

P.E.R.C. NO. 94-104

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-H-93-233

P.B.A. LOCAL NO. 98,

Charging Party.

SYNOPSIS

In light of the issues raised in the Association's exceptions and the Borough's reply to those exceptions, the Public Employment Relations Commission remands this matter to the Hearing Examiner for clarification of the scope of his conclusions and recommendations.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-H-93-233

P.B.A. LOCAL NO. 98,

Charging Party.

Appearances:

For the Respondent, Ruderman & Glickman, P.C., attorneys,
(Steven S. Glickman, of counsel)

For the Charging Party, Weinberg & Kaplow, P.A., attorneys,
(Richard J. Kaplow, of counsel)

DECISION AND ORDER

On December 31, 1992, P.B.A. Local No. 98 filed an unfair practice charge against the Borough of Sayreville.^{1/} The charge alleges 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), (2), (3), (4), (5) and (7),^{2/} when, on November 18,

1/ The charge was amended at hearing to delete the PBA president as a charging party.

2/ 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. (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. (4)

1992, its police chief, Douglas A. Sprague, charged the PBA's president, Charles Kelly, with violations of department rules and regulations that are over 17 years old and superseded by the parties' collective negotiations agreement; the chief disciplined PBA supporters more severely than those "supportive of him"; the chief tried to terminate Kelly through the November charges for engaging in protected activity; the chief refused to abide by the collective negotiations agreement; and the Borough permitted the chief to dredge up alleged violations against the PBA president, some almost three years old, for the sole purpose of harassing and intimidating the president and unit members from pursuing protected rights and the president's First Amendment rights.

On March 17, 1993, a Complaint and Notice of Hearing issued. On May 27 and 28, and June 3, 8 and 17, 1993, Hearing Examiner Alan R. Howe conducted a hearing. The parties examined witnesses and introduced exhibits. At the end of the charging party's case-in-chief, the Hearing Examiner granted the employer's motion to dismiss the alleged violations of subsections 5.4(a)(2),

2/ Footnote Continued From Previous Page

Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

(5) and (7), but denied the motion as to subsections 5.4(a)(1), (3) and (4). At the end of the hearing, the parties waived oral argument, but filed post-hearing briefs.

On December 6, 1993, the Hearing Examiner issued his report and recommendations. H.E. No. 94-11, 20 NJPER 36 (¶25012 1994). He found that the Borough violated subsections 5.4(a)(1) and (3) by the "egregious conduct of its police chief, over many years," which was motivated by anti-union animus and hostility to the PBA president's protected activity and which tended to interfere with Kelly's exercise of those rights. More specifically, the Hearing Examiner found that: the 12 specifications in the November charges against Kelly "in the aggregate, constituted an independent violation of §5.4(a)(1)"; specifications 4, 5, 8, and 12 independently violated subsection 5.4(a)(1); and the chief's seeking Kelly's removal through the November charges independently violated subsection 5.4(a)(1). The Hearing Examiner found that the chief's memorandum to Lieutenant Zdan regarding Kelly's assignment to Borough Hall would have independently violated subsection (a)(1), but was untimely. He dismissed the independent allegation of favoritism, in part because of untimeliness.

The Hearing Examiner also found that the employer's actions that independently violated subsection 5.4(a)(1) also violated subsection 5.4(a)(3). He declined to address the charging party's constitutional claim.

By way of remedy, the Hearing Examiner recommended that the Borough cease and desist from interfering with Kelly's protected rights and from discriminating against him because of the exercise of those rights. He also recommended that we order the Borough to withdraw specifications 2, 4, 5, 8, and 12 of the November charges and the same specifications in a "sanitized version" of the charges served on Kelly in February 1993. Finally, he recommended that any reference to those specifications be expunged from Kelly's personnel file and that a notice of the Borough's violations be posted.

On December 30, 1993, the Borough filed exceptions to the Hearing Examiner's findings of fact and conclusions of law. We need not address those exceptions at this time.

On January 3, 1994, the PBA filed limited exceptions to the scope of the recommended remedy. It notes that the Hearing Examiner found that the 12 specifications, in the aggregate, violated the Act. It argues that the Hearing Examiner therefore should have ordered the withdrawal of all the specifications. It also argues that any remedial order should have included an additional specification filed on April 3, 1993, which it claims was also the subject of this litigation.

On February 7, the Borough replied to the PBA's exceptions. It asserts that, notwithstanding its exceptions, the Hearing Examiner properly limited the scope of his recommended order.


In light of the issues raised in the Association's exceptions and the Borough's reply to those exceptions, we remand

this matter to the Hearing Examiner for clarification of the scope of his conclusions and recommendations.

ORDER

We remand to the Hearing Examiner for a supplemental report consistent with this opinion.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: April 28, 1994
Trenton, New Jersey
ISSUED: April 29, 1994

H.E. NO. 94-11

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

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-H-93-233

P.B.A. LOCAL NO. 98, .

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the Respondent violated Sections 5.4(a)(1) and (3) of the New Jersey Employee-Employer Relations Act by the egregious conduct of its Chief of Police over many years, dating back to 1987, vis-a-vis Robert Kelly, the President of the PBA during this span of time. Examples of hostile, retaliatory conduct by the Chief to Kelly are too numerous to mention. Also, independent violations of §5.4(a)(1) were found, which in many instances overlapped the §5.4(a)(3) findings.

An affirmative order recommended that the Borough expunge from Kelly's personnel file any references to the various subject matters found illegal in this proceeding.

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.

H.E. NO. 94-11

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

In the Matter of

BOROUGH OF SAYREVILLE,

Respondent,

-and-

Docket No. CO-H-93-233

P.B.A. LOCAL NO. 98,

Charging Party.

Appearances:

For the Respondent, Ruderman & Glickman, Attorneys,
(Steven S. Glickman, of counsel)

For the Charging Party, Weinberg & Kaplow, Attorneys,
(Richard J. Kaplow, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

An Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") on December 31, 1992, by P.B.A. Local No. 98^{1/} ("Charging Party" or "PBA") alleging that the Borough of Sayreville ("Respondent" or "Borough") has engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. ("Act"); in that, inter alia, the Borough has in the past been found guilty of unfair practices, involving Charles F. Kelly,

^{1/} The caption was amended on May 27, 1993, to delete "Charles Kelly, President" (1Tr7).

President of the PBA^{2/}; the Borough's Chief of Police ("Chief"), Douglas A. Sprague, charged Kelly with violations of the rules and regulations of the Police Department as of November 18, 1982; in or around early February 1992, Kelly communicated with the Mayor and Council regarding a vacancy in a Captain's position; when the Chief refused to participate in a certain proceeding and hearing, he suspended Kelly for three days without pay, following which Kelly was exonerated; notwithstanding a statute which provides that no officer shall be suspended or fined without a hearing, Kelly and other members of the PBA have been suspended without being afforded a hearing; the Chief has charged Kelly with failing to report his absences on PBA matters despite the fact that the Business Administrator of the Borough was the one who summoned Kelly to his office to discuss PBA matters; on October 30, 1992, the Chief summoned Kelly and two superior officers to his office where he told Kelly that his actions as President of the PBA brought disgrace to the Department and that he would not permit Kelly to make any comments about the Department, etc.; within weeks of this meeting

2/ In three cases the Commission found that the Borough had violated the Act, as follows: (1) P.E.R.C. No. 79-60, 5 NJPER 117 (¶10069 1979), involving §5.4(a)(5) of the Act ["comp" time]; (2) P.E.R.C. No. 84-142, 10 NJPER 362 (¶15167 1984), involving §5.4(a)(3) of the Act [transfers from Detective Bureau to Patrol Division re: overtime]; and P.E.R.C. No. 91-35, 16 NJPER 542 (¶21244 1990), involving §§5.4(a)(3) and (5) of the Act [demotion for filing grievance and unilaterally establishing "power shift"]. The first two violations occurred on the watch of Chief Raymond N. Sweeny and the third violation occurred while Douglas A. Sprague was Chief of Police.

the Chief sought the termination of Kelly; the Chief refuses to abide by the collective negotiations agreement between the parties, stating that he will not permit the agreement to interfere in any way with his running of the Department; and the Borough has permitted the Chief to pursue stale charges for the sole purpose of harassing Kelly as President of the PBA; all of which is alleged to be in violation of N.J.S.A. 34:13A-5.4(a) (1) through (5) and (7) of the Act.^{3/}

A Complaint and Notice of Hearing was issued on March 17, 1993. Pursuant to the Complaint and Notice of Hearing, hearings were held on May 27, May 28, June 3, June 8^{4/} and June 17, 1993 in Newark, New Jersey, at which time the parties were given an

^{3/} 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. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (7) Violating any of the rules and regulations established by the commission."

^{4/} The Respondent moved to dismiss on the fourth day of hearing, June 8th, which I disposed of at 4Tr4-24, as follows: granted as to §5.4(a) (2) [4Tr6]; granted as to §§5.4(a) (5) and (a) (7) [4Tr18]; but denied as to §§5.4(a) (1), (a) (3) and (a) (4) [4Tr10, 24].

opportunity to examine witnesses, present relevant evidence and argue orally. Oral argument was waived (5Tr18, 19). The parties filed simultaneous post-hearing briefs by August 16, 1993.

* * * *

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The Borough of Sayreville is a public employer within the meaning of the Act, as amended, and P.B.A. Local No. 98 is a public employee representative within the meaning of the same Act.
2. The parties are governed by a collective negotiations agreement, dated December 5, 1991, and effective during the term January 1, 1991 through December 31, 1993 (J-1).
3. Charles F. Kelly ("Kelly") has been a Patrolman with the Borough for over twenty two years and has been the President of the PBA for the past six years (1Tr31). Douglas A. Sprague ("Sprague") has been employed in the Respondent's police department for forty one years, having become its Chief of Police in 1984 (4Tr25).
4. Kelly testified that during his employment with the Police Department, he has been the subject of disciplinary actions on six occasions (1Tr32; 2Tr21). The first occurred in 1973, and was verbal, involving Chief Sweeny (2Tr21). The remaining five charges have all occurred during Kelly's term of office as PBA President. All have involved the service of Civil Service disciplinary notices signed by Sprague. In each instance,

suspension or removal was sought. [1Tr32]. Kelly testified credibly that during this period his relationship with the Chief has been "strained" (1Tr34). On June 21, 1990, Kelly was charged with calling in sick and then attending a social function in Washington, D.C. (R-13). In 1992, Kelly wrote a letter on behalf of Lt. Richard A. Zdan, which resulted in a three-day suspension. Then there were the three sets of disciplinary charges, which were explored at length in the hearing, and which are still pending: CP-1 [November 18, 1992]; CP-11 [served February 5, 1993]; and CP-12 [April 2, 1993]. Kelly testified credibly that the three remaining disciplinary charges against him were dropped or reversed. [1Tr33; 2Tr21-24].

5. The disciplinary charges against Kelly, set forth in CP-1 under date of November 18, 1992, were prepared by Sprague with the assistance of his personal counsel, Louis E. Granata (4Tr27, 74, 75). The specifications were based upon materials in Chief Sprague's personal file on Kelly (4Tr77, 78, 120, 121).^{5/} Sprague's stated reason for filing these charges against Kelly was that Kelly had filed a police report which disparaged the Chief (4Tr27).

^{5/} Sprague initially testified equivocally that the charges, incorporated into CP-1, were prepared by Granata in October 1992 or, possibly, November 1992 (4Tr75, 76, 78-80). However, on redirect, Sprague testified that he met with Granata after October 30th (4Tr120, 121). I credit the Chief on this point. Also, he was not questioned further on recross examination (4Tr122).

6. After Granata met with the Chief and Steven S. Glickman, the current counsel for Respondent, the disciplinary charges against Kelly were amended and served February 5, 1993 (CP-11). Because the Borough is a Civil Service municipality, Glickman utilized the "Preliminary Notice of Disciplinary Action" format, which is required by Civil Service. [4Tr28, 29].

7. In the Fall of 1987, Kelly filed his first grievance with Chief Sprague, several months after having been elected President of the PBA. Kelly stated that after he had made an appointment to see Chief Sprague he entered his office with his State Delegate Dennis Sheridan. Following a brief discussion about the grievance Kelly, who had a copy of the contract in his hand, stated: "Chief, it's a violation of Article..." The Chief looked at Kelly and said "...You can shove that contract book up your ass..." At that point Kelly and Sheridan left the room. [1Tr34, 35; 2Tr24, 25]. The Chief's denial that he made such a statement is deemed perfunctory and is not credited (4Tr72).

8. Kelly also testified credibly regarding the attitude of Chief Sprague toward the filing of grievances. Kelly testified several times that the Chief plays favorites in the resolution of grievances, depending upon who the grievant is. [1Tr35, 36; 2Tr25-31]. I find as a fact that the Chief has shown favoritism in the resolution of grievances filed under the collective agreement. The Chief failed to rebut effectively the testimony of Kelly on this issue. [1Tr35, 36; 2Tr25-31; 3Tr34-40; 4Tr32, 33]. Kelly

testified, by way of example, that the officers whom the Chief favored, in connection with discipline, included Philip McCutcheon^{6/}, Bruce Marcinczyk, Thomas Fischer and Joseph Wolski (2Tr25-27). Kelly also identified Lt. Ronald Green, Robert Nita, Benjamin Bardes and William Lanning as having been similarly treated (2Tr27, 28; 4Tr35-57; R-9 to R-11, R-14 to R-17).

9. On May 1, 1990, Kelly sent a letter to the Attorney General, Robert J. Del Tufo, in which he set forth the events surrounding parking summonses given to two residents of the Borough on January 22, 1989 (CP-2). These summonses were scheduled for hearing in mid-April 1989, but when the issuing officer, Scott Henry, arrived in the court room for the hearing, he was informed that the cases were adjourned (Id.) When he later went to the Court Office to determine why the adjournment had taken place, he was told that Chief Sprague had requested a postponement "pending his personal investigation" (Id.). The same issuing officer later learned on April 10, 1990, that the summons had been dismissed on March 8th by the Magistrate (Id.). Kelly's final point to the Attorney General was that, in the past, a police officer had been "drummed out of service" at the insistence of the Chief for engaging in the same conduct: Sgt. Philip McCutcheon [CP-2, supra, CP-3; 1Tr43-50; 2Tr33-36]. Kelly acknowledged that he had never spoken to

^{6/} His disciplinary history covered the years 1986 to 1988, McCutcheon ultimately having retired. [2Tr38, 39; R-5 to R-8, R-12].

the Magistrate or to the County Prosecutor about the incident before writing his letter to Del Tufo (2Tr35). On August 6, 1990, a Detective of the Middlesex County Detective Bureau, Arthur V. Peceski, filed a 23-page report on his investigation of Kelly's charges to the Attorney General of May 1st, in which he concluded that Kelly's charges concerning the Chief of Police, the Mayor and the Magistrate, together with the Prosecutor, were "unfounded" (R-2). On August 8th, the Middlesex County Prosecutor directed a letter to the Division of Criminal Justice in Trenton, in which he stated, "Our findings reveal that the charges, innuendos and inferences contained in the accusation of May 1, 1990 are baseless..." (R-1). .[See also, CP-1, ¶3; 2Tr40, 41].^{7/}

10. The Chief alleged in Specification No. 4 of his charges against Kelly that, on November 1, 1991, he caused an advertisement to appear in the local newspaper, in which he disparaged the official management of the Police Department. Kelly was charged with being insubordinate and displaying disrespect toward a superior officer (CP-1, ¶4; 1Tr58-63; CP-4). In this advertisement, which dealt in minor part with overtime, Kelly argued that the provisions in the current collective negotiations agreement did not support the claim of some candidates for office that overtime would be increased "drastically." Chief Sprague's position

^{7/} This finding is made even though this matter is time-barred under §5(c) of the Act and is marginal as to protected activity.

on the expense of overtime was that he would not be held responsible for it, notwithstanding that there were many legitimate bases for the occurrence of overtime (2Tr50-57). Overtime for the year 1991 was \$200,000. The governing body directed Chief Sprague to do what he could to "cut down on the overtime..." [2Tr57, 58].

11. On February 4, 1992, Kelly sent a letter to the Police Committee of the Borough in which he urged their support of the promotion of Lt. Richard A. Zdan to the position of Captain, explaining his reasons for this request. (1Tr69-71; 3Tr69, 70, 83, 84; CP-5). Based upon Kelly's entreaty on behalf of Zdan, Chief Sprague included this incident in his charges against Kelly of November 18, 1992. He claimed that Kelly violated Rule 3:1-29, which involves prohibited solicitation (CP-1, ¶5; 1Tr69-71). This resulted in a hearing before the Business Administrator of the Borough, Joseph Dominic (1Tr71). In his decision of August 6, 1992, Dominic exonerated Kelly of the charges filed against him by the Chief (CP-6; 1Tr72; 5Tr6-19).

12. Chief Sprague also charged Kelly on November 18th with having knowingly attempted to obtain payment for unused vacation days in or around February 5, 1992 (CP-1, ¶7). Business Administrator Dominic had initially approved Kelly's request for payment for unused vacation days under the contract. When Sprague informed Dominic that it was not departmental policy to pay for unused vacation days, Dominic then agreed to permit Kelly to carry over these days and Sprague concurred. There was no provision in

the contract which permitted pay for unused vacation days.

[1Tr72-77; 2Tr60-64, 68, 69; 4Tr63, 64; CP-7, CP-8; J-1 Art. IX, pp. 13-15].^{8/}

13. Chief Sprague also alleged on November 18, 1992, inter alia, that Kelly had used his position as President to criticize the actions of the Chief and to undermine his authority in connection with the Chief's alleged interference with the scheduling of days off for Kelly to attend to PBA matters (CP-1, ¶8). This problem arose when Kelly sent a memorandum to Captain Leo J. Farley on January 23, 1992. Farley's responsibilities included the scheduling of PBA representatives to various functions during the year (CP-9). Kelly had requested certain contractual days off (J-1, Art. VI, §§ E & F, pp. 7, 8). I credit Kelly's denial that he sought to undermine Chief Sprague in connection with the matter of his scheduling himself and other PBA officers to PBA functions during the course of the year since his position was clearly sanctioned by the collective agreement. (1Tr78-81, 83, 84; 2Tr69-79; 4Tr61-63; J-1, supra).

14. In Paragraph 12 of his Specifications of November 18, 1992, Chief Sprague stated, inter alia, that Kelly had rejected counseling regarding his alleged misconduct and false statements. According to the Chief, the cumulative effect of Kelly's conduct

^{8/} This finding is tangential to the issues presented.

"...is insubordination..." and, thus, it was the Chief's conclusion that Kelly's conduct warranted his removal. [1Tr86-90; CP-1].^{9/}

15. In his amended charges against Kelly of April 2, 1993 (CP-12), the Chief alleged that in a memorandum of February 26, 1993 to Farley (R-3), Kelly stated that because the Chief's "Internal Affairs Policies & Procedures" memorandum (J-3, undated) was subject to review, the members of the PBA would not comply with it (CP-12, CP-13, R-3; 1Tr95-98; 2Tr87-90, 102, 103; 4Tr67-71).^{10/}

16. On March 15, 1993, Kelly wrote to Captain Farley, complaining again about the inadequacy of the Chief's "Internal Affairs" guidelines (J-3, supra), which had been issued by the Chief pursuant to the Attorney General's Internal Affairs Policies and Procedures (CP-13; J-4). Kelly also advised Farley that a grievance had just been filed challenging the Chief's issuance of J-3. [1Tr98-101; 2Tr100-103; 4Tr69, 70]. The charges filed by the Chief against Kelly on April 2, 1993 resulted from Kelly's failure to retract his February 26th memo to Farley (CP-12, R-3; 4Tr68-71, 107).^{11/}

^{9/} Exhibits CP-11 and CP-12 are, respectively, the Preliminary Notices of Disciplinary Action filed by the Borough against Kelly on or about February 5, 1993 and, specifically, April 2, 1993 (1Tr92, 93).

^{10/} This finding is made, notwithstanding that it is marginal as to protected activity.

^{11/} This finding is made, notwithstanding that it is marginal as to protected activity.

17. Leo J. Farley, who has been in the Borough's Police Department for thirty-one years, and Captain for nine years, is the father-in-law of Kelly. He has no direct dealings or responsibility for Kelly in the day-to-day operations of the Department (3Tr5, 7). Farley has first-hand knowledge of the facts and circumstances that result in the disciplining of Officers, including Kelly. Farley testified credibly that the discipline meted out to Kelly by Chief Sprague has "...always been harsher..." [3Tr8, 9]. But when Chief Sprague recommended a six-month suspension for Kelly regarding the abuse of sick time, the Chief was overruled and Kelly was exonerated (3Tr11). Although Farley served the Chief's charges of November 18, 1992 (CP-1) upon Kelly on November 20th, Farley had had no input into the substance of the twelve charges. This is explained by the policy in the Department that one officer is not involved in the matters of another family member or relative. [3Tr12, 13]. In the November 18th charges, supra, the Chief sought the "removal" of Kelly from the Department. In Sprague's nine years as Chief, he had recommended only once that an officer be removed; that officer was Sgt. McCutcheon (3Tr15).

18. Richard A. Zdan has been employed in the Police Department for twenty-eight years. He has been a Lieutenant for 12 years. (3Tr60, 82). Zdan received a memo from Chief Sprague, dated May 12, 1992, in which the Chief complained that Kelly, who was on Zdan's shift, had been assigned to "Section One" around the Borough Hall on a daily basis. The Chief added that everyone should be

rotated. [3Tr62, 63; CP-17]. Zdan agreed with the Chief that there should have been greater rotation as to Kelly. He did not concur with the balance of the Chief's memorandum of May 12th, namely, that Kelly was spending too much time with the Business Administrator, Joseph Dominic [3Tr64, 65, 68]. Zdan stated affirmatively that he had no problem with the amount of time that Kelly was spending with Dominic since he was aware that Kelly was in the Borough Hall from time to time on PBA business (3Tr65-69).

19. On October 30, 1992, the Chief convened a meeting with Kelly and two Lieutenants, Henry Piekarski and Zdan (4Tr64). The Chief, who did not disclose that he was taping the meeting, opened with extended remarks and charges against Kelly, i.e., what Kelly had done to undermine him and the Police Department. He concluded with a warning to Kelly that if he persisted in his allegations and insinuations about the Chief, and continued to bring disgrace upon the Department, then the Chief would take disciplinary action.

[J-5, p. 1]. Although Kelly indicated that he understood, the Chief continued to warn him regarding his bringing disgrace upon the Department (J-5, pp. 1, 2). At the top of page 2 of J-5, Kelly responded that the Chief was threatening him, which the Chief denied. They continued to charge and counter-charge each other.

[See pages 2 through mid-page 6 of J-5]. Kelly, at the mid-point of page 6, stated that, "...this conversation's over. You do what you gotta do..." At this point Zdan asked if he was "free to go." The Chief so indicated. But before leaving, Zdan inquired if the Chief

had his "tape recorder on." The Chief said "No, I don't. Do you wanna see it?" to which Zdan said "No."^{12/} At the bottom of page 6 and the top of page 7 of J-5, Zdan stated that, as Kelly's supervisor, he has had no problem with him. I take especial note of the testimony of Zdan, who described the demeanor of the Chief toward Kelly on October 30th as "vicious."^{13/}

20. The Chief insisted that the purpose of his meeting with Kelly and the two other Lieutenants on October 30, 1992, was to "counsel" Kelly, but it did not turn out to be a "counseling session" (3Tr80, 81; 4Tr80).^{14/} The Chief taped the meeting for "future reference" so that there could not be any denial that a meeting took place (4Tr81). The Chief acknowledged that, notwithstanding the holding of this meeting, charges against Kelly were already being prepared by Granata (4Tr82-85; CP-1). The Chief acknowledged that he never told Kelly that the discipline was going forward (4Tr83).

^{12/} It is apparent that the Chief did have his tape recorder on throughout the meeting, which is why there is a transcript (4Tr66; J-5).

^{13/} See, also, Zdan's notes, which he made immediately after the meeting (CP-14) where, on the second page, he wrote:
"Observation: It appears that the sole purpose of this encounter was an attempt to intimidate, coerce, harass and threaten Officer Kelly because of position as the elected PBA representative" (3Tr77, 78).

^{14/} The Chief stated that he has had counseling sessions with other officers in the Department about personal problems but that he has never counselled on the issue of criticism or disparaging remarks (4Tr91, 92).

21. The Business Administrator of the Borough, Joseph Dominic, testified that on August 3, 1992, he was the Hearing Officer on a grievance filed by Kelly, regarding a recommended three-day suspension for interceding on behalf of Zdan's promotion to Captain by letter dated February 4, 1992, to the Mayor and Council (5Tr6; CP-6). When Dominic acts as a Hearing Officer, as he did in connection with CP-6, he puts aside anything regarding his position as Business Administrator and functions "...just as Judge..." In this case, the Chief did not appear nor was he represented although notice had been given (5Tr7, 8). On August 6, 1992, Dominic concluded that there was a "rumor of a double standard" without finding it as a fact. He did, however, find that there was no violation of the cited rule and regulation. [5Tr9]. Further, Dominic found that Kelly had not solicited anyone to intercede for him but he had gone directly to the Council or the Police Committee. In fact, Kelly had done the same thing in the past. [5Tr10]. Dominic ordered the expunging from Kelly's personnel file of any reprimand regarding the incident (5Tr12, 14).

ANALYSIS

On the fourth day of hearing, June 8, 1993, I granted the Respondent's Motion to Dismiss on the record as to the PBA's allegations that the Borough had violated §§5.4(a)(2), (a)(5) and (a)(7) of the Act. [4Tr6, 18].

Because I intend to find a derivative violation of §5.4(a)(1) of the Act^{15/} and an independent violation of this subsection, I am setting forth initially the test for determining whether an independent violation has occurred.

"An employer (independently) violates subsection 5.4(a)(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification": Jackson Tp., H.E. No. 88-49, 14 NJPER 293, 303 (¶19109 1988), adopted, 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, 116 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); N.J. Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Gorman, Basic Text on Labor Law, at 132-34 (1976). Also, the Charging Party need not prove an illegal motive in order to establish an independent violation of Section 5.4(a)(1) of the Act: Morris, The Developing Labor Law, at 75-78 (2d ed. 1983).

* * * *

Since the key findings of violations of the Act by the Borough deal with the application of §5.4(a)(3), the test used in assessing employer motivation under this subsection is as established by our Supreme Court in Bridgewater Township v. Bridgewater Public Works Association, 95 N.J. 235 (1984). The Court

^{15/} See Galloway Township Board of Education, P.E.R.C. No. 77-3, 2 NJPER 254, 255 (1976).

there articulated the following test in assessing employer motivation: (1) the Charging Party must make a showing sufficient to support an inference that protected activity was a "substantial" or a "motivating" factor in the employer's decision; and (2) once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected activity (see 95 N.J. at 242).

Further, the Court stated that no violation may be found unless the Charging Party has proved by a preponderance of the evidence on the record as a whole that protected activity was a substantial or a motivating factor in the employer's adverse action. This may be done by direct or circumstantial evidence, which demonstrates that the employee engaged in protected activity, that the employer knew of this activity, and, finally, that the employer was hostile toward the exercise of the protected activity. [95 N.J. at 246].^{16/}

If, however, the employer has failed to present sufficient evidence to establish the legality of its motive under our Act, or, if its explanation has been rejected as pretextual, then there is a sufficient basis for finding a violation of the Act without more. But if the record demonstrates that a "dual motive" is involved, the

^{16/} However, the Court in Bridgewater stated further that the "Mere presence of anti-union animus is not enough. The employee must establish that the anti-union animus was a motivating force or a substantial reason for the employer's action..." (95 N.J. at 242).

employer will be found not to have violated the Act if it has proven by a preponderance of the evidence that its action would have occurred even in the absence of protected conduct [Id. at 242]. This affirmative defense need only be considered if the Charging Party has first proven on the record as a whole that anti-union animus was a "...motivating force or substantial reason for the employer's action..." [Id.].^{17/}

The Respondent Borough Did Not Violate Section 5.4(a)(4) Of The Act As Alleged

Section 5.4(a)(4) of the Act makes it unlawful for a public employer to discharge or otherwise discriminate against an employee because he has "...signed or filed an affidavit, petition or complaint or given any information or testimony under this act..." I erroneously denied the Respondent's Motion to Dismiss the subsection (a)(4) allegation at the hearing on June 8th. [4Tr10]. This occurred because I erred in having pointed to CP-11 and CP-12, two Preliminary Notices of Disciplinary Action, issued in February and April 1993, as proof that there was at least a scintilla of evidence that §5.4(a)(4) of the Act was "...implicated, if not violated..."

^{17/} Although not relevant to the results in this case, since I am dismissing the §5.4(a)(4) allegation, infra, the Commission found in Downe Township Board of Education, P.E.R.C. No. 87-154, 13 NJPER 576, 577 (¶18211 1987) that the Bridgewater analysis is also applicable to alleged violations of Section 5.4(a)(4) of the Act. See also, Hunterdon County Board of Chosen Freeholders, P.E.R.C. No. 87-150, 13 NJPER 506, 507 (¶18188 1987).

Upon reconsideration, it is obvious that these Exhibits, CP-11 and CP-12, bear no relevance to the definition contained in §5.4(a)(4), supra, since the employee must have filed or signed an affidavit, petition or complaint, or given testimony under the Act. These two exhibits could in no way relate to Kelly's problems vis-a-vis the Chief under the Act. Also, the PBA adduced no evidence which would cause me to conclude differently.

Accordingly, I will recommend that the Section 5.4(a)(4) allegation be dismissed.

The Respondent Borough Independently Violated Section 5.4(a)(1) Of The Act By The Conduct Of Its Chief Of Police Which Tended To Interfere With Kelly's Rights Under The Act. Further, The Chief's Conduct Lacked A Legitimate And Substantial Business Justification.

In substantiating my conclusion that the Borough independently violated Section 5.4(a)(1), as well as derivatively under Galloway Township Board of Education, supra, I am referring seriatim to my Findings of Fact above. Several of these Findings contain matters which occurred prior to July 1, 1992, and, thus, are time-barred under Section 5(c) of the Act. As such, the finding of a subsection (a)(1) violation is precluded. However, such time-barred events may be used as "background" to events that occurred within the six-month limitation: Local Lodge No. 1424, IAM (Bryan Mfg. Co.) v. NLRB, 362 U.S. 411, 45 LRRM 3212 (1960).

I.

I find and conclude that the repeated disciplinary actions, leveled against Kelly on at least five or six occasions, beginning in 1973 and continuing through 1993, have tended to interfere with Kelly's right to discharge his duties as President of the PBA since 1987. Further, the Borough by the Chief's conduct has interfered with Kelly's furtherance of the legitimate aims and objectives of the PBA as the "...the exclusive collective negotiation agent for all patrolmen..." (J-1, p.1). This finding is supported by Kelly's testimony that three of the six disciplinary charges against him were dropped or reversed. Even if the first three instances of discipline are deemed time-barred by §5(c) of the Act, they do provide "background" under Bryan to the three pending charges against Kelly: CP-1, CP-11 & CP-12. [F/F No. 4].

II.

I find and conclude that the twelve specifications in the Chief's disciplinary charges against Kelly, dated November 18, 1992 (CP-1), which were prepared by the Chief's personal counsel, Granata, and which were litigated almost in their entirety during the hearing, were timely filed under the Act, and, in the aggregate, constitute an independent violation of §5.4(a)(1). [F/F Nos. 5, 9-14]. I find incredible the Chief's stated reason for having filed this compendium of charges against Kelly, namely, that Kelly had filed a police report which disparaged the Chief (4Tr27). The Chief's reaction was extreme, which indicates to me that his objectives lacked any substantial or legitimate business justification.

The serving of these charges upon Kelly tended to interfere with his §5.4(a)(1) rights under the Act. I am not persuaded that the initial illegality of the Chief's conduct, in having prepared his charges against Kelly (CP-1) on November 18, 1992, was in any way dissipated by the amended charges, which were served on February 5, 1993 (CP-11). These latter charges merely sanitized the original charges and enabled the Borough to straighten out its act as a Civil Service municipality (4Tr28, 29). [F/F No. 6].

III.

While I might initially have been inclined to have found an independent §5.4(a)(1) violation of the Act by the Chief with respect to his alleged favoritism in the resolution of grievances under the Agreement, I am here confronted with the six-month limitation provision in §5(c), regarding the cases of McCutcheon, Marcinczyk, Fischer, Wolsky and Bardes, all of whose disciplinary problems occurred prior to July 1, 1992, the six-month cut-off. [F/F No. 8]. Even if I took this time-barred activity as "background" under Bryan, supra, I would be left only with the Chief's disciplinary actions against Green, Nita and Lanning as supporting a conclusion that the Borough has independently violated §5.4(a)(1). This, however, is too slender a reed upon which to base a violation. Therefore, the allegations of the PBA with respect to grievance-favoritism are dismissed.

IV.

However, I find and conclude that the Borough independently violated §5.4(a)(1) of the Act by the conduct of its Chief with respect to Kelly's having placed an advertisement in the local newspaper on November 1, 1991, in which, according to the Chief, Kelly disparaged the official management of the Police Department. The Chief thereafter charged Kelly with being insubordinate and displaying disrespect toward a superior officer in Specification No. 4 of the charges filed against Kelly on November 18, 1992 (CP-1, ¶4).

It appears to me that the Chief is plainly off the mark in having concluded from the text of the advertisement that Kelly had in fact disparaged the management of the Police Department. It strikes me that all that was involved was Kelly's having placed an advertisement in the local paper, which dealt, in small part, with overtime. Since there is no six-month limitation problem with respect to this incident, it having been incorporated into the Chief's charges against Kelly on November 18th, I reiterate that the Borough violated §5.4(a)(1) of the Act. [F/F No. 10].

V.

I find and conclude that the action of the Chief, with respect to Kelly's having sent a letter to the Police Committee (not to the Mayor and Council) on February 4, 1992, urging their support of the promotion of Lt. Zdan to Captain, violated the §5.4(a)(1) of the Act. This action of Kelly was clearly a protected activity as to which any employee in the Police Department could have engaged.

Unfortunately, the response of the Chief was to incorporate this alleged infraction into his November 18th charges against Kelly (CP-1, ¶5).

However, this event had a happy ending when the matter was brought by Kelly as a grievance before Borough Administrator Dominic, acting as a Hearing Officer. Dominic's decision of August 6, 1992 exonerated Kelly of the charges which had been filed against him by the Chief. Once again, there is no six-month limitation problem since the Chief incorporated this matter into his November 18th charges against Kelly. Also, the Business Administrator dealt with this matter within the six-month period (July 1, 1992 to December 31, 1992). [F/F Nos. 11 & 21].

VI.

I find and conclude that the Borough independently violated §5.4(a)(1) of the Act by the Chief's unwarranted attack upon Kelly for using Article VI, §§E & F of the collective negotiations agreement to schedule days off for himself and other PBA officers to attend PBA functions during the course of 1992. The Chief's totally illogical position was that his authority was being undermined by Kelly whose actions had, however, been undertaken in cooperation with Captain Farley, who had the responsibility to work with Kelly in scheduling PBA representatives to various functions during the year. I have credited Kelly's claim that he had no intention to undermine the Chief. Significantly, this matter of scheduling days off was also considered disciplinary and was included by the Chief

in his disciplinary charges against Kelly of November 18, 1992.
[F/F No. 13].

VII.

I find and conclude further that the Borough independently violated §5.4(a)(1) of the Act by the conduct of the Chief pursuant to Paragraph 12 of his specifications of November 18, 1992 wherein he claimed that Kelly had rejected counseling with respect to his alleged misconduct and false statements, all of which "is insubordination." This warranted Kelly's removal . [F/F No. 14].

This conclusion of an (a)(1) violation of the Act ties into Findings of Fact Nos. 19 & 20, which dealt with the signal meeting, convened by the Chief on October 30, 1992. It appears to me that there was no compelling reason for the Chief to have convoked this meeting except to have set Kelly up in the presence of two senior officers, Lts. Piekarski and Zdan. The Chief's obvious purpose was to bring about a confrontational encounter. That he had no intention to counsel Kelly is evident from the transcript of what transpired during this meeting, infra. To compound the matter, which also sheds light on the motivation of the Chief, he taped the meeting without the knowledge of any of those present. 18/

18/ I have been provided with a transcript of the entire meeting, from which I have drawn certain inferences and conclusions (J-5). At the invitation of the parties, I also listened to the original tape of this meeting and this fact was placed upon the record (5Tr5). However, this tape was not made an exhibit.

The tenor of the meeting is provided by the Chief in his extended, vituperative remarks on page 1 of J-5 and continuing to the top of page 2. At that point, all that Kelly is able to interject is: "...Well, I don't think threatening me is gonna get you anywhere..." The Chief responded that he was not threatening Kelly. I conclude that the Chief's remarks on page 1 are patently threatening and tended to interfere with Kelly's rights under the Act. The transcript continues thereafter from page 2 through the middle of page 6 and breaks off with a colloquy between the Chief and Kelly.^{19/} From the mid-point of page 6 through page 11, the conversation is between the Chief and Zdan, Kelly having left the room at about the mid-point of page 6.

As I have previously indicated, the only conclusion that can be drawn is that the Chief never sought to "counsel" Kelly on October 30th. Rather, the Chief convoked and used the meeting solely to intimidate, coerce and attack Kelly for his past exercise of activities, most of which I have previously found to have been protected under the Act. [See F/F Nos. 14, 19 & 20].

VIII.

I find and conclude, in connection with the Chief's having sought the removal of Kelly by his November 18, 1992 charges (CP-1), that the Borough independently violated §5.4(a)(1) of the Act since

^{19/} During pages 2 through 6 of J-5, one finds much vituperation but little substance in the colloquy between the Chief and Kelly.

its Chief, Douglas A. Sprague, had never before sought the removal of an officer from the Police Department except, in the case of Sgt. McCutcheon, who had a substantive disciplinary trail much longer than that of Kelly. The evidence of disparage treatment as to Kelly was provided by Captain Farley. Not only did he testify with respect to the Chief's past history of "removals" but Farley also testified credibly that the discipline meted out to Kelly by the Chief has "...always been harsher..." (3Tr8, 9). Captain Farley's position in the Department has always placed him in a position of having had first-hand knowledge of the facts and circumstances with respect to the disciplining of officers, including Kelly. [F/F No. 17].

IX.

Although outside the six-month limitation under §5(c), I find as "background" under Bryan that the Borough by its Chief of Police would have otherwise also independently violated §5.4(a)(1) of the Act, based upon the Chief's memorandum to Zdan on May 12, 1992, regarding the assignment of Kelly to the Borough Hall. While Zdan agreed that there should have been greater rotation at the Borough Hall with respect to Kelly, he did not concur with that part of the Chief's memorandum that Kelly was spending too much time with the Business Administrator. Zdan testified that, as Kelly's supervisor, he had had no problem with Kelly's spending too much time in the Borough Hall since he knew that he was there on PBA business. This incident qualifies as "background" under Bryan.

since it fell outside the six-month limitation by six weeks. [F/F No. 18].

* * * *

The Respondent Borough Violated
Section 5.4(a)(3) Of The Act By
The Conduct Of Its Chief Of Police

Because there is no need to duplicate at length the analyses previously set forth under the §5.4(a)(1) subject headings I through IX, I am incorporating by reference all except III and IX into my findings and conclusions with respect to violations by the Borough under §5.4(a)(3) of the Act. In other words, I have determined that the facts as previously found and later analyzed under the subject headings I, II, IV, V, VI, VII and VIII, supra, afford, in each instance, a valid basis for a finding by me that the Borough has also violated §5.4(a)(3) of the Act by the conduct of its Chief of Police.

This requires that the Bridgewater analysis, supra, be applied to each of these subject headings and that I reach the conclusion that anti-union animus and/or hostility were the motivating factors in the adverse actions of the Chief vis-a-vis Kelly. There can be no doubt but that the Charging Party has proven that Kelly exercised protected activities and that the Borough by its Chief of Police knew these activities. Also, I find that the Chief was hostile toward Kelly's exercise of protected activities and that this was a motivating factor/reason for the Chief's many retaliatory actions against Kelly.

Because I am necessarily concluding that any explanation for the Chief's extended pattern of hostility and retaliation against Kelly is a mere pretext, I reject any suggestion by the Borough that a dual-motive defense is applicable.

Briefly, as to each of the seven relevant subject headings, supra, separate Section 5.4(a)(3) violations are found, as follows:

I.

The Chief's repeated disciplinary actions against Kelly, particularly since 1990, demonstrate that the Chief has manifested the requisite hostility against Kelly to warrant a finding that the Act was violated (F/F No. 4).

II.

I find that the Chief's reason for filing the compendium of twelve disciplinary charges on November 18, 1992, i.e., because Kelly had filed a police report disparaging the Chief, defies credulity. Rather, I find that the Chief's action indicates that Kelly was being punished for the protected conduct in which he had engaged and which the Chief had incorporated into these charges.

IV.

The matter of the November 1, 1991 advertisement shows the plain animus of the Chief toward Kelly. One has only to consider the Chief's stated reasons for his upset with Kelly: that Kelly was insubordinate and displayed disrespect toward a "superior officer," i.e., the Chief. A fair reading of the advertisement, and its purpose, indicates that Kelly was rightfully exercising a protected

activity on behalf of the PBA, as to which the Chief was circumscribing Kelly's right to do so. Since this incident was incorporated into the Chief's charges of November 18th as ¶4, the evidence that the Borough violated §5.4(3) is even stronger. [F/F No. 10].

V.

The urging by Kelly of the promotion of Lt. Zdan was clearly a protected activity, but the Chief's reaction was to include this matter in the above disciplinary charges (CP-1, ¶5). The fact that this matter had a satisfactory ending due to Kelly's having filed a grievance is irrelevant to the animus manifested by the Chief. [F/F No. 11].

VI.

The Chief's unwarranted interference in Kelly's contractual rights under Article VI, §§ E & F of the Agreement is yet another instance of the unjustified retaliatory conduct by the Chief toward Kelly. It is clear that Kelly was merely working out scheduling with Captain Farley as to PBA functions during 1992, but the Chief took umbrage, claiming that his authority was being undermined. [F/F No. 13].

VII.

The whole matter of the Chief's October 30th meeting has been thoroughly aired previously and will not be repeated here. One has only to read the first page and one-half of the transcript of this meeting (J-5) to conclude that §5.4(a)(3) has been egregiously

violated. The vituperation of the Chief, and his seeking a confrontation with Kelly, is borne out fully by the transcript of this meeting. Any suggestion that the Chief convened this meeting for the purpose of counseling Kelly is devoid of support in the record and is rejected. [F/F Nos. 14, 19 & 20].

VIII.

The Chief's having sought Kelly's removal by his filing of the November 18th disciplinary charges, and the fact that Kelly has always received harsher discipline than other patrolmen, compels the conclusion that the Chief illegally retaliated against Kelly for his exercise of protected activities over many years. Here again the Borough has violated the Act.

* * * *

In conclusion, I note that the parties have cited several decisions of the State and Federal Courts which deal with the First Amendment constitutional rights of public employees. I am listing these cases here but I see no need to discuss or apply them since I have found that Commission precedent is adequate to decide the case
2t bar. ^{20/}

^{20/} As a general rule, the Commission, like other administrative agencies, does not normally adjudicate constitutional questions. But compare: Hunterdon Central High School Bd. of Ed., P.E.R.C. No. 80-4, 5 NJPER 289 (¶10158 1979), aff'd 174 N.J. Super. 468 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981).

Citations Noted But Not Relied Upon:

1. Hall v. Mayor et al, 170 N.J. Super. 307 (1979), rev'd 176 N.J. Super. 229 (App. Div. 1980).
2. Connick v. Myers, 461 U.S. 138 (1983).
3. Zamboni v. Stamler, 847 F.2d 73 (3rd Cir. 1988), cert. den. 102 L.Ed. 2d 233 (1989).
4. Fiorillo v. U.S. Dept. of Justice, 795 F.2d 1544 (D.C. Cir. 1986).
5. Wulf v. City of Wichita, 644 F.Supp. 1211 (D.C. Kan. 1986).
6. Solomon v. Royal Oak Tp., 656 F. Supp. 1254 (E.D. Mich. 1986).
7. Pickering v. Bd. of Educ., 391 U.S. 563 (1968).

* * * *

Upon the foregoing, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent Borough independently and derivatively violated N.J.S.A. 34:13A-5.4(a) (1) by the egregious conduct of its Chief of Police, Douglas A. Sprague, over many years, dating at least to 1987, which conduct has tended to interfere with the rights of Charles Kelly, the President of the PBA, which are guaranteed by Section 5.4(a) (1) of the Act.

2. The Respondent Borough violated N.J.S.A. 34:13A-5.4(a) (3) by the same conduct of the Chief vis-a-vis Charles Kelly as under §5.4(a) (1) since the Charging Party has fully met the requisites of Bridgewater Tp. v. Bridgewater Public Works Ass'n. in having proven that the Chief's conduct toward Kelly was motivated by

anti-union animus and hostility to Kelly's exercise of protected rights.

RECOMMENDED ORDER

The Hearing Examiner recommends that the Commission ORDER:

A. That the Respondent Borough cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to check the conduct of its Chief of Police who, over many years, from at least 1987, has tended to interfere with the rights of Charles Kelly in the performance of his duties as PBA President.

2. Discriminating in regard to any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to check the conduct of its Chief of Police who has, over many years, manifested animus and hostility toward Charles Kelly and, additionally, has retaliated against him for his exercise of protected activities, all of which was known to the Borough.

B. That the Respondent Borough take the following affirmative action:

1. Cease and desist from permitting its Chief of Police to engage in the activities set forth above under paragraphs A.1 and A.2.

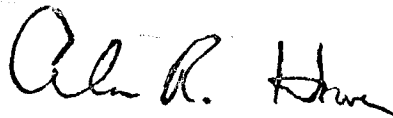
2. Withdraw forthwith the following disciplinary charges against Charles Kelly, contained in the November 18, 1992

Specifications (CP-1): ¶'s 2, 4, 5, 8 and 12; and as similarly repeated in the sanitized version of February 5, 1993 (date served) except for ¶12 (CP-11)

3. Any and all references to the above Specifications in CP-1 and CP-11, which now appear in the personnel file of Charles Kelly are to be expunged forthwith.

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

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



Alan R. Howe
Hearing Examiner

Dated: December 6, 1993
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly, by failing to check the conduct of our Chief of Police, which has tended over the years since 1987, to interfere with the rights of Charles Kelly, exercised by him as President of the PBA.

WE WILL NOT discriminate regarding the terms and conditions of employment of Charles Kelly, particularly, by failing to check the conduct of our Chief of Police, who has, in the past, manifested animus and hostility toward Charles Kelly and who has, also, retaliated against him for his exercise of protected activities, all of which was known to the Borough.

WE WILL forthwith withdraw the following disciplinary charges against Charles Kelly, contained in the November 18, 1992 Specifications (CP-1): ¶'s 2, 4, 5, 8 and 12; and as similarly repeated in the sanitized version of February 5, 1993 (date served) except for ¶12 (CP-11).

WE WILL forthwith expunge from the personnel file of Charles Kelly any and all references to the above Specifications.

Docket No. CO-H-93-233

Borough of Sayreville
(Public Employer)

Dated _____

By _____
(Title)

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

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