

P.E.R.C. NO. 96-89

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket Nos. CO-H-94-72 and  
CO-H-94-76

JERSEY CITY POLICE OFFICERS BENEVOLENT  
ASSOCIATION and JERSEY CITY POLICE  
SUPERIOR OFFICERS ASSOCIATION,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission finds that the City of Jersey City violated the New Jersey Employer-Employee Relations Act by unilaterally transferring duties traditionally performed by employees in negotiations units represented by the Jersey City Police Officers Benevolent Association and the Jersey City Police Superior Officers Association to non-unit employees of the public employer. The Commission orders the employer to restore these duties to employees represented by the POBA and PSOA pending negotiations over the transfer of such duties to non-unit employees of the City: property room, BCI, radio repair, pistol range, and crossing guard supervision. The remaining allegations in the Complaint are dismissed.

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.

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ASSOCIATION and JERSEY CITY POLICE  
SUPERIOR OFFICERS ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent, Martin R. Pachman, P.C., attorneys  
(Martin R. Pachman, of counsel; Robin T. McMahon, on the  
brief)

For the Charging Party - POBA, Fast and Tenenbaum, P.A.,  
attorneys (Jacqueline Jassner, of counsel); Schneider,  
Goldberger, Cohen, Finn, Solomon, Leder, and Montalbano,  
P.C., attorneys (Bruce D. Leder, on the exceptions)

For the Charging Party - PSOA, Klausner & Hunter, attorneys  
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On September 7 and 13, 1993, the Jersey City Police  
Officers Benevolent Association ("POBA") and the Jersey City Police  
Superior Officers Association ("PSOA") filed unfair practice charges  
against the City of Jersey City. The charges allege that the  
employer violated the New Jersey Employer-Employee Relations Act,  
N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and

(5),<sup>1/</sup> when it unilaterally transferred work traditionally performed by employees in the negotiations units represented by the charging parties to non-unit civilian employees.

On October 6, 1993, the matters were consolidated and a Complaint and Notice of Hearing issued. On July 25, July 29 and November 28, 1994, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On October 30, 1995, the Hearing Examiner issued his report and recommendations. H.E. No. 96-7, 22 NJPER 3 (¶27003 1995). He rejected the City's assertion that it acted pursuant to a systematic reorganization and he therefore independently determined whether each transfer of duties was subject to negotiations. All three parties filed exceptions and the City filed an answering brief. We will review the Hearing Examiner's conclusions and the issues raised in the exceptions in our analysis.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 2-9) with these comments and modifications.

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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...."

We accept the Hearing Examiner's characterization of the police director's testimony about civilianization. The director wanted to maximize the number of police officers in operational positions given the budgetary maximum of 840 officers so he decided to use civilian employees in certain non-operational positions.

We accept the Hearing Examiner's finding that a police management consulting firm developed plans to civilianize the department. The Hearing Examiner did not find that the firm was retained for that purpose.

We add to finding 13 that a civilian from the motor pool who was transferred to the Department of Public Works is now doing police radio repairs (3T31).

The underlying issue in this case involves questions of negotiability that have been carefully analyzed under the balancing test set forth by the Supreme Court in Local 195, IFPTE v. State, 88 N.J. 393 (1982). As early as 1979, the Appellate Division upheld our determination that the shifting of work from employees within a negotiations unit to other employees outside the unit is a mandatory subject of negotiations. Rutgers, the State Univ., P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), recon den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd 6 NJPER 340 (¶11170 App. Div. 1980); see also Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023, 1977). We had observed that when the same amount of work is being performed and the employer is merely revamping personnel assignments, negotiations over preserving unit work would not, in

general, significantly interfere with any governmental policy determinations. Two years later, the Appellate Division affirmed another unit work decision involving the same parties. Rutgers, the State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1983). Rutgers there argued that then recent Appellate Division decisions in Local 195, IFPTE v. State, 176 N.J. Super. 85 (App. Div. 1980), later aff'd in part. part 88 N.J. 393 (1982) and State v. State Supervisory Employees Ass'n, P.E.R.C. No. 80-19, 5 NJPER 381 (¶10194 1979), aff'd in pt., rev'd in pt. 7 NJPER 28 (¶12012 App. Div. 1980), which had held that subcontracting is not mandatorily negotiable, commanded that the transfer of unit work to non-unit employees was also not mandatorily negotiable. We disagreed and the Appellate Division affirmed the distinction between contracting out work to private contractors and shifting unit work to non-unit employees of the same public employer. Numerous cases have followed those holdings. See, e.g., Bergen Cty., P.E.R.C. No. 92-17, 17 NJPER 412 (¶22197 1991); City of Newark, P.E.R.C. No. 88-105, 14 NJPER 334 (¶19125 1988); Mine Hill Tp., P.E.R.C. No. 87-93, 13 NJPER 125 (¶18056 1987); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985); Washington Tp., P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983); Weehawken Tp., P.E.R.C. No. 81-147, 7 NJPER 361 (¶12163 1981); Monroe Tp. Bd. of Ed, P.E.R.C. No. 81-145, 7 NJPER 357 (¶12161 1981); Passaic Cty. Reg. H.S. Dist. 1, P.E.R.C. No. 81-107, 7 NJPER 155 (¶12068 1981);

Jersey City Bd. of Ed, P.E.R.C. No. 81-24, 6 NJPER 434 (¶11219 1980); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, 6 NJPER 338 (¶11169 App. Div. 1980); Monroe Tp. Bd. of Ed., P.E.R.C. No. 81-145, 7 NJPER 357 (¶12161 1981); Passaic Co. Reg. H.S. Dist., P.E.R.C. No. 81-107, 7 NJPER 155 (¶12068 1981); Piscataway Tp. Bd. of Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978); Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977).

There have been situations, however, where an employer has exercised its managerial right to reorganize the way it delivers government services and, as a consequence, could transfer job duties to non-unit employees without incurring a negotiations obligation. See, e.g., Maplewood Tp., P.E.R.C. No. 86-22, 11 NJPER 521 (¶16183 1985) (employer had managerial prerogative to consolidate police and fire dispatching functions and employ civilian dispatchers); Freehold Reg. H.S. Bd. of Ed, P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984) (board had prerogative to reorganize supervisory structure for custodial employees with consequence that some unit work was shifted outside negotiations unit); see also Nutley Tp., P.E.R.C. No. 86-26, 11 NJPER 560 (¶16195 1985) (under particular circumstances and in absence of exceptions, assignment of school crossing guard rather than police officer to traffic safety unit did not constitute an unfair practice).

There have also been situations where a union has waived its right to negotiate over the transfer of unit work. In Monmouth

Cty. Sheriff, P.E.R.C. No. 93-16, 18 NJPER 447 (¶23201 1992), the union had not objected in the past when civilian employees had been hired to perform clerical work previously performed by correction officers. Given the parties' overall understanding about civilian employees performing clerical work, we found that the employer did not breach any negotiations obligation when it hired civilian employees to perform other clerical duties.

Finally, there have been situations where the employer did not have a negotiations obligation because the disputed duties were historically performed by non-unit personnel exclusively or in conjunction with unit employees. See State of New Jersey (Div. of State Police), P.E.R.C. No. 94-78, 20 NJPER 74 (¶25032 1994) (troopers historically performed communications duties alone or with civilians); Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20112 1989), recon. den. P.E.R.C. No. 89-119, 15 NJPER 288 (¶20128 1989) (police had historically performed dispatching duties alone or with civilians).

We agree with the Hearing Examiner that, in this case, no "reorganization" controlled all the negotiability questions. The employer "reorganized" in the sense that it wanted to maximize the number of police officers in operational positions. But in some cases it only substituted one person for another without changing the structure or nature of the job. That type of "reorganization" does not per se eliminate a duty to negotiate over the transfer of duties to non-unit employees. Accordingly, we will follow the

Hearing Examiner's lead and examine each change individually.

Property Room

Police officers assigned to the property room have historically collected evidence from the four police districts and brought it to the central property room to be cataloged and stored. In early 1994, two officers assigned to the property room retired and were rehired as civilians to work in the property room. The Hearing Examiner found that this transfer of police unit duties to civilians without negotiations violated the Act. The POBA asserts that the Hearing Examiner should have included this violation in his remedial order. Relying on City of Newark, D.R. No. 81-18, 7 NJPER 3 (¶12002 1980), the City asserts that the civilian property room attendants are not performing police duties.

City of Newark does not apply. In that case, the legal issue was whether non-police working for the police department in the title of supervising police property clerk could remain in a negotiations unit covered by the interest arbitration statute. That statute applies to police departments having employees engaged in performing police services. The then Director of Representation determined that the property clerk performed clerical, not police, duties and should be removed from a negotiations unit entitled to interest arbitration. In this case, the legal issue is whether an employer that has historically used police officers in its property room must negotiate before substituting civilians for some of those officers. Neither union is arguing that the civilians now working in the property room are entitled to interest arbitration.



The unit work doctrine does not compel the City to use police officers for these duties if the public would be better served by having police in operational assignments. It simply requires the City to abide by any agreement it may have made to use police officers for such duties and to negotiate in good faith with the representatives of police officers before shifting such duties to civilians. We conclude that this transfer of property room duties from police to civilians without negotiations violated the Act and we will order the City to restore the status quo pending negotiations.

Bureau of Criminal Identification ("BCI")

In the Spring of 1994, the two police officers in BCI retired and were rehired as civilians. They perform the same functions they performed as police officers, but do not go to crime scenes. The Hearing Examiner found that this shifting of police unit duties to civilians without negotiations violated the Act. The POBA asserts that the Hearing Examiner should have included this violation in his remedial order. The City asserts that the civilian property room attendants are not performing police duties and relies on City of Newark. It notes that clerk-typists have been employed in BCI since at least 1985.

The record does not suggest and the City does not assert that the retired police officers are performing duties historically performed by the clerk typists. Instead, it argues that the police

officers assigned to BCI are not involved in the detection, apprehension or arrest of lawbreakers and therefore their work should not be deemed unit work. We incorporate our previous discussion distinguishing City of Newark. We cannot declare that, as a matter of law, the employer must use a police officer to perform these BCI duties. Nor can we declare that the employer cannot use a police officer to perform these duties. The employer may decide which use it prefers, but it must negotiate in good faith before acting. We conclude that the City had a duty to negotiate before shifting BCI duties that had historically been performed by police officers to civilians. We will order the City to restore the status quo pending negotiations.

Motor pool and mail delivery

Although police officers have delivered mail between police locations and officers have been used in the police motor pool, civilians simultaneously performed similar work. The Hearing Examiner found that this consolidation of two City operations improved efficiency and was a legitimate reorganization. The POBA asserts that the Hearing Examiner's conclusion conflicts with his finding that no such reorganization took place.

As in Maplewood, two groups of employees were performing similar functions and the employer decided to reorganize and consolidate those functions. In Maplewood, separate police and fire dispatching systems were consolidated into one civilian-run system. Here, the duties of the separate police mail and motor pool systems

were absorbed into the existing civilian mail and motor pool systems. This is not simply a matter of changing who will be performing certain duties, but involves questions of how those duties will be performed. Under these circumstances, the City had a right to consolidate the similar but previously separate functions without incurring a negotiations obligation.

### Clerical

The City's police department is divided into four districts. In 1992, a civilian clerk typist began working with the patrol officer assigned as desk assistant in the West District. In July 1993, a civilian clerk replaced one of three police officer desk assistants in the North District. In July 1994, two police officer desk assistants retired and one was rehired as a civilian clerk in the South District. He performs the same duties he did as a police officer. The record is silent as to the East District. The Hearing Examiner found that police officers and civilians have historically shared certain clerical duties. He concluded that the City had no duty to negotiate over the assignment of additional clerical duties to civilians.

In his analysis, the Hearing Examiner stated that civilian clerical employees had been used in the West District and BCI as early as 1985. The POBA asserts that this conclusion conflicts with the finding that a civilian clerical was first hired for the West District in 1992. But civilians have been used in BCI since 1985. The Hearing Examiner's conclusion was drawn from that fact. Because

both civilians and police officers have historically performed these clerical duties, the City did not need to negotiate before having civilians pick up more of that workload. See State of New Jersey (Div. of State Police); Town of Dover.

#### Fiscal Officer

Before 1993, a police officer ran the police fiscal office. When he took a leave of absence to attend law school, he was replaced by a civilian. The Hearing Examiner found that the unilateral substitution of a civilian fiscal officer for a police fiscal officer was not a "true reorganization," and thus violated subsections 5.4(a)(1) and (5). The POBA asserts that the Hearing Examiner should have included this violation in his remedial order. The City asserts that the Hearing Examiner incorrectly assumed that the police fiscal officer's predecessor was not a civilian when the record does not reflect that fact.

The City disputes the Hearing Examiner's implicit assumption that the fiscal officer duties were historically performed by police officers. The record indicates only that Jack McGuire was the fiscal officer before the police officer. It does not specify whether or not McGuire was a civilian. Nevertheless, given the City's undisputed assertion and the fact that it was not proven that police officers historically performed fiscal officer duties, we will not find that the City unlawfully transferred unit work to a non-unit employee when it used a civilian fiscal officer beginning in 1993.

Radio Repairs

Radio repairs have traditionally been performed by three police officers in the support services division. The Hearing Examiner found that the record does not establish that the City has acted on plans to civilianize radio repair. However, he recommended that we find that the announcement of such plans coupled with a refusal to negotiate violated subsection 5.4(a)(1). In his recommended order, he suggested that we restore any officers who were improperly transferred from radio repair.

The POBA asserts that the record shows that the City has acted on its plan to remove radio repair functions from police officers. We agree and have made that factual finding. The POBA also asserts that the order should require that the City refrain from unilaterally transferring radio repair functions to non-unit employees. The City asserts that the Hearing Examiner should have found that repairing radio equipment is not police unit work as a matter of law. It relies on City of Trenton, D.R. No. 83-14, 8 NJPER 589 (¶13274 1982) and City of Plainfield, H.O. No. 82-5, 7 NJPER 525 (¶12232 1981), adopted on other grounds D.R. No. 82-39, 8 NJPER 156 (¶13068 1982).

Trenton, like Newark, involved an attempt to include non-police in a police unit. Plainfield involved an attempt to include signal division employees in a firefighter's unit and the Director of Representation did not adopt the Hearing Officer's analysis that the City now relies on. Neither case addressed

whether police officers or firefighters could negotiate to preserve work that had been traditionally performed by employees in their units. Accordingly, given this unilateral transfer of work that had traditionally been performed by police officers to civilian employees, we find that the City violated its obligation to negotiate in good faith. We will order restoration of that work to police employees pending good faith negotiations.

#### Pistol Range

The City's pistol range was staffed by a lieutenant and three police officers. As of January 1, 1995, the City planned to use a civilian range master and two civilian range instructors. One police officer would remain assigned to the range until a third civilian instructor was found. The Hearing Examiner found that these changes were not reorganizations to improve efficiency or consolidate functions, but instead were attempts to lower costs by shifting work to civilian employees. Because he found that the City had not yet civilianized the pistol range, he recommended a finding that the City's announcement violated subsection 5.4(a)(1). His recommended Order requires the City to restore to their former positions any officers who were improperly transferred from the pistol range. The POBA asserts that the Hearing Examiner should have restrained the City from unilaterally transferring pistol range duties to non-unit civilian employees. The City asserts that the work of these employees should not be considered police work because it does not involve the detection, apprehension or arrest of offenders.

We again reject the implicit argument that, as a matter of law, these duties can only be performed by civilians. We also reiterate that the issue is not whether civilians who perform these duties are police officers or should be included in a negotiations unit with police officers. The issue is whether an employer that has traditionally used police officers to perform certain duties must negotiate before transferring those duties to non-police employees. The answer to that limited question is yes. We will order the City to cease and desist from unilaterally transferring the duties and to restore the status quo pending negotiations.

#### Legal Bureau

For many years, the police department had its own legal bureau staffed by police officers. Legal work encompassed no more than 10 to 15% of their work. The remainder was administrative. Civilian attorneys, presumably out of the corporation counsel's office, have also worked with the police department. Since September 1993, all legal work for the department has been handled by the City's corporation counsel. The POBA contends that the Hearing Examiner did not address the legal bureau and improperly dismissed the balance of the Complaint. The PSOA also contends that the Hearing Examiner did not decide this issue. It urges that we find that the unilateral transfer of legal work to the corporation counsel violated the Act.

Given the history of both police and civilian attorneys performing legal work for the police department, we cannot find that

the department's legal work was historically or traditionally performed by police officers alone. Accordingly, we conclude that the City did not have an obligation to negotiate before shifting the balance of the police department's legal work to the corporation counsel.

#### Crossing Guards

The City employs 70 to 100 civilian crossing guards. Before August 1993, the guards were supervised by superior police officers. The Hearing Examiner found that since the work was supervisory, the shifting of unit work to non-unit employees did not violate the Act. The PSOA asserts that the cases cited by the Hearing Examiner do not involve questions of unit work. It further asserts that the City was simply seeking an economic savings by substituting civilian personnel for police.

There may be situations where a change in lines of supervision flows from a managerial determination that one supervisory title is more qualified than another to supervise a particular job title. Here, the qualifications of PSOA unit members to supervise crossing guards are not in dispute. Instead, as with other aspects of this case, this transfer of supervisory duties to a civilian flowed from a desire to maximize the number of police officers in operational positions. We do not question the wisdom of that decision. However, the obligation to negotiate before implementing that decision attaches here as it does in other aspects of this case. We will order the City to restore the status quo and negotiate before transferring these duties to PSOA unit personnel.



ORDER

The City of Jersey City 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 unilaterally transferring duties traditionally performed by employees in negotiations units represented by the Jersey City Police Officers Benevolent Association and the Jersey City Police Superior Officers Association to non-unit employees of the public employer.

B. Take this action:

1. Restore these duties to employees represented by the POBA and PSOA pending negotiations over the transfer of such duties to non-unit employees of the City: property room, BCI, radio repair, pistol range, and crossing guard supervision.

2. Negotiate in good faith with the POBA and PSOA before transferring work traditionally performed by employees represented by those organizations to non-unit employees of the public employer.


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

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, and Klagholz voted in favor of this decision. Commissioners Boose, Ricci and Wenzler opposed.

DATED: June 20, 1996  
Trenton, New Jersey  
ISSUED: June 21, 1996



# NOTICE TO EMPLOYEES



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

**We hereby notify our employees that:**

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 unilaterally transferring duties traditionally performed by employees in negotiations units represented by the Jersey City Police Officers Benevolent Association and the Jersey City Police Superior Officers Association to non-unit employees of the public employer.

WE WILL restore these duties to employees represented by the POBA and PSOA pending negotiations over the transfer of such duties to non-unit employees of the City: property room, BCI, radio repair, pistol range, and crossing guard supervision.

WE WILL negotiate in good faith with the POBA and PSOA before transferring work traditionally performed by employees represented by those organizations to non-unit employees of the public employer.

Docket Nos. CO-H-94-72; CO-H-94-76

CITY OF JERSEY CITY

(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

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

APPENDIX "A"

H.E. NO. 96-7

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

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket Nos. CO-H-94-72 and  
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JERSEY CITY POLICE OFFICERS BENEVOLENT  
ASSOCIATION and JERSEY CITY POLICE  
SUPERIOR OFFICERS ASSOCIATION,

Charging Parties.

Appearances:

For the Respondent  
Martin R. Pachman, attorney

For the Charging Party - POBA,  
Schneider, Goldberger, Cohen, Finn  
Solomon, Leder, and Montalbano, attorneys  
(Bruce D. Leder, of counsel)

For the Charging Party - PSOA,  
Klausner, Hunter & Seid, attorneys  
(Stephen B. Hunter, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On September 7 and 13, 1993, respectively, the Jersey City Police Officers Benevolent Association, and then the Jersey City Police Superior Officers Association filed unfair practice charges with the Public Employment Relations Commission alleging the City of Jersey City engaged in unfair practices within the meaning of

N.J.S.A. 34:13A-5.4(a)(1) and (5)<sup>1/</sup> when, without negotiations, it unilaterally transferred work traditionally performed by employees in these two bargaining units to non-unit, civilian employees.

The City argues that its actions resulted from a re-organization of its police force and therefore it had a non-negotiable, managerial right to take the disputed actions.

A Complaint and Notice of Hearing was issued on October 6, 1993 and hearings were conducted on July 25, July 29 and November 28, 1994. Briefs were filed by April 24, 1995.

#### Findings of Fact

1. Beginning in 1993, the City embarked on a policy it calls civilianization. It began hiring civilian employees and assigning these employees duties formerly performed by police officers. The police officers who were displaced were assigned to patrol duties.

Joseph Pelliccio served as Police Director from June 1992 until January 1, 1994.<sup>2/</sup> Soon after Pelliccio became Director, he

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (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."

<sup>2/</sup> He was also a police officer in the Department from 1955 to 1984.

instituted the civilianization plan. Pelliccio describes civilianization as identifying those positions within the Department that could be handled by civilian personnel (2T94).

In 1993, there were 854 police officers. Pelliccio's plan called for 940 employees, 60 of whom would be civilian (2T87).

2. The current Police Director, Michael Moriarity, testified that plans to civilianize were promulgated as early as 1988 by County Prosecutor DePasquale (who apparently acted as police director). A police consulting management firm also developed plans to civilianize the police force. In a memorandum dated September 17, 1992, Police Chief Salvo identified 64 positions he and Director Pelliccio believed should be "civilianized". Moriarity reviewed all these plans and generally followed the recommendation in Chief Salvo's memo. Not all of the recommendations had been implemented at the time of the hearing.

Moriarity is civilianizing the force to "reduce crime or the fear of crime in Jersey City by improving the quality of service and maintain the resources of the Department" (3T11). The Department's budget only allowed for 840 officers. Moriarity attempted to structure the Department so that the budget was maximized by redeploying officers doing administrative tasks to more operational duties. Currently 67% of the force is operational and Moriarity's goal is to increase the police force to 85% operational (3T15).

As part of Moriarity's overall re-organization, he also instituted a work schedule change to ensure a sergeant is always on duty with a certain number of police officers. There are three squads in each shift and one of those squads is on duty at any given time (3T16). The Department is also instituting community-based policing; that is, certain officers are assigned to specific geographic areas of responsibility.

3. Vincent Adler, and one other officer, delivered mail for the Police Department. Adler delivered mail for four years (1T18). The two officers picked up and delivered mail, including interdepartmental mail, to all police locations in marked police cars (there are 10 or 12 such locations). These two officers also distributed subpoenas to officers for court appearances. They picked up money at the car pound every day and delivered it to the chief of police; on occasion they picked up evidence and delivered it to the police property room at Boland Street. For at least 18 years only police officers delivered the mail (1T19; 2T102, 103). In September 1993 both mail duty officers were transferred to patrol duty (1T10), and the mail duties were assigned to civilian employees. The City already had civilian employees delivering mail to other City departments (3T20). In October 1993, Adler was asked to return to mail duty because civilian delivery of police mail was not functioning properly. Adler continued delivering the mail until mid-December 1993 when he was again returned to patrol. .

4. Patrolman Vincent A. Czachorowski has been assigned to the Bureau of Criminal Identification (BCI) for nine years. In 1985, the BCI staff consisted of a lieutenant, 3 sergeants, 14 police officers and 2 clerk typists on the day tour (1T67). Before civilianization, there were five police officers on the day tour, five on the evening tour and four on the midnight tour. The clerk typists would take telephone messages, answer mail correspondence, draw files, prepare correspondence for officers, and do fingerprinting and photographing. Clerk typists never processed prisoners.

In the Spring of 1994, two police officers in BCI retired and within a month were re-hired as civilians (1T70).

Since civilianization in 1994, there are four officers on days, four on evenings, three on midnights, one sergeant on each tour, two clerks on days, one on evenings and one on midnights. The two former police officers who are now civilians perform the same functions they performed as police officers. They check FBI correspondence to verify fingerprint identification, fingerprint civilians and occasionally process prisoners when ordered to by a supervisor (1T73). The civilian retirees have been assigned to lift fingerprints from evidence at BCI headquarters (1T77). The retirees do not go to crime scenes.

5. Patrol Officer James Gallagher is a desk assistant (D.A.) on the day tour at the West District police station. His duties include distributing walkie-talkies to officers going on



patrol, building security, report taking and writing, taking reports of citizens who come into the District for such things as stolen car reports, domestic violence complaints, assault complaints, etc. The D.A. also makes visual inspections of patrol cars. Gallagher had access to the police computer in order to send duty notes to the dispatcher.

In the summer of 1992, or earlier, (over a year before these unfair practice charges were filed) a civilian clerk typist began working next to Gallagher (1T55). The clerk now takes reports (e.g., domestic violence, assaults). Gallagher continues to take reports when the clerk is busy.

6. In the North District, there were three police officer D.A.S. and no civilian clerks. In July 1993, a civilian clerk replaced one of the police officers. The civilian clerk does work formerly done by the police clerks (2T6).

7. In the South District, four police officers functioned as D.A.S. Two officers retired July 1, 1994 and one of them, Jerry Ferraro, was immediately re-hired as a civilian clerk. His duties as a civilian are the same as when he was a police officer (2T20).

8. There is nothing in the record as to the use of civilian clerks in the East District.<sup>3/</sup>

9. Police officers assigned to the property room have historically collected evidence from the four police districts and

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<sup>3/</sup> However, Pelliccio recalled that there were civilian clerks in at least two districts and possibly more (2T104).

brought it to the central property room where it is cataloged and stored. Two officers assigned to the property room retired in early 1994 and were re-hired as civilians. They have continued to work in the property room but have no duties outside the property room (2T44). They handle and record evidence including narcotics (2T45). Prior to this time, there were no civilians in the property room (2T96).

10. The City employs 70 to 100 civilian crossing guards. Historically, the school crossing guards were supervised by superior officers. James M. Kenyon, a sergeant in the Special Patrol Bureau, supervised school crossing guards for seven or eight months (2T68). Kenyon did pre-hiring background checks, made hiring recommendations and provided training for school crossing guards. In August 1993, Kenyon was replaced by a civilian.

11. For many years, the Police Department had its own legal bureau, staffed by police officers which was independent of the City's Corporation Counsel office. The bureau's staff was used to review documents signed by the Director, draft policy directives and memos from the Director, as well as engage in negotiation, and personnel actions (1T90).

John Dooley, a captain in the Department, worked in the legal bureau, performing legal duties for ten years, until September 1993. The legal bureau often interacted with the City's Corporation Counsel. There were certain matters that the police legal bureau would not refer to Corporation Counsel, e.g., personnel questions

and investigations of conduct and criminal matters where no conclusions were yet drawn (2T143).

Legal work was no more than 10 to 15% of what the legal office did. "Most of the work was akin to senior staff advisor or administration assistant" (2T144). The legal bureau was abolished in September 1993. Dooley believes that no one is now performing the functions that he performed. Any legal work that is now being done, including requests for advice are now being forwarded to Corporation Counsel's office (2T147).

Pelliccio had two civilians on his legal staff. Civilian attorneys have worked with internal affairs and with the police director on various matters (2T118) and none handled negotiations and contracts (2T119).

12. There were three or four officers who ran the motor pool for the police department. They did minor repairs but were primarily responsible for the assignment of motor vehicles.<sup>4/</sup> These duties were taken over by the City's Department of Public Works which, prior to this transfer of work, maintained and repaired all other City vehicles (3T24).

13. Radio repairs have traditionally been performed by three police officers in the support services division. At the time of the hearings, two officers were doing this work and the City wanted to transfer this work to the civilian Department of Public

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<sup>4/</sup> The record does not establish who made major repairs.

Works. It could not do so; public works had to first hire a civilian electronics technician to do the work (3T30).

14. The City's police pistol range was staffed by a lieutenant and three police officers. The City was about to civilianize the pistol range. A civilian range master and two range instructors were to replace the assigned police officers. the City was looking for a third instructor, so temporarily a sworn officer would remain with the pistol range (3T43).

15. Police Officer Phil Rolly, ran the police fiscal office. The fiscal officer handled and prepared the budget for the Department. He maintained pension files and handled purchasing requisitions. Apparently, sometime in 1993, Rolly began using his leave time to attend law school and was replaced by a civilian who apparently, is still there (2T98).<sup>5/</sup>

#### ANALYSIS

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over mandatorily negotiable terms and conditions of employment.

The shifting of work from employees within a particular negotiations unit to other public employees outside of the unit is a mandatorily negotiable subject of negotiation. An employer has an obligation to negotiate with the majority representative before

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<sup>5/</sup> Although Director Moriarity testified there is a separate payroll department and pension office in the City Administration, there is nothing in the record to indicate that these City departments now do this work (3T28, 3T29).

shifting work to employees outside the unit. Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); ; Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, App. Div. Dkt. No. A-3564-78 (1980); Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78 1980); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988); City of Newark, P.E.R.C. No. 87-106, 14 NJPER 336 (¶19126 1988); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985); Washington Tp., P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983); Monroe Tp. Bd. of Ed., P.E.R.C. No. 81-145, 7 NJPER 357 (¶12161 1981); Passaic Co. Reg. H.S. Dist., P.E.R.C. No. 81-107, 7 NJPER 155 (¶12068 1981); Piscataway Tp. Bd. Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978); Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977).<sup>6/</sup> The City also argues that its civilianization program was part of a

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<sup>6/</sup> The City argues that in Middlesex County College, the Commission relied upon the rationale in Fiberboard Paper Products Corp. AFL-CIO v. State, 88 N.J. 393 (1982), but the State Supreme Court rejected any reliance upon Fiberboard in public sector cases in State v. Local 195, IFPTE. Accordingly, the Commission's line of cases conflicts with the holding of Local 195. However, the Commission rejected this same argument in the Rutgers decisions. The Commission drew a distinction between subcontracting (the subject matter of both Fiberboard and Local 195) and the issue here of work reassignment. See also Monmouth County Sheriff, P.E.R.C. No. 93-16, 18 NJPER 447 (¶23201 1992)

re-organization of the Police Department, and therefore, not negotiable. Where an employer engages in a legitimate reorganization to effectively fulfill its managerial mission, such action constitutes a managerial prerogative and any reassignment of work flowing from such a reorganization would not be subject to negotiations. In Tp. of Maplewood, P.E.R.C. No. 86-22, 11 NJPER 521 (¶16180 1985), dispatching functions of the police and fire departments were consolidated with civilian dispatchers. An employee representative filed for arbitration claiming the reassignment deprived unit employees of overtime in violation of the parties contract. The Commission held that the dispute predominately concerned Maplewood's managerial prerogative to consolidate functions and the issue was not arbitrable (i.e., negotiable).

However, in County of Bergen, P.E.R.C. No. 92-17, 17 NJPER 412 (¶22196 1991), the Commission found that dispatching work traditionally performed by unit employees, was shifted to employees outside the unit for economic reasons and, therefore, the employer had an obligation to negotiate before transferring unit work. See also Toms River Ed. Assn., P.E.R.C. No. 92-71, 18 NJPER 62 (¶23027 1991).

Also, where police have historically shared duties with civilian employees, where there is a historical waiver, the transfer of additional work to civilians does not create an obligation to negotiate. State of New Jersey, Dept. of Law and Public Safety and

IFPTE Local 195, P.E.R.C. No. 94-78, 20 NJPER 74 (¶25031 1994); Monmouth County Sheriff; Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶20111 1989).

Finally, the assignment of supervisory duties is a permissively negotiable subject. City of Camden, P.E.R.C. No. 93-43, 19 NJPER 14 (¶92408 1992), affirmed 20 NJPER 319 (¶25163 1994). Therefore, the unilateral alteration of a supervisory assignment is not an unfair practice within the meaning of the Act. Freehold Regional High School District, P.E.R.C. No. 85-69, 11 NJPER 47 (¶16025 1984); Ridgefield Park, 78 N.J. 144 (1978); Paterson PBA, 87 N.J. 78 (1981).

#### Conclusions of law.

Although the City claims all of its actions were part of a systematic re-organization, the record shows very discrete actions by the City, not a broad District-wide program. The specific acts must be reviewed on a job-by-job basis.

The transfer of the duties of the crossing guard supervisor to a civilian was not violative of the Act since the work transferred is supervisory in nature and therefore not mandatorily negotiable.

The Jersey City police have historically shared certain clerical duties with civilians. Although neither the North or South Districts employed civilian clericals until July 1993, both the West Districts and BCI have a history of using civilian employees as

early as 1985. Accordingly, I find that a historical waiver exists as to the assignment of civilian clerical employees and the City had no obligation to negotiate over such assignment even where the civilians who were assigned the clerical duties were retired police officers.

The delivering mail and the work of the motor pool have historically been done by police officers. However, the City had civilians simultaneously doing similar work. The consolidation of two City operations into one improves the over-all efficiency of the operation of the City. These consolidations predominately concern a legitimate reorganization and therefore constitute a managerial prerogative. Tp. of Maplewood. The transfer of this work to existing City departments is not negotiable.

However, I find the City's rehiring of retired police officers as civilians in the property room and BCI is neither subject to a historical waiver nor constitute a legitimate re-organization. These former officers are now performing police related duties that are not traditional clerical duties, e.g., the handling of evidence, including narcotics, and the processing and fingerprinting of prisoners. The City's action was simply economic. It is attempting to keep the same employees doing largely the same jobs for less pay.

I find that the substitution of a civilian fiscal officer for a police fiscal officer is not a true reorganization. There is no evidence that the work is now being done by the City's fiscal office. Rather, it is being performed by a civilian employee.



I further find that the City's plans to transfer radio repair work to the Department of Public Works and to hire civilians to staff the pistol range are not re-organizations to improve efficiency. There is no evidence in the record that the City ever had facilities to repair civilian radios. Rather, the City has to hire a civilian repairman before the work can be transferred. Obviously, the pistol range is purely for police personnel. These are not attempts to consolidate existing functions. Rather, these are attempts to simply lower costs by shifting work to civilian employees outside the unit. Bergen.

Accordingly, I recommend that the Commission find the City of Jersey City unilaterally altered terms and conditions of employment in violation of §5.4(a)(1) and (5) of the Act when it rehired retired police officers as civilians to do essentially the same tasks they did as police officers in the Bureau of Criminal Identification and the Property Room, and when it filled the vacant position of fiscal officer with a civilian.

The record does not establish that the City acted on its plans to civilianize radio repair or the pistol range. However, I recommend the Commission find the City's announcement of its intention to take such action while refusing to negotiate with the Associations unlawfully interferes with the Associations' exercise of protected rights in violation of §5.4(a)(1) of the Act.

I further recommend that the balance of the unfair practice charge be dismissed.

Recommended Order

I recommend the Commission ORDER:


The City to negotiate with the Jersey City Police Officers Benevolent Association and the Jersey City Police Superior Officers Association before it shifts unit work which does not flow from a re-organization.

I further recommend the Commission ORDER:

1. The City to restore any officers who were improperly transferred from the radio repair or the pistol range to their former positions.

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

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

  
Edmund G. Gerber  
Hearing Examiner

Dated: October 30, 1995  
Trenton, New Jersey



# 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 NOT interfere with, restrain or coerce employees in the exercise of the rights guaranteed to them by the Act, particularly by threatening and/or threatening to transfer unit work outside the unit while refusing to negotiate with the Police Officers Benevolent Association and/or the Police Superior Officers Association.

WE WILL NOT refuse to negotiate in good faith with the Police Officers Benevolent Association and/or the Police Superior Officers Association concerning terms and conditions of employment of employees by unilaterally transferring unit work without negotiations when such transfers were not cause by a legitimate re-organization.

WE WILL restore any officer who were improperly transferred from the radio repair or the pistol range to their former positions.

Docket No. CO-H-94-72 and CO-H-94-76

City of Jersey City

(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

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

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