. And I talked to Capt. Roscoe about that and I sa[id] to gauge your investigation accordingly, limit your contacts [to] who you have to talk to, also limit the scope of your inquiry to the fact of what happened at the PBA meeting that resulted in the letter being issued.

My concern was this, the PBA sat there at the meeting and word for word turned around and

directed the officers to write and sign or was this something that he took it upon himself to do. And that was the scope of what I wanted the captain to do, when it came to speaking to the officers in regard to the PBA meeting.  
[2T67-16 - 2T68-6].

I credit the Chief's testimony. He was a trustworthy witness, and there was no evidence to contradict his expressed concern for PBA privacy.

On November 14, 1997, Capt. Roscoe interviewed Officer Gonzalez regarding the entire incident and recorded the interview (J-21). That same day Officer Lewis (J-24-1), Corporal Turner (J-24-2), and Sgt. Kaminsky (J-24-3), submitted reports of their knowledge of the Gonzalez-Yanicak incident to Capt. Roscoe. Gonzalez told Roscoe he found the reference in J-1 to "honor code", "true colors" and "bad apple" offensive because they portrayed him as a traitor to the organization which could have an ostracizing effect (J-21 p.14). He thought the "honor code" reference in J-1 meant he should not have issued Mrs. Yanicak a ticket (J-21 p.15), and he told Roscoe that officers Oldenburg and Pryor were only having "necessary" conversation with him since the incident (J-21 p.17). Roscoe ordered Gonzalez not to discuss the matter with anyone in the Department until the investigation was completed (J-21 p.18).

The reports submitted by Officer Lewis and Corporal Turner did not provide any new information, but Lewis commented that he thought the contents of J-1 were harsh (J-24-1). Sgt. Kaminsky wrote in his report that J-1 was disturbing and harsh, that he told

Gonzalez he did not agree with its content, that Gonzalez had every right to be upset over it, and that he [Gonzalez] acted "correctly and appropriately" (J-24-3).

5. On November 17, 1997, Officer Hoelzel, and Sgts. Shulack and Mikus submitted reports to Capt. Roscoe regarding the Gonzalez matter (J-24-6; J-24-7; and J-24-8, respectively). Hoelzel noted that the content of J-1 was not discussed at the PBA meeting. Sgt. Shulack said that numerous officers in the Department thought Gonzalez acted improperly by issuing the Yanicak summons, and they felt hostility toward him for creating the conflict which they thought could have been avoided.

On November 18, 1997, Oldenburg was interviewed by Capt. Roscoe as part of the internal affairs investigation. Oldenburg signed a pre-interview advisement form (J-4) prior to the interview. Roscoe told Oldenburg that neither he nor the Department was interested "in anything that is said at a PBA meeting - other than...when it directly is related to an investigation about misconduct of one of our officers...." (J-8 p.3). Oldenburg explained that while the membership provided input for the letter, he wrote it. Oldenburg told Roscoe that he agreed with Gonzalez' issuing the summons (J-8 p.11), and that he thought Gonzalez did what he was required to do, but the membership felt he handled Officer Yanicak in an unprofessional or disrespectful manner. While I credit Oldenburg's explanation for why the membership wanted a letter to be sent to Montgomery, I do not credit his statement that

he agreed with Gonzalez issuing the ticket. His testimony in J-13 as discussed above demonstrates he was opposed to issuing a summons. Oldenburg also explained what he meant by the terms used in the letter. He spoke to Gonzalez several times regarding the incident yet could not recall whether he (Oldenburg) used the word "disrespectful." Oldenburg concluded his remarks to Roscoe saying that J-1 was not intended to chastise Gonzalez for issuing the summons. It was meant, he said, to apologize to Officer Yanicak and to resolve the differences between the two PBAs over the incident (J-8 pp 11-12). Since Oldenburg did not originally intend to give Gonzalez a copy of J-1, I credit his explanation that J-1 was not written to chastise (i.e., discipline) Gonzalez for issuing the ticket. I believe that the primary reason for the letter was to placate Yanicak and the Montgomery PBA, but Oldenburg sought to achieve that goal by denigrating Gonzalez for the lawful performance of his duties.

During the conduct of Oldenburg's interview the Department received a copy of a letter dated November 18, 1999 and addressed to Oldenburg from Robert Dato, Gonzalez's private attorney (J-3). Chief Gazaway saw the letter while Oldenburg was being interviewed by Capt. Roscoe and gave it to Roscoe at the conclusion of the interview (1T73). In J-3, Dato warned Oldenburg that civil litigation may be pursued as a result of J-1, and told him that Gonzalez would not participate in any PBA matters until the internal affairs investigation was completed.

Sometime on November 18, Sergeant Jaczuk submitted his report on the Gonzalez matter to Capt. Roscoe (J-24-4). Jaczuk said the content of J-1 was not what he expected, he did not agree with it, and would not have voted to send a letter with that content.

Gazaway knew that the corporal position was limited to one year, and that pursuant to the Department's rules and regulations and the PBA contract he had the right to remove an officer from that position at any time (2T71). Since he also knew that Oldenburg sometimes supervised Gonzalez, and since he (Gazaway) considered the J-1 language improper, he did not believe that Gonzalez could continue to take orders from Oldenburg (2T62; 2T66).

Consequently, by about 7:00 p.m. on November 18, after Oldenburg's interview, and the receipt of reports from other officers, Gazaway concluded that Oldenburg had used his own words in J-1 (2T70). He called Oldenburg into his office and told him he had lost faith and confidence in his ability to perform corporal duties and told him he was removed from his corporal position (2T71). Gazaway issued Oldenburg a written memorandum relieving him of his corporal duties (J-5), and notified the Department's superior officers (J-6).

Gazaway succinctly explained why he quickly removed Oldenburg from performing corporal duties:

I lost faith in his ability to operate as a corporal and to supervise. I, therefore, even though the investigation was not complete, I was satisfied at that point, regardless of what I knew, I did not have faith in him acting as a corporal.  
(3T40).



I credit Gazaway's testimony that he had lost faith in Oldenburg's ability to perform corporal supervisory duties.<sup>5/</sup>

6. In late November 1997, near the end of Roscoe's investigation, he recommended to Gazaway that a number of charges be filed against Oldenburg. After they discussed what had happened, Gazaway and Roscoe agreed upon certain charges (2T74; 3T78). On November 25, 1997, Roscoe gave Gazaway his report on the Gonzalez incident (J-9). He recommended Oldenburg be charged with violating the following Department Rules and Regulations.

4.5.2.15 - Is able to maintain effective working relationships with officials, department heads, employees and the public, and the ability to communicate effectively and tactfully, and in a professional manner with officials, department heads, employees and the public.

5.2.1 - Standard of Conduct. Members and employees shall conduct their private and professional lives in such a manner as to avoid bringing the Department into disrepute.

5.4.11 - Criticism of Official Acts or Orders. Members and employees shall not criticize the official actions, instructions, or orders of any Department member in a manner which is defamatory, obscene, unlawful, or which tends to impair the efficient operation of the Department.

7.1.6.11 - Conduct unbecoming an employee in the public service.

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<sup>5/</sup> In reliance upon facts in Finding No. 10 herein, the Charging Party, in its post hearing brief, argued that Gazaway's explanation for removing Oldenburg's corporal duties was pretextual. I reject that argument. I found Gazaway to be an exceptionally reliable witness with no personal animus toward Oldenburg or the PBA. See further discussion in the Analysis.

Roscoe's findings in J-9 with respect to the above regulations follow:

1. 4.5.2.15 - As a result of his actions, Officer Oldenburg, while assigned to the position of Corporal, lost his ability to maintain an effective working relationship with a fellow employee and did not communicate effectively, tactfully, and in a professional manner when he composed, signed and sent the letter in question.
  2. 5.2.1 - As a result of his conduct in this manner Officer Oldenburg has brought the Department into disrepute. He has breached the public faith and trust that a Police Officer swears to uphold in that he has raised considerable doubt in regard to his ability to make decisions and enforce the law without favor and in a fair and just manner.
  3. 5.4.11 - By way of his conduct, Officer Oldenburg criticized the official actions of a Department member in a defamatory manner which personally damaged the reputation of a Department member and seriously impaired the efficient operation of the Department.
  4. 7.1.6.11 - Considering the circumstances surrounding the letter in question, which was composed, signed and sent by Officer Oldenburg, it is apparent that in the letter Officer Oldenburg is stating that when Officer Gonzalez performed his duty in a proper manner and issued a traffic summons to a relative of a fellow Officer, he broke an "honor code" which reportedly exists among Police Officers and as a result should be considered a "bad apple". The message conveyed in this letter, regardless of the explanation offered by Officer Oldenburg, clearly constitutes conduct unbecoming an employee in the public service.
7. On November 26, 1997, Capt. Roscoe sent the following memorandum to officers Lewis and Hoelzel; Corporal Tulner; sergeants Kaminsky, Merkler, Mikus, Kubisch, Shulack and Joczak; and, Lieutenant Genzel.

The Interoffice Memo I requested from you regarding the current internal affairs investigation is confidential. It is not to be discussed or released to anyone.

Anyone requesting a copy of your memo should be directed to me.  
(J-24-11).

On December 5, 1997, Attorney Robert Dato sent Oldenburg a letter (CP-1) as a follow up to his (Dato's) letter of November 18 (J-3). In CP-1, Dato wrote:

I make reference herein to my letter of November 18th, 1997, to which there has been no response. I have been instructed by my client to put this matter into suit. I trust that you have decided that my letter was not worthy of a response and under such circumstances, unless I hear from your office or PBA Counsel, we will proceed to litigate.

A copy of CP-1 was sent to Captain Roscoe.

By cover letter of December 19, 1997 (C-1B-2), the Charging Party sent the instant unfair practice charge to the Commission's Director of Unfair Practices resulting in the official filing of the charge on December 23, 1997. The cover letter noted the enclosed charge and that the Charging Party had provided proof of service to the Township.<sup>6/</sup>

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<sup>6/</sup> Exhibit C-1B-2 states:

Pursuant to regulations, enclosed herewith please find an original plus nine copies of an Unfair Practice Charge filed on behalf of the above cited PBA.

In compliance with said regulations, please accept this

Footnote Continued on Next Page

On December 24, 1997, Dato sent Oldenburg another letter (CP-2) which was also copied to Capt. Roscoe. CP-2 provides:

We have heard from no one in regard to previous communications and under such circumstances we have concluded that you are inviting litigation. I find it extraordinary that your PBA is going to permit this matter to go "public". As a PBA attorney and involved with law enforcement for most of my career, as an attorney, I respectfully suggest that once this lawsuit is initiated and the press become aware of the facts of this matter (as you know lawsuits are a matter of public record) all of us connected to law enforcement will to some degree suffer. Your refusal to even extend the courtesy of a response suggests that you wish to publicly debate the issue as to whether family members of police officers should be preferentially treated. We will be filing our Complaint.

8. Between January 16 and 21, 1998, newspapers covering the Hillsborough/Montgomery area published Oldenburg's letter, J-1, and printed several articles and/or editorials regarding the Yanicak/Gonzalez incident (C-2B-A, C-2B-B, C-2B-C, C-2B-D, C-2B-E). Every article referred to the use of the term "honor code" in J-1, some also referred to use of the term "bad apple", and in several articles a question was raised about the meaning of those terms.

9. In March and July 1998, hearings were conducted regarding the disciplinary charges filed against Oldenburg. The

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6/ Footnote Continued From Previous Page

letter as Proof of Service. An exact copy of said charges and attachments have been forwarded via regular U.S. Mail to John Middleton, Business Administrator of the Township of Hillsborough.

Should you have any questions, please contact my office.

hearing officer issued a decision on October 2, 1998 (J-14), upholding the 5.2.1 and 7.1.6.11 charges, but dismissing the two other charges. The hearing officer dismissed the 4.5.2.15 charge, concluding that the evidence presented before him did not prove that J-1 damaged the work relationship between Oldenburg and other employees. In discussing the 5.2.1 charge the hearing officer found that J-1 excoriated Gonzalez's professional judgment and personal character. In dismissing the 5.4.11 charge the hearing officer said J-1 did not "specifically criticize Gonzalez's official action", therefore, he could not find a violation of that charge. Finally, the hearing officer found that J-1 was conduct unbecoming an employee therefore violating 7.1.6.11.

10. In early 1996 Officer Gonzalez told Chief Gazaway that he thought he was being treated improperly by a particular sergeant based upon an improper motive. Gonzalez explained that in a briefing in early 1995 the sergeant made a racially insensitive remark that offended him, and that since the sergeant had been strict with him, he (Gonzalez) wondered about the sergeant's motivation.

Gazaway questioned the sergeant who recalled making the particular remark but explained that he intended no offense and did not realize he offended Gonzalez. The sergeant apologized to Gonzalez and Gazaway for his remark. Gonzalez notified Gazaway in writing that he was satisfied with the apology and that he wanted nothing else done regarding the matter. Since the sergeant readily

admitted making the remark and apologized for it, which Gonzalez accepted, Gazaway decided to only issue the sergeant a low level-oral-reprimand (3T35-3T39).

11. The Hillsborough Police Department has a police management manual which contains the Department's internal affairs policies and procedures. Those policies and procedures are explained in General Order 97-45 issued in October 1997 (C-2A-A), and in chapter five of the manual (C-2A-B).

In July 1997, Chief Gazaway decided that policies and procedures concerning internal affairs complaints and investigations needed to be updated. He created a committee to address the matter with someone from each rank in the Department. Pursuant to a memorandum dated July 23, 1997 (C-2B-H), Gazaway gave President Oldenburg the opportunity to appoint one committee member. On August 8, 1997, the committee member selected by Oldenburg, Detective Corporal John Sheridan, sent Capt. Roscoe a memorandum (C-2B-K) suggesting the proposed general order include: "who will be allowed to attend the interview session i.e. union representative". As a result of that memorandum, the committee recommended the following language:

The officer may choose an active member of P.B.A. Local 205 employed by Hillsborough Township to attend the interview session.

The Chief accepted that recommendation and the cited wording was included in General Order 97-45 (C-2A-A) at Section III(F)(7) as follows:

7. Interviewing the subject officer
  - a. The Internal Affairs Investigator shall schedule an interview with the officer.
  - b. The officer may choose an active member of P.B.A. Local 205 employed by Hillsborough Township to attend the interview session.
    - (1) In investigations of criminal allegations, it may be inappropriate for a union representative to be present. However, the officer shall be given the opportunity to consult with a union representative.

The General Order also provides the following pertinent language at C-2A-A, Section III (A) (2):

- a. The Internal Affairs Unit is responsible for the investigation and review of all allegations of misconduct by members of this Department.
  1. Misconduct is defined as:
    - a. Commission of a crime or an offense; or,
    - b. Violation of Departmental procedures and/or rules and regulations; or,
    - c. Conduct which adversely reflects upon the officer or the Department.

Both the General Order and manual require that internal affairs investigations remain confidential.

1. The progress of internal affairs investigations and all supporting materials are considered confidential information. (C-2A-A, Section III (H) (1))

12. Officer Oldenburg received very good evaluations and several commendations in 1996, 1997 and 1998 (J-15, J-16, J-17). He also received the "Top Cop Award" from Chief Gazaway in 1998 (J-18).

ANALYSIS

Public employees and their labor organizations have a free speech right of communication. See New Jersey Department of Corrections, P.E.R.C. No. 97-145, 23 NJPER 388 (¶28176 1997) adopting H.E. No. 97-26, 23 NJPER 221, 223 (¶28106 1997); Jackson Tp., P.E.R.C. No. 88-14, 14 NJPER 405 (¶19160 1988) adopting H.E. No. 88-49, 14 NJPER 293, 304 (¶19109 1988). Correspondence between labor organizations is one form of protected communication. If that was the only inquiry here--as the Charging Party seems to suggest in its post-hearing brief--it might be simple to find a violation. After all, J-1 was such correspondence and led directly to the internal investigation, and Oldenburg's subsequent loss of title and the imposition of disciplinary charges. But the law is not usually applied in so strict a vacuum. Generally, it is more judicious to apply the law only after having considered all the facts. In so doing, the trier of fact most often must then balance the application of the law to the facts to achieve a just result. In labor-management cases, the trier of fact must also balance the rights of a labor organization with the obligations of a public employer to deliver its governmental responsibilities. The courts of this state and the Commission have frequently used such balancing techniques in deciding public sector labor cases. See, Local 195, IFPTE v. State, 88 N.J. 393 (1982); Woodstown-Pilesgrove Reg. H.S. Bd. Ed. v. Woodstown-Pilesgrove Reg. Ed. Assn., 81 N.J. 582 (1980); Fairview Free Public Library, P.E.R.C. No. 99-47, 25 NJPER 20



(¶30007 1998); Trenton State College, P.E.R.C. No. 88-19, 13 NJPER 720 (¶18269 1987).

To understand the implications that balancing has here, one needs to understand that this case is not just about Oldenburg's and the PBA's right to conduct union business free of employer involvement. It is also about the Township's right, indeed their obligation, to maintain order, proper supervision, and minimize conflict within its police force; to engender public trust; and to ensure the neutral enforcement of the law.

Having considered all of the facts in this case I have struck a balance amongst those rights from which I find that the Township did not violate the Act by the conduct of its internal investigation regarding J-1, including the questioning of employees about what was said leading to J-1 or by restricting employee communication with the PBA during the conduct of the investigation; nor did it violate the Act by removing Oldenburg's corporal position. However, despite finding an absence of personal animus by either Roscoe or Gazaway I, nevertheless, find that the Township violated the Act by charging Oldenburg with violating Sections 5.2.1 and 7.1.6.11 of the Departmental rules and regulations for issuing J-1.

#### The Internal Investigation

In counts two and four of the original charge, the PBA alleged the Township violated 5.4a(1) and (2) of the Act by conducting the internal investigation of the PBA meeting of October

21, 1997 that led to the issuance of J-1. Both of those provisions of the Act prohibit interference by a public employer.

A public employer independently violates 5.4a(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. [emphasis added].  
Id. at 422-423.

In N.J. Sports and Exposition Authority, the Commission restated the a(1) standard, holding:

It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or to coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification. [Id. at 551 n. 1] [Emphasis Added].

In determining whether an employer has violated 5.4a(1), the Commission in Fairview Free Public Library recently held:

[W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees.... If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act. [citation omitted]  
25 NJPER at 21.

In Atlantic Community College, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission discussed the standards for a 5.4a(2) violation. It noted that 5.4a(2) prohibits employer domination or interference with the formation, existence or administration of an employee organization, then explained that:

Domination exists when the organization is directed by the employer, rather than the employees....Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity. 12 NJPER at 765.

The Commission has held that the type of activity prohibited by 5.4a(2) must be "pervasive employer control or manipulation of the employee organization itself...." North Brunswick Twp. Bd. Ed., P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

The PBA made several arguments in its post-hearing brief to support its claim that the Township violated the Act by conducting the internal investigation, interviewing officers about what

occurred at the PBA meeting, requiring statements of the same, and ordering officers not to discuss the matter with the PBA. It argued that the investigation "created or could have reasonably created internal turmoil and conflict within the PBA", and that the prohibition against discussing their statements with PBA representatives was overly broad, restrictive, had no legitimate business purpose and interfered with the PBA's ability to conduct union business. In one of its closing remarks the PBA argued that the content of J-1 had nothing to do with the Township.

The PBA relied upon several cases to support its arguments. Rutgers University, P.E.R.C. No. 96-88, 22 NJPER 247 (¶27130 1996); County of Sussex, P.E.R.C. No. 95-33, 20 NJPER 432 (¶25222 1994); Orange Bd. Ed., P.E.R.C. No. 94-124, 20 NJPER 287 (¶25146 1994); and Atlantic City Bd. Ed., H.E. No. 98-5, 23 NJPER 580 (¶28288 1997), adopted P.E.R.C. No. 98-119, 24 NJPER 209 (¶29099 1998).

The PBA's arguments and cases are not persuasive. The primary issue in the a(1) allegations regarding the investigation is not whether the Township's investigation tended to interfere, of course it did. The first legal issue is whether the Township's actions lacked a legitimate and substantial business justification. N.J. Sports and Exposition Authority. The second is whether any legitimate business justification for the Township's actions outweighs the tendency of that action to interfere with employee rights. Fairview. If there was no legitimate justification, and/or

it did not outweigh the tendency to interfere, there was a violation of the Act. If the Township met these standards, however, its actions were lawful.

The PBA has apparently taken the position that since Oldenburg prepared J-1 on his own time, in his own home and sent it to Yanicak who was not even a Hillsborough employee it had nothing to do with the Township and, therefore, the investigation, etc., was not legitimate. But that position does not consider the totality of the evidence nor balance the competing interests of the parties. N.J. College of Medicine and Dentistry.

The investigation was not launched by Gazaway sua sponte. The investigation was precipitated by Gonzalez filing a formal internal affairs complaint against Oldenburg. Once Gazaway was confronted with that complaint he was legitimately obligated to investigate whether "misconduct," officially defined as conduct adversely reflecting upon the officer or Department, and/or as violations of Departmental rules, regulations or procedures, had occurred.

General Order 97-45 (C-2A-A) provides that the Internal Affairs Unit is responsible for investigating all allegations of misconduct by Department members including conduct adversely reflecting upon an officer or the Department which was the type of misconduct Gonzalez alleged in his complaint (J-19). The General Order further provided that materials gathered through internal affairs investigations were confidential. Without considering any

other evidence, the requirements of the General Order, in conjunction with Gonzalez' complaint, demonstrate that the Township had a legitimate, if not mandatory, business reason for conducting the investigation and for directing the officers not to reveal the information to the PBA in order to prevent tainting the investigation.

Reliance on Gonzalez' complaint as a basis for the investigation becomes more significant absent evidence that the complaint was handled differently than any other internal affairs complaint. The PBA argued that the way in which the sergeant was treated in Gonzalez' 1996 incident was better than the way Oldenburg was treated here shows disparate treatment. In the 1996 incident, however, Gonzalez did not file an internal affairs complaint. Rather, he accepted the sergeant's apology, thus, there was no reason there to conduct an investigation.

But it was not just Gonzalez's complaint that raised Gazaway's concern. Having seen J-1, and having learned about Gonzalez's intent to pursue a lawsuit against Oldenburg, it was reasonable, if not patently obvious, that Gazaway would be concerned about the impact of J-1 on his Department. Similarly, since one could infer from the language in J-1 that a "code of honor" existed as to how friends and relatives of police officers might be treated, it was reasonable for Gazaway to be concerned about how J-1 may be perceived by the public. I find the substantial business reasons discussed above compelled Gazaway to conduct the investigation

which, under these circumstances, far outweighed the tendency of the investigation to interfere with employee rights. Fairview. Consequently, the 5.4a(1) allegation regarding the investigation should be dismissed.

The elements of a 5.4a(2) violation were not established. The investigation, the restriction on employee communication with the PBA regarding the investigation, and even Oldenburg's resignation as PBA president, were not evidence of domination. The Township was not attempting to direct the PBA, nor was it a(2) interference because the Township was not attempting to control or manipulate the organization itself. Atlantic Community College; North Brunswick.

Rather, the evidence shows that Gazaway took action to limit the scope of the investigation, and there was no evidence that he or Roscoe sought Oldenburg's removal as PBA president. Therefore, I find there was no intent or attempt to dominate or interfere with the existence or administration of the PBA. Consequently, the 5.4a(2) allegation should be dismissed.

The cases the PBA relied upon were only marginally relevant. None of them involved a 5.4a(2) allegation. Rutgers University concerned the ability to obtain certain documents through discovery. In considering whether certain internal union information was discoverable, the Commission addressed the union's argument that the information was protected by a union representation privilege. The Commission explained that each

challenge to an employers actions under the 5.4a(2) protection "...depends on the particular circumstances of that case" 22 NJPER at 248, and it emphasized the need to balance the parties interests. Although the PBA relied upon Rutgers to prove a violation, I believe that Rutgers emphasis on considering the particular circumstances of each case supports a finding here that the Township had to investigate Gonzalez's complaint, address the conflict between two officers, and reassure the public of its equal application of the law. In sum, the Township had a legitimate and substantial basis to conduct the investigation.

In Sussex County, Orange Bd. Ed., and Atlantic City Bd. Ed., the Commission found a(1) interference violations. In Sussex, the Commission found the County interfered with a nurse's right to speak to co-workers regarding her suspension. The County sought to prevent the employee from discussing her employment in front of patients. The Commission found on the facts there that the employee had the right to discuss the matter in the nurses station area. The PBA argues that Sussex supports the right of the police officers to discuss the information they gave during the investigation regarding J-1. I do not agree. Sussex supports the imposition of reasonable restrictions. In Sussex, the Commission said:

We agree with the County that reasonable time and place restrictions may be imposed [on] the freedom of employees to discuss their employment conditions when an employer can demonstrate legitimate business needs justifying such restrictions. 20 NJPER at 434.



Here, the Township had a legitimate need to restrict conversation about an ongoing internal affairs investigation which could have resulted in civil or criminal allegations over whether officers were applying the law fairly to all citizens. The restriction was reasonable under the circumstances and there was no evidence that anyone other than Oldenburg was at risk due to the restrictions.<sup>7/</sup>

In Orange Bd. Ed., a principal interfered with the association by calling a meeting to criticize the union leadership. The Commission found no legitimate business justification for making those remarks at a meeting where attendance was required. In contrast, here there was a legitimate basis for the investigation and for maintaining confidentiality, consistent with all other internal affairs investigations.

Finally, in Atlantic City, the Board engaged in interference, in part, by distributing a notice to staff that the union had filed a charge on behalf of three specific teachers. The Commission found that the Board singled out those teachers, thereby discouraging their exercise of protected activity. The Board had no legitimate basis for issuing the notice. The PBA argued a parallel between that case and Oldenburg's issuance of J-1. I partially reject that argument. While Oldenburg had the right to send a letter to Yanicak or the Montgomery PBA, that right must be balanced

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<sup>7/</sup> The risk to Oldenburg was mitigated because he was afforded his representation rights during the investigatory interview but he voluntarily waived those rights.

against the Township's obligation to investigate an internal affairs complaint that concerned the harsh criticism of an officer for performing his duties, and language ostensibly suggesting the favored treatment of certain citizens.

Accordingly, I recommend that counts two and four of the original charge be dismissed.

#### The Corporal Title and The Disciplinary Charges

In count three of the original charge, and count one of the amended charge, the PBA alleged that Oldenburg was discriminated against for engaging in protected activity. Count three concerned the removal of Oldenburg's corporal title, and count one concerned the imposition of disciplinary charges.

The standard for evaluating 5.4a(3) allegations was established in In re Bridgewater Tp., 95 N.J. 235 (1984). The Court held that no violation of 5.4a(3) will be found unless the charging party has proved, by a preponderance of the evidence, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246. If the employer does not present any 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 a motive unlawful under our Act and another motive 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 about the employer's motives are for the hearing examiner and then the Commission to resolve.

The Commission's decision in Black Horse Pike Reg. Bd. Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), is also instructive in analyzing the instant case. There a Board official sent letters to the association vice president criticizing him for comments he made in representing a teacher. The letters were initially placed in his employee personnel file. The Commission found that the letters were intended to discourage the vice president's future conduct, and punish him for the conduct, not simply to protest the representative's actions which it believed were inappropriate. The Commission did not find the letters were per se violative of the Act, but in finding a(1) and (3) violations, it said:

A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to

criticize those actions of the employer which it believes are inconsistent with that goal. However, ...the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer. See, In re Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979) and City of Hackensack, P.E.R.C. No. 78-30, 4 NJPER 21 (¶14001 1977).

When an employee is engaged in protected activity the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be appropriate and even legal action, ...may be initiated to halt or remedy the other's actions. However, ...where the employee's conduct as a representative is unrelated to his or her performance as an employee, the employer cannot express its dissatisfaction by exercising its power over the individual's employment.  
7 NJPER at 503.

\* \* \*

The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity.  
7 NJPER at 504.

In applying Bridgewater and Black Horse Pike, I find that the Township did not violate 5.4a(1) or a(3) of the Act by removing Oldenburg's corporal title, but did violate those provisions by implementing certain disciplinary action against him.

Despite J-1's negative impact, absent evidence it advocated some illegal or inappropriate conduct, it was protected activity. The Township obviously became aware of the activity and implemented a response.

Stripping Oldenburg of his corporal title certainly had the tendency to interfere with his employee rights, but the Township's justification for that action outweighed the tendency the action had to interfere with those rights. Fairview. Similarly, although Oldenburg engaged in protected activity by issuing J-1 which the Township became aware of, the removal of his corporal position was not motivated by union animus or an intent to punish Oldenburg for issuing J-1, thus, it did not satisfy the Bridgewater hostility requirement.

The Township's justification for removing the corporal position was Gazaway's loss of faith in Oldenburg as a supervisor, his failure to follow the chain of command and other reasons discussed in the a(1) analysis above. Just as an employer cannot use its power over an individual's employment to take action against conduct that was not related to the employees performance (Black Horse Pike), an employee cannot hide behind his/her role as a union representative to avoid action intended to address conduct that was related to employee performance. As a supervisory employee, Oldenburg should not have criticized Gonzalez outside the chain of command for his (Gonzalez's) official conduct merely because Oldenburg as a union official disagreed with the way Gonzalez handled the Yanicak incident.

As a corporal, Oldenburg was in a supervisory or quasi-supervisory position occasionally supervising Gonzalez. His language in J-1 implied that Gonzalez performed his job improperly. But Gonzalez did nothing wrong. He had the right to issue the Yanicak summons. The Chief inferred that J-1 criticized Gonzalez for doing his job--issuing the ticket. He believed the content of J-1 violated the Department's chain of command and weakened Oldenburg's ability to give orders to Gonzalez and perhaps other employees. As a result, Gazaway lost confidence in Oldenburg's ability to direct other officers. I credited Gazaway's testimony.

The PBA challenged that testimony. It argued that Gazaway's reaction to the sergeant whose insensitive remark offended Gonzalez in 1996 compared to his (Gazaway's) more severe reaction to Oldenburg's letter was proof of disparate treatment. That argument lacks merit. In the 1996 incident, Gonzalez did not file an internal affairs complaint, he merely informed Gazaway of his concern, the sergeant readily admitted making the remark, and after he apologized to Gazaway and Gonzalez, Gonzalez asked that the matter be closed. That incident is not comparable to the instant facts where Oldenburg took his criticism of Gonzalez outside the Department, in part causing Gonzalez to file a formal internal affairs complaint.

Union animus was not the reason Gazaway removed Oldenburg's corporal title. While that action had the tendency to interfere with Oldenburg's right to send the letter, I find that Gazaway acted

because he needed to restore order in the Department, repair the chain of command and place in positions of authority officers in whom he had faith to do the job. Those reasons for Oldenburg's loss of title, I find, far outweighed the tendency that action had to interfere with Oldenburg's rights, and did not meet the hostility requirement in Bridgewater. Consequently, I find the removal of Oldenburg's corporal title did not violate 5.4a(1) or (3) of the Act. Accordingly, I recommend that count three of the original charge be dismissed.

The result is not the same for the allegation in the first count of the amended charge that Oldenburg violated sections 5.2.1 and 7.1.6.11 of the Department's rules and regulations.<sup>8/</sup> Under the Fairview balancing test, I find an independent a(1) violation because the tendency the discipline had to interfere with the right of the PBA and its president to communicate with others outweighed any need the Township may have had to issue the discipline. In removing Oldenburg's corporal title, the Township had an operational need which outweighed the interference. However, no operational need existed requiring the discipline.

Similarly, consistent with Black Horse Pike, I find an a(3) violation because by imposing discipline on Oldenburg for

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<sup>8/</sup> This count was not limited to just the 5.2.1 and 7.1.6.11 disciplinary charges, it included the 4.5.2.15 and 5.4.11 disciplinary charges. However, since those latter charges were dismissed by the hearing officer below (J-14), I will not address their merit here.

writing J-1 the Township was converting its criticism of him as a union representative into adverse action against him as an employee. The primary purpose for imposing the discipline, I believe, was to send a message to the public and the press that the Township was taking control of this incident, that there was no sanctioned honor code in the Department, and that the Department would apply the law to all citizens equally. Whether sparked by a noble intention, or by politically wise or expedient instincts, the effect of the discipline was to chill the right of the PBA and its president to communicate with others in an otherwise lawful, though controversial communication. While neither Gazaway nor Roscoe were personally hostile toward Oldenburg, I believe Bridgewater hostility is presumed because of the intent to punish Oldenburg for sending J-1.

Although the Township's action may have sent an effective message to the public, the message it sent to the employees was that all private PBA communications may be used against them or their union leaders. Oldenburg wrote J-1 in his role as a union representative. He compromised his supervisory position by his choice of words, but the Township was able to remedy that problem by removing his corporal title and duties. The chilling effect that the imposition of discipline had on the exercise of the protected right, however, far outweighed the Township's need to take a tough public stance. Black Horse Pike. In balancing the interests of the parties I find that the circumstances here did not warrant the imposition of discipline for sending J-1.



Consequently, I find that the Township violated 5.4a(1) and a(3) of the Act by issuing the 5.2.1 and 7.1.6.11 disciplinary charges. Those charges should be withdrawn and expunged from Oldenburg's record. He should be made whole for any suspension he may have served resulting from the charges.<sup>9/</sup>

#### Other Allegations

In count two of the amended charge the PBA alleged that by including the PBA's December 19, 1997 cover letter to the Commission's Director of Unfair Practices (C-1B-2) in Oldenburg's disciplinary/internal investigation file violated the Act. Other than the admission of C-1B-2 in evidence in this record, no other evidence was presented to support that charge. Oldenburg's disciplinary file was not presented, and no witnesses were offered to testify they saw C-1B-2 in his file. The PBA's post-hearing brief claims that Oldenburg's attorney discovered C-1B-2 in the file. I cannot accept that statement as fact, however, because Oldenburg's attorney did not testify at this hearing. Indeed, even if C-1B-2 was in Oldenburg's personnel file that may not be sufficient to prove a violation of the Act. Consequently, I find that the PBA did not prove this allegation by a preponderance of the evidence, and recommend that this count be dismissed.

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<sup>9/</sup> My recommendation does not include expunging the 4.5.2.15 and 5.4.11 disciplinary charges since they were dismissed below and because I believe they were more related to Oldenburg's role as a corporal, and not intended as punishment for conduct as a union representative.

In count three of the amended charge, the PBA alleged that Section III(F)(7)(b) of General Order 97-45 (C-2A-A) violated the Act because it restricted an employee's right to choose a representative with whom to attend an internal affairs interview. The evidence did not support that allegation.

In its charge, the PBA labelled the relevant language as "a prohibition", and in its post-hearing brief it described the language as "designating that an employee could only be represented by a member of PBA, Local No. 205" (Emphasis added). Neither characterization is accurate. The relevant language does not on its face prohibit or limit an employees choice of representative. It say in pertinent part that an officer:

may choose an active member of P.B.A. Local 205  
employed by Hillsborough...to attend  
the...session.

The operative word is "may." It did not say "shall" which would have a limiting effect.

Additionally, the record shows it was the PBA's representative, not the Township's, who suggested the language and apparently also agreed with the final draft. That language appears to be an attempt to protect the officers right to a Weingarten<sup>10/</sup> representative in interviews that may lead to discipline.

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10/ NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975); see also UMDNJ and CIR, 144 N.J. 511 (1996); E. Brunswick Bd. Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in pt., rev'd in pt., NJPER Supp.2d 78 (¶61 App. Div. 1980).

Since there was no evidence any employee was denied representation protected by the Act this count should be dismissed.

Finally, there was no evidence the Township failed to negotiate in good faith with the PBA. Thus, the 5.4a(5) allegation should be dismissed.

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

Conclusions of Law

1. The Township violated 5.4a(1) and (3) of the Act by imposing discipline on Trevor Oldenburg for issuing J-1.

2. The Township did not vilated 5.4a(1), (2), (3) or (5) of the Act by investigating the origins of J-1; limiting employee contact with the PBA regarding the investigation; removing Oldenburg's corporal title, or by the other allegations in the amended charge.

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Township of Hillsborough 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 imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

2. Engaging in conduct which has the tendency to interfere with, restrain or coerce its employees from engaging in conduct protected by the Act, particularly by imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

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 imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

B. That the Township take the following action:

1. Withdraw the 5.2.1 and 7.1.6.11 disciplinary charges imposed against Trevor Oldenburg and expunge them from his record.

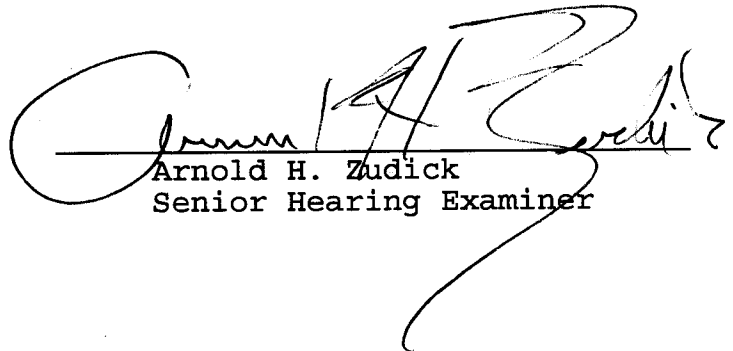
2. Withdraw any suspension imposed on Trevor Oldenburg because of the above charges.

3. Make Trevor Oldenburg whole for any suspension he may have served as a result of the above charges.

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

C. That all counts in the original charge, and counts two and three of the amended charge be dismissed.



Arnold H. Zudick  
Senior Hearing Examiner

Dated: October 26, 1999  
Trenton, New Jersey



**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 employees in the exercise of the rights guaranteed to them by the Act, particularly by imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

WE WILL cease and desist from engaging in conduct which has the tendency to interfere with, restrain or coerce employees from engaging in conduct protected by the Act, particularly by imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

WE 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 imposing certain disciplinary charges and suspension on Trevor Oldenburg for issuing a letter as PBA president.

WE WILL withdraw the 5.2.1 and 7.1.6.11 disciplinary charges imposed against Trevor Oldenburg and expunge them from his record.

WE WILL withdraw any suspension imposed against Trevor Oldenburg because of the above charges.

WE WILL make Trevor Oldenburg whole for any suspension he may have served as a result of the above charges.

Docket No. CO-H-98-231

Township of Hillsborough  
(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, P.O. Box 429, Trenton, NJ 08625-0429 (609) 984-7372



**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 employees in the exercise of the rights guaranteed to them by the Act, particularly by singling out Trevor Oldenburg for discipline based upon his status as Hillsborough Policemen's Benevolent Association, Local No. 205 president.

**WE WILL** cease and desist from discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by singling out Trevor Oldenburg for discipline based upon his status as PBA president.

**WE WILL** withdraw all disciplinary charges imposed against Trevor Oldenburg based on the October 2, 1998 department hearing officer report and expunge them from his record.

**WE WILL** lift any suspension imposed on Trevor Oldenburg based on the October 2, 1998 departmental hearing officer report and make Oldenburg whole for any resulting loss of pay, seniority and benefits.

Docket No. CO-H-98-231

TOWNSHIP OF HILLSBOROUGH  
 (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.

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