

H.E. No. 2010-8

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

In the Matter of

NEW JERSEY STATE (STATE POLICE),

Respondent,

-and-

Docket No. CO-2004-345

STATE TROOPERS FRATERNAL  
ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Commission dismiss a Complaint alleging that the State of New Jersey (Division of State Police) improperly disciplined, refused to promote and reassigned Sergeant Kevin Walls, an STFA unit employee and former STFA executive board member, in retaliation for his protected activities. The Hearing Examiner found that the charging party failed to prove that the State was hostile to his protected conduct, pursuant to the standards set forth in In re Bridgewater Tp., 95 N.J. 235 (1984), and that some of the allegations were untimely. N.J.S.A., 34:13A-5.4(c).

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,  
Paula T. Dow, Attorney General  
(Sally Ann Fields, Sr. Deputy Attorney General)

For the Charging Party,  
Loccke, Correia, Schlager, Limsky and Bukosky, attorney  
(Merick H. Limsky, of counsel)

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On May 10, 2004, the State Troopers Fraternal Association (STFA) filed an unfair practice charge against the State of New Jersey, Division of State Police (State or Division). The charge alleges that the State violated sections 5.4a(1), (2), (3), (4) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act

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<sup>1/</sup> These provisions prohibit public employers, their agents or representatives 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  
(continued...)

N.J.S.A. 34:13A-1 et seq. (Act). The STFA alleges that between November 10, 2003 and May 10, 2004, the State improperly investigated and filed disciplinary charges against STFA member Sergeant Kevin Walls, mishandled his grievances, reassigned him and refused to promote him, all in retaliation for his advocacy on behalf of the STFA and for filing his own grievances.

On April 8, 2005, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the 5.4a(1), (3) and (5) allegations<sup>2/</sup>.

On October 8, 2005, after receiving an extension of time, the State filed an Answer denying that it violated the Act and asserting that its actions followed the Division's rules and policies, and were not intended to discredit Walls or deny him a promotion because of his union activities.

I conducted a hearing on November 30, 2005, December 1, 2005, January 5 and 26, 2006, February 21, 2008 and July 16,

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1/ (...continued)  
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.

2/ The Director refused to issue the Complaint as to the alleged violations of section 5.4a(2) and (4), finding that those allegations were not supported by sufficient alleged facts.

2008, at which the parties examined witnesses and presented exhibits<sup>3/</sup>. On April 5, 2007, I issued a letter, granting part of the State's Motion to Dismiss, specifically, the alleged violation of section 5.4a(5) of the Act. Both parties filed post-hearing briefs and reply briefs. Upon the record, I make the following:

FINDINGS OF FACT

1. The STFA represents a negotiations unit of several hundred State troopers. At the time of the hearing, Christopher Burgos was the president of the STFA (1T51)<sup>4/</sup>. The State and STFA are parties to a succession of collectively negotiated agreements.

2. Kevin Walls has been employed by the State Police for eighteen years. On June 2, 2005, Walls was promoted to sergeant, retroactive to January 3, 2004 (1T56). Walls is a member of the STFA and has held positions on the Union's executive board (1T50-1T53, 1T58-1T63).

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<sup>3/</sup> The hearing in this matter was delayed by a Motion to Dismiss at the close of the Charging Party's case, and by delays in the scheduling of the hearing between 2007 and 2008.

<sup>4/</sup> "C" represents Commission exhibits; "CP" represent the Charging Party's exhibits; "R" represents Respondent's exhibits; and "J" represents joint exhibits. "1T" represents the transcript for the hearing on November 30, 2005, "2T" represents the transcript for the hearing on December 1, 2005, "3T" represents the transcript for the hearing on January 5, 2006, "4T" represents the transcript for the hearing on January 26, 2006, "5T" represents the transcript for the hearing on February 21, 2008, and "6T" represents the transcript for the hearing on July 16, 2008.

3. Walls is currently assigned to the programming unit in the Information Technology Bureau (1T56). For several years, Walls has worked in the Management Awareness and Personnel Performance System Unit (MAPPS) (1T56). MAPPS is a software application that collects personnel information such as attendance, disciplinary infractions, performance notices and training. The system enables managers to monitor and identify troopers whose performance indicates that additional mentoring, training, discipline, and/or separation is warranted (6T127-6T129). MAPPS was intended to assist the Division's compliance with a 1999 Federal Court consent decree. Through the MAPPS system, data is collected and analyzed (1T57-1T58, 6T40-6T41, 6T127-6T129). Data of particular interest, such as motor vehicle stops, can be extracted (6T41). Initially, MAPPS was a unit within the superintendent's office. Walls was assigned to MAPPS in March 2002 and helped create the MAPPS system (1T58).

4. As an STFA station representative, a position he first held in 1999, Walls represented unit members assigned to the Atlantic City Expressway barracks in grievances, investigatory interviews, and tried to ensure that the collective agreement was followed (1T58-1T59). As a member of the South Jersey Troop A executive board, Walls coordinated station representatives (1T61). In both roles, he found that field supervisors were often uninformed about the precedents set in the STFA's grievances, arbitrations and unfair practice charges. He

complained to personnel in the Division-level labor relations unit to have them inform the local commanders about the precedents and correct their practices (1T62).

5. From 2000 to 2001, Walls served as sergeant-at-arms and treasurer of the statewide STFA executive board (1T50). During this period, he had more contact with the Division's central labor relations unit and the Governor's Office of Employee Relations (OER) (1T51-1T53, 1T66).

6. In March 2000, Walls participated in collective negotiations for the union and was very active in the STFA's representation of a large number of troopers who were subjected to internal investigatory interviews (1T70-1T71). Walls found that many of the new internal affairs investigators were unaware of the troopers' rights and that he had to complain directly to the investigators' superior officers or to the Division-wide labor relations unit (1T71-1T72).

7. On or about October 2, 2000, Atlantic City Expressway Station Commander Lieutenant Francis tried to replace Walls as station representative (2T14). Lieutenants are not members of the STFA, but are in the Superior Officers Association (2T4). On October 2, 2000, Francis sent a letter (CP-1) to then-STFA President Ed Lennon:

The personnel at the Atlantic City Expressway . . . are not satisfied with their present station rep. Your office has been contacted . . . and was advised to hold an election. Trooper Marsh has been elected as the new station rep. . . [CP-1; 2T4-2T6]

Lennon disregarded Francis' letter and Walls remained station representative (2T6).

8. On July 25, 2001, Walls sent a memorandum to Acting Atlantic City Station commanders Hines and Tuohy alerting them to the possibility that overtime would be required because of the opening of the Atlantic City Expressway tunnel project, scheduled to begin two days later (2T7-2T9). Walls thought that Hines and Tuohy could use the information to bolster their request for additional staffing, which he believed had previously been denied (2T12-2T15). Troop Commander Lieutenant Richard Gilbert also received the memo and he angrily confronted Walls, telling him there would not be any overtime (2T10). Gilbert appeared to resent Walls' attempt to "force" the Division to offer Walls' barracks overtime (2T10-2T13).

9. Within weeks of the confrontation with Lieutenant Richard Gilbert, Walls was transferred to the Tuckerton barracks (2T17, 2T26). The STFA grieved the transfer and later withdrew it (2T17-2T26, 3T120-3T124). Sergeant First Class Thomas Gilbert, then a Division-level labor relations officer, defended the transfer and informed Walls that management had the right to determine a "normal" rotation for toll road duty, though it had not been formalized (2T17-2T19, 2T20-2T26, 6T94-6T95). Walls disagreed with Gilbert (2T20-2T26, 6T95)<sup>5/</sup>.

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<sup>5/</sup> Charging Party asserts that this transfer was in retaliation for Walls' representation of STFA members, however, the  
(continued...)

10. One result of the Federal consent agreement was mobile video recordings of troopers' traffic stops (2T34). By fall 2001, three STFA unit members were being investigated for an incident that had become the subject of media interest and public inquiry and Walls was helping them (2T34-2T35). Major Albert Kernagis was section supervisor of the field operations section, where the vast majority of troopers work (2T33-2T34). Captain Glen Miller was the executive officer of field operations. Both Kernagis and Miller were annoyed with Walls because of his efforts on behalf of troopers, and Miller told Walls he was "a pain in the ass" (2T37).

11. By late 2001, Lieutenant Colonel Thomas Gilbert had advanced to the position of chief of staff and second in command of the Division (6T91). Gilbert first met Walls soon after he became an STFA representative (6T93). In the wake of the terrorists' attacks on September 11, 2001, the Division asked many members to perform extraordinary tasks across the State and in New York (6T99, 6T114). The members had responded willingly (6T99-6T100). At that time, Colonel Dunbar was Superintendent.

12. In early winter, Dunbar sought to recognize the members for their extra efforts (6T100). He specifically wanted to move ahead quickly on promotions and to schedule a recognition

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5/ (...continued)  
allegation is untimely, more than two years outside of the Act's six month statute of limitations. N.J.S.A. 34:13A-5.4(c).



ceremony (6T99-6T100). However, the STFA collective agreement provides that there be specific period for posting notices of promotions before they are made. The posting period interfered with the scheduled promotional and recognition ceremony (6T100). Dunbar wanted Gilbert to expedite and complete the process by the scheduled date (6T101-6T103). The STFA can waive the posting time limits. Gilbert contacted the STFA and reached Walls, who was the Union's spokesperson then (6T101-6T103). Walls told Gilbert that the STFA would not waive the contractual posting period (2T40, 3T131, 6T102-6T105). Walls steadfastly denied Gilbert's request, believing that it would be improper to waive all members' rights to grieve individually over not being promoted. He never explained this reason or any reason for refusing to waive the posting period (2T40, 3T131-3T132, 6T104).

Gilbert did not request a change in any provision of the agreement (6T105). At this time, between November 2001 and January 2002, Governor-elect McGreevey was waiting to take office and it was generally believed that the Attorney General would also be replaced (6T108). There were concerns about the budgetary health of the State and the possibility of freezes on all personnel moves, including promotions (6T108-6T109). The Division's request to the STFA was designed to facilitate the promotions of as many members as possible (6T111). Colonel Dunbar had the support of the Attorney General and Governor and the Division staff had worked on the promotions and the ceremony

for months (6T111-6T112, 6T114). The OER directed Gilbert not to proceed without a written waiver; it rejected the union's verbal assurance not to grieve an expedited posting period, which was all the union would give (6T113-6T114). After January 1, 2002, when a new STFA president was installed, the parties negotiated a compromise on the posting requirements and the STFA members' promotions were implemented (6T106-6T107)<sup>6/</sup>.

13. In early December 2001, STFA and Division representatives met several times to resolve a dispute about promotional examinations (2T27-2T28). Walls was on the executive committee and was present at all meetings (2T29). At one point, Major Fred Madden indicated that he had to take a proposal to Colonel Dunbar, to which Walls objected, remarking that all of the State's decision-makers ought to be present (2T30). Three of the State's representatives - Whitcomb, Madden and Gilbert - were visibly upset at Walls' comment (2T30, 3T84).

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<sup>6/</sup> Walls testified that Gilbert indirectly threatened him that the union's refusal (to waive the posting time period) ". . . will not sit well with the bosses" (2T40, 3T88, 3T136). Gilbert also testified at the hearing. He denied threatening Walls or making the alleged statement. He conceded that he and the Colonel were disappointed and frustrated because the Division genuinely wanted to acknowledge the members as soon as possible by promoting them (6T155). They had arranged a ceremony that had to be postponed because no agreement on the posting requirement was reached with the union. They thought Walls made a bad decision (6T156). I credit Gilbert's denial and find he pursued the waiver vigorously at the Colonel's behest and they were frustrated, but I do not find this amounted to a threat (6T155-6T156).

14. At that time, late 2001, Walls and Thomas Gilbert had frequent contact and a business-like relationship; they disagreed on various issues, but apparently without rancor (2T31-2T33). At the end of his official positions with the STFA, Walls continued to serve as an STFA station representative for the Atlantic City Expressway Station until early 2002, when his official roles with the STFA ended (1T53, 1T64, 3T101,6T119-6T120; R-22).

15. In March 2002, Walls was assigned to a committee charged with reporting on a 12-hour tour proposed by then-Superintendent Joseph Santiago (2T44-2T45). Captain Miller, who was also on the committee, favored an 8-hour schedule and became agitated at Walls' disagreement with him (2T45).

16. In May 2002, Walls was assigned to the model troop initiative committee with Chief of Staff Thomas Gilbert, Lieutenant Richard Gilbert, Major Kernagis and Captain Miller (2T50-2T52, 3T137, 6T115-6T116). Discussions centered on returning troopers to road duty, training, and potential scheduling issues and Walls raised various implications of the proposals on the collective agreement (2T52). Walls recalled having a heated discussion over scheduling with Lieutenant Richard Gilbert (2T52). Walls testified that Captain Canatella told him to "watch himself," and that Kernagis, Miller, R. Gilbert, T. Gilbert and Captain John Hunt all stated that Walls should be careful, watch himself and that he was not making any friends (2T53, 2T54, 3T139-3T140). I do not credit this

testimony because it is second-hand hearsay, was uncorroborated and denied by both Lieutenant Colonel Tom Gilbert and Captain Hunt (6T42, 6T115-6T116).

17. The committee members knew that Walls was active in the STFA and none mocked him or expressed disapproval of his participation. Hunt credibly testified that he never "mockingly" referred to Walls as the "union guy" on the committee, contrary to Walls' testimony (6T42). I also credit Hunt's testimony that Walls contributed to the committee's work in both areas of his expertise, the MAPPS program and the collective negotiations between the Division and the STFA (6T42-6T43). Lieutenant Colonel Tom Gilbert corroborated that no one on the committee mockingly referred to Walls as "the union guy" (6T116-6T117). Gilbert knew Walls was not there representing the union but as "a valued member of the Division" (6T116). Gilbert thought that Walls brought the perspective of the troopers "on the road" where the model troop initiative was focused. Moreover, Gilbert conceded in his testimony that if he thought that Walls' participated on the committee as a union representative, he "probably would have been excluded from the meetings" (6T116-6T117). Gilbert thought that Walls asserted some good ideas to the committee regarding potential violations of the STFA contract and other labor relations issues (6T117).

18. In July 2002, Walls was ordered to attend situational interaction training, sarcastically named "charm school," for

troopers who are considered problem employees (2T54-2T56). Walls and his immediate supervisor, Lieutenant Michael Siegelski, investigated the reason he was scheduled for this training and learned that participants were selected by the Office of Professional Standards (OPS). However, they discovered that Walls had been recommended by Field Operations Captain Richard Gilbert with the concurrence of Lieutenant Colonel Albert Kernagis (2T57-2T58). Walls objected to being included among those selected for "charm school" and, with Siegelski's help, was removed from the order, and did not go to the training (2T55-2T57)<sup>2/</sup>.

19. In July 2002, Walls was assigned to the MAPPS unit (2T60). The unit structure consisted of a lieutenant (unit head), a sergeant first class (assistant unit head), a sergeant and civilian administrative staff (CP-6; 2T60-2T62). Walls was selected because of his interest and abilities and because he had served on the MAPPS Development Committee (CP-7).

20. On November 25, 2002, Lieutenant Siegelski, the MAPPS unit head, recommended Walls for promotion to sergeant (CP-5; 2T58-2T59).

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<sup>2/</sup> I do not credit the hearsay testimony that Lieutenant Roseanne Manghisi's comment, "when is this stuff going to stop" is evidence of hostility towards Walls' protected activity. Charging Party did not establish that this lieutenant knew the reason Walls had been erroneously scheduled for the communications training or that she was referring to others' hostility toward Walls' protected activity.

21. By February 2003, Walls began to question why, if his position were budgeted as a sergeant, he had not been promoted (CP-6, CP-7, CP-8). In the Division, promotions are often made in groups, and there had been a group of promotions on February 4, 2003, which did not include Walls (CP-7; 2T63).

22. On February 4, 2003, Walls wrote to Acting Superintendent Madden requesting that his position be assigned a sergeant's rank and he be promoted (CP-7; 2T63). Though Walls received no written response, Lieutenant Colonel Kernagis told him that there was no sergeant vacancy available for his position and that on February 4, 2003, only personnel whose positions were announced on December 24, 2002, had been promoted (2T64-2T65, 2T72-2T74; CP-7). Walls testified that on February 3, 2003, Siegelski said that Captain Thomas Gilbert and Acting Superintendent Madden had discussed his promotion and thought that Walls was disrespectful of authority, rude, brash, arrogant, and, as long as they had a say in the matter, he would not be promoted (2T66-2T68). Under certain circumstances these are code words evincing anti-union hostility. Siegelski did not testify at the hearing and Walls' testimony is second-hand hearsay. Gilbert denied that he made these statements about Walls and I credit Gilbert's denial (6T121-6T122). Gilbert thought that Walls needed to work on his collaborative and interpersonal skills (6T121-6T122). Gilbert's other testimony regarding Walls is consistent with this testimony (6T116-6T117).

23. On April 16, 2003, and on June 3, 2003, Walls submitted two additional written requests to meet personally with the new superintendent about his career (2T72-2T76; CP-8, CP-9).

Gilbert explained that in June 2003, the Division was at risk of failing to meet certain benchmarks related to the MAPPS program, posing a very serious problem (6T130-6T133). Gilbert was aware of Siegelski's recommendation to promote Walls but the Division was considering whether the MAPPS unit needed changes and refrained from promoting anyone (6T133). At the time of Walls' requests for meetings with the Colonel and explanations about his promotional status and rights, Gilbert and others were formulating plans to merge units that could have affected Walls' promotion (6T133-6T134). The merged units were to form a quality assurance bureau (6T133). Gilbert told Siegelski that the meeting Walls requested was premature because of the decision-making that was going on at the time related to defining goals and changing existing unit structures (6T134).

24. On August 8, 2003, for the second time, Siegelski formally recommended that Walls be promoted to Captain Hunt, Bureau Chief of the Quality Assurance Bureau (2T78; CP-10).

Siegelski wrote:

. . . Trooper Walls has been tasked with overseeing the development of the MAPPS . . . Kevin has worked in a prudent, and focused manner to refine policies and integrate them with already existing Standing Operating procedures.

Kevin is totally committed to achieving excellence. His daily work habits consistently involve extra effort and personal sacrifice. He has taken initiative to reach out and contact experts in the field of computer based police management tools. He absorbs information quickly and is able to evaluate the feasibility of applying the concept to our organization. He freely shares his research with others and is always available for assistance.

. . . I would strongly recommend that he be afforded an opportunity to serve the organization in the role of a supervisor. He is more than capable and highly qualified (CP-10).

25. Hunt received CP-10, concurred with it and sent it through the chain of command (6T46, 6T48-6T50).

26. On August 12, 2003, Hunt prepared R-5, a personnel transfer form to effectuate Walls' promotion to sergeant, effective September 6, 2003 (6T49-6T50; R-5).

27. On September 6, 2003, Walls became acting sergeant. Lieutenant Colonel Tom Gilbert, who, along with the superintendent, agreed with the promotion, facilitated Walls' moving into an acting sergeant's position, reallocated a vacant sergeant's position, and personally authorized the move (6T122-6T123). Walls' promotion to acting sergeant occurred because of Siegelski's and Hunt's recommendations and Gilbert's authorization (3T146, 6T122-6T123, 6T150; CP-10; R-5). Walls acknowledged that the appointment to acting status is at the superintendent's sole discretion and is not appealable through the grievance procedure (3T146-3T148; J-1A). After serving



continuously for eight biweekly pay periods as an acting sergeant, Walls received sergeant's pay, in accordance with the contract (6T124-6T125; J-1A).

28. On or about September 2, 2003, Walls was ordered to attend a communications workshop on September 29, 2003, by an order issued by the superintendent (2T84; CP-11). Walls learned that this training was for members with at least three misconduct investigations in a two-year period, at least one of which related to attitude and demeanor (2T86; CP-12). Walls did not fit that profile. When training officer Captain Edward Donovan verified Walls' record, he removed Walls from the schedule (2T86). Walls does not know who recommended him for the training (2T84-2T87).

29. In early September 2003, Lieutenant Siegelski informed Captain Hunt that he had heard rumors that Walls was having an inappropriate personal relationship with his subordinate (6T51-6T53). Hunt became concerned because the Division was under a great deal of scrutiny, because the MAPPS unit was critical to the Division's successful performance under the consent decree, and because ethics within the Division was among the issues being monitored by the Federal Government (6T52-6T53). Hunt believed the relationship could be harmful to the entire unit (2T81, 3T165, 6T54-6T56). Hunt advised Siegelski to discuss the matter with Walls (6T51-6T53). On September 16, 2003, Hunt, Siegelski and Walls met, and Siegelski asked Walls whether he was having an

inappropriate relationship with the employee (2T81-2T82, 3T162-3T167, 6T53-6T54). Walls was outraged at Siegelski's accusation and denied it emphatically (2T81-2T82, 3T162-3T167). Hunt was satisfied by his reaction and decided that the rumors were baseless and that no further action was warranted (2T80-2T83, 6T53-6T56).

30. On October 2, 2003, Siegelski informed Walls that Hunt was upset with Walls for going outside his chain of command to Donovan to complain about having been scheduled for the communication training (4T25-4T26). Walls explained how he came to contact Donovan, and Siegelski accepted the explanation (4T27; CP-11).

31. Siegelski then questioned Walls about several inaccuracies in Walls' electronic time sheets, or, "E-Dailies" (4T26-4T28). Siegelski told Walls that on several occasions he did not have the requisite six hours off between his regular and overtime shifts, also called the "six-hour rule" (4T31). Siegelski gave Walls an opportunity to check his records but initially, Walls was not very concerned about the issue and did not look into his records (4T29-4T30, 4T32-4T36).

32. On October 2, 2003, Walls received CP-13, a Reportable Incident Form (Form 525), alleging that on thirteen dates he appeared not to have complied with the six-hour rule or recorded discrepancies between compliance with the rule and actual time worked (2T90-2T92; CP-13). Siegelski wrote:

When confronted with this information, the member stated that, on occasion, he completed his daily activity log with times that were inaccurate but would allow him to meet the guidelines of SOP F2. In reality he indicated that he worked hours other than noted on his log sheet during his primary duty assignment workday . . . [he] has not regularly forwarded s Supplemental [overtime] request Form to [me] for approval . . . [CP-13]<sup>8/</sup>.

The matter was referred to the OPS, the Division's internal affairs section for a misconduct investigation (4T39-4T42).

33. Sergeant First Class Stephen Kearny worked in the OPS Internal Affairs unit between 2003 and 2004 and was assigned to investigate the charges brought against Walls (6T3-6T4). R-6 is the internal investigation log and contains Kearny's investigative report of the Walls' case (6T4-6T5; R-6).

34. On October 10, 2003, Kearny informed Walls that he was being investigated by the OPS (4T36, 4T39). Kearny viewed Walls' case as routine and similar to many other cases he had investigated (6T6, 6T28).

35. On October 23, 2003, Kearny interviewed Walls' immediate supervisors, Lieutenant Siegelski and Sergeant First Class Beyers, and during these interviews new allegations against Walls surfaced (2T95, 6T6-6T8; R-6). These concerned Walls' attendance at Municipal Court proceedings and proper overtime authorization (2T95, 6T6-6T8). Kearny immediately advised Walls

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<sup>8/</sup> SOP F2 is the Standing Operating Procedure that provides rules and guidelines for the Division's overtime program.

about the new allegations (6T6-6T8). Kearny cancelled the October 23, 2003, meeting with Walls to investigate the new issues (2T95, 4T45-4T48, 6T7).

36. On October 31, 2003, Walls informed Kearny that he wished to receive a letter of declination stating that the Division would be pursuing the case administratively rather than criminally (3T6-3T8, 4T55, 6T12). Walls also provided Kearny with copies of municipal court notices and subpoenas relevant to his court appearances (4T56).

37. Walls testified that Kearny was upset with him because Kearny could not complete all interviews in one day because of Walls' request for a declination letter (3T6-3T7, 3T95). According to Walls, Kearny became visibly annoyed and said he had to contact his supervisor (4T56). However, Kearny testified that at that point it was routine within OPS to obtain a letter of declination of prosecution with almost every case before interviewing the subject of the investigation (6T12). Often, union representatives would ask for these letters and Kearny regularly initiated the process, as he had in Walls' case (6T12-6T13). I do not find that Kearny was angry at Walls for having asked for a letter of declination or that, as Charging Party asserts, in anger he slammed open the door and knocked a clock off the wall (3T6-3T7, 3T95 4T57-4T58, 6T13-6T14). Walls admitted that Kearny had to cancel the meeting scheduled for October 23 because of the new allegations (2T95, 4T45-4T48).

Kearny denies having "slammed" the door. Kearny testified that there was no reason to become annoyed as Walls had provided the subpoenas he asked for and because obtaining the letter of declination was routine (6T13, 6T20-6T21). Walls also testified that Kearny conducted himself in a professional manner throughout the rest of the investigation (3T94, 3T95-3T96).

38. On October 29, 2003, Siegelski issued a performance notice (CP-16) restating the allegation that Walls had "participated in the . . . overtime program without having obtained proper authorization . . ." and advising Walls to be aware of the applicable policies and regulations (2T98-2T100; CP-16). Supervisors use performance notices to note both positive and negative performance, and for quarterly performance appraisals (2T99). The notices are entered into or "published" to the MAPPS database (2T101, 3T13-3T14).

39. On October 31, 2003, Walls filed CP-17, a grievance objecting to the misconduct investigation (2T102, 3T7-3T8; CP-17).

40. Kearny prepared a report to Deputy Attorney General Thomas Goan based on the discrepancies that remained after receiving Walls' subpoenas and asked for a letter of declination (6T12). On November 19, 2003, Goan issued the letter and Kearny informed Walls about it (6T21; R-6).

41. Walls informed Kearny about the grievance (CP-17) and stated he did not understand why the matter was being handled as a misconduct investigation because there were sanctions contained within SOP F-2 (2T95, 3T8-3T9, 4T49-4T50). However, Walls acknowledged that some of Siegelski's allegations in CP-13 and CP-16 went beyond performance issues and that he was alleged to have committed more than mere technical violations of the six-hour rule (4T42-4T43, 5T99-5T100; CP-13, CP-16). Walls admitted that the allegation that he worked hours other than reported on his log to allow him to meet the six-hour rule was essentially an allegation of falsifying time records (4T31-4T43, 5T99-5T100).

42. On November 3, 2003, Walls met with Hunt about MAPPS application issues and then their conversation evolved into a discussion of the pending internal investigations and the performance notice that Siegelski had issued to Walls (3T10; CP16)<sup>9/</sup>. The two discussed Walls' October 31, 2003 grievance

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<sup>9/</sup> Walls testified that at this meeting and again on November 19, 2003, Hunt stated that he hoped the investigation did not hold up Walls' promotion, which Walls took to be sarcastic (3T10, 3T25, 3T27, 4T64-4T65). Hunt denies having asked Walls about the status of the misconduct investigation or disingenuously saying he hoped it did not affect Walls' promotion (6T76). Hunt testified that from time to time, Walls would ask if Hunt knew anything about the investigation (6T76-6T77). I credit Hunt's denial. Hunt credibly testified that his treatment of Walls was in no way influenced by Walls' protected activity and he thought Walls deserved the promotion (6T80, 6T83). Further, Walls  
(continued...)

(CP-17) objecting to the OPS misconduct investigation as improper (6T58; CP-17, CP-20). Hunt did not have the ability to review or affect that decision.

43. Near the end of their meeting Walls gave Hunt CP-18, a Special Report, form SP-329, requesting a review of Siegelski's performance notice and alleging Siegelski had not used the appropriate notice (3T11-3T14, 6T58; CP-18). Walls also informed Hunt that Siegelski had not entered the notice into the MAPPS system. Hunt responded that he would talk to Siegelski (3T13, 6T58).

Events Within the statute of limitations period between November 10, 2003 - May 10, 2004

44. On November 17, 2003, Walls filed another special report seeking to have his October 31<sup>st</sup> grievance moved to Phase II, because he had not received an answer (CP-19). Walls marked the "resolution" box "unsatisfactory" and requested a hearing and determination by the superintendent (3T16-3T17). Walls gave the grievance to Siegelski, following the chain of command (3T17).

45. On November 18, 2003, Walls was given Hunt's response to the October 31, 2003 grievance. Hunt indicated on the document that at his level he was unable to resolve the grievance

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9/ (...continued)  
testified: "it came out of the blue I had no idea why he would say something like that," but I do not credit Walls' "surprise" since in his later testimony he acknowledged that he knew a misconduct investigation could delay a promotion (3T10, 3T80, 4T64-4T65, 5T39-5T40).

(3T18; CP-20). Charging Party alleges that Hunt delayed responding for 15 days and Hunt could not explain why Walls was not informed about his determination sooner (6T71-6T74). I do not find, based on all of the testimony, that Hunt purposely delayed giving Walls' his response, that the delay, either standing alone or as a pattern, demonstrates Hunt's hostility towards Walls' protected activity or that the delay was prejudicial to Walls. On December 8, 2003, the grievance was denied by the Colonel, approximately 38 days after it was initially filed (R-17). Colonel Fuentes wrote:

In the matter at hand, this is an allegation of misconduct. It is the Division's policy, as well as responsibility, to thoroughly investigate allegations of misconduct. The processing of a Reportable Incident Form, SP 525, and a pending internal investigation by the Office of Professional Standards is within the parameters of "Managerial Prerogative." The relief sought is denied.  
[R-17, page 3]

Walls received the determination on December 29, 2003, and marked on the document that the resolution was "unsatisfactory" (R-17).

46. On November 19, 2003, Walls filed CP-21, a grievance objecting to the fact that no meeting had been held concerning the October 29, 2003 performance notice, CP-16 (3T22-3T23, 6T74; CP-16, CP-21). The grievance was submitted to Hunt (3T23). According to Walls, a meeting was held with Hunt on November 19, 2003, and should have been held by November 18, 2003, one day earlier (4T86-4T87). Hunt responded by ordering Walls to prepare



another special report addressed to Sergeant First Class Steven Schaller to have Schaller review the performance notice (3T23). Hunt believed Walls had not followed procedure with regard to reviews of performance notices (3T23). Walls believed Hunt was wrong and told Hunt but Hunt reiterated his order (3T23). On November 19, 2003, Walls filed CP-22, a special report addressed to Schaller, objecting to the performance notice of October 29, 2003 (3T23-3T24; CP-22).

47. On cross examination, Walls admitted that he had no idea whether Hunt mishandled the grievance intentionally or because of Walls' union activity (4T73-4T74).

48. On November 20, 2003, Sergeant Kearny interviewed and tape-recorded Walls for the misconduct investigation (3T27, 6T14; R-6). Typically, the investigator and principal subject of the investigation informally discuss matters before and after the formal taping. The investigator advises the principal subject what is going to take place, what documents are in the file, and how the interview is going to proceed (6T33). Off the record, Walls advised Kearny of his belief that the Division's decision to proceed with a misconduct investigation was an attempt to discredit him and avoid promoting him (3T27-3T28, 6T26-6T27). If Kearny had uncovered evidence that Walls' union activity played a role in how he was being treated or charged, such evidence would have been included in his investigative report (6T35). Kearny did not find any such evidence (6T35-6T36).

49. Walls asked Kearny to have others included as principal subjects of the investigation (6T30). Kearny, independent of Walls' request, believed that the supervisors responsible for approving Walls' E-dailies should have caught the discrepancies revealed in the investigation, and he asked to have them added as principals, but this request was denied (6T36-6T37; R-6).

50. Kearny was not influenced by Walls' grievance or past union activity (6T16-6T17). No State Police official tried to influence the way he handled Walls' case (6T15-6T17, 6T28)<sup>10/</sup>.

51. On December 15, 2003, Walls filed CP-23, a special report to complain that he had not received a written determination of his November 19, 2003 grievance, CP-16, objecting to Siegelski's October 29, 2003 performance notice (3T29; CP23).

52. Hunt refused to submit the grievance to Phase II until after Walls met with Siegelski (6T78). Walls believed Hunt was going backwards in the process, and that Hunt was either trying to thwart the grievance and put it in limbo, or was not interested in processing it (4T104-4T105). I find, however, that Hunt felt it was important for Walls and Siegelski to communicate

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<sup>10/</sup> According to Walls, Kearny commented that there were "forces way above his head steering" the investigation (3T28). However, I do not credit this statement. Kearny denies having said this and he testified credibly that no one tried to influence his investigation (6T16, 6T26-6T27; R-6). No other evidence supports the implication that forces above Kearny were controlling the investigation.

before advancing the grievance. Hunt had consulted with members of the Division Services Unit to confirm that his was a sound way to proceed (3T33, 6T78-6T79).

53. At the time, the STFA was zealously representing Walls (4T105-4T106).

54. On December 31, 2003, Walls met with Siegelski (3T35). Walls testified, but I do not find, that Siegelski said he thought Walls' grievances and the internal investigation were causing turmoil in the unit, affecting Walls' work and that Walls was a "rabble-rouser" (3T34-3T37, 4T109-4T113, 5T32-5T33)<sup>11/</sup>.

Siegelski was trying to improve Walls' situation (4T111). Siegelski complimented Walls' expertise and expressed his gratitude for Walls' work ethic (4T112-4T113). Walls testified that Siegelski was concerned for him, as well as critical of him, and that he accepted Walls' assurance that he was trying to separate work from his other problems (4T111-4T112).

55. On January 3, 2004, Sergeant Schaller was promoted to sergeant first class as assistant unit head of the MAPPS unit (5T10-5T11). Between January and April 2004, Siegelski left the

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<sup>11/</sup> Walls' testimony here is hearsay. Siegelski did not testify and the State did not directly rebut these statements attributed to Siegelski. However, no other legally competent evidence in the record corroborates these statements. Hearsay evidence is admissible in administrative hearings, but the residuum rule requires that some legally competent evidence exist to support each ultimate finding of fact. Weston v. State of New Jersey, 60 N.J. 36, 51 (1972); N.J.A.C. 1:1-15.5(b).

MAPPS unit and Schaller advanced to acting lieutenant, leaving the assistant unit head position, a sergeant first class, vacant (5T11, 5T71-5T73).

56. On January 5, 2004, the Division served Walls with a notice of summary disciplinary action, subjecting him to a maximum of 30 days suspension (3T37-3T39; CP-24). Walls knew that he was facing a hearing and possible 30-day suspension (4T123-4T124).

Kearny had found that some of the allegations against Walls were substantiated, and three higher level officers who reviewed his investigation report concurred (R-6, R-7; 4T117-4T119). Walls was offered a plea agreement of a written reprimand, ten days suspension and his reimbursement to the Division for overtime, which he rejected (3T39).

57. Early in January 2004, Hunt informed Walls that the promotional list for sergeant was about to be issued, that he had scored number one for his position, but that his promotion was being held in abeyance by the Superintendent due to the pending summary disciplinary action (3T40-3T42).

58. Recommendations for promotions come up through the chain of command to Lieutenant Colonel Gilbert and Colonel Fuentes (6T147). The highest rated candidates are identified. The recommendations do not take into account or identify a pending internal affairs investigation or pending EEO matter (6T147). The superintendent then checks to see if there are any

active internal affairs or EEO matters (6T147). If such matters are identified, a discussion is held among the superintendent's office and the Attorney General's Office of State Police Affairs about the promotion (6T147). Depending on the severity of the issue, approval to proceed with a promotion may be given by the Attorney General, the promotion may be held in abeyance until the outcome is known, or the promotion may be rescinded (6T148). If the promotion is held in abeyance, as in Walls' case, the member continues to hold the higher title in an acting capacity and continues to receive the higher pay (6T148).

59. On cross examination, Walls acknowledged that promotions in the Division are often held in abeyance pending the completion of internal investigations, but he stopped short of acknowledging that this is the "normal course" (3T80, 5T39-5T40). I infer from his testimony his acknowledgment that the pending charges would have been a factor in the superintendent's determination about whether to hold a promotion in abeyance pending the outcome of disciplinary charges (3T81, 5T39-5T40).

60. On January 28, 2004, Sparano ordered Walls to report to Lieutenant Siegelski's office (3T43-3T44). Walls had been ordered to report to training, which was cancelled because of a snow storm. Instead, without notifying Siegelski, he reported to a satellite MAPPS office at the Division's Buena Vista station (3T44). Siegelski intended to file a reportable incident against Walls because he thought Walls had disobeyed a directive to

report to the MAPPS unit in Trenton that day. When Walls explained to Siegelski that he had reported to one of the MAPPS units, Siegelski withdrew the report but issued a performance notice for Walls' failure to report to the MAPPS unit (3T45-3T46; CP-27). CP-27 is the performance notice - counseling that Siegelski issued on January 28, 2004 (3T48; CP-27). Siegelski wrote that Walls had failed to comply with an order and failed to advise him of the change in duty location (CP-27). At the same meeting, Walls received his performance evaluation for November 1, 2002 through December 31, 2003 (3T47; CP-26). Walls indicated on the document that he wanted to discuss the evaluation with the reviewer (3T47; CP-26).

61. On February 3, 2004, Walls met with Siegelski to discuss his evaluation and receive CP-27 (3T49-3T50). Walls and Siegelski discussed the 13 sections of the evaluation in a non-confrontational and business-like manner (3T51). Walls questioned why Lieutenant John Silver was listed as a reviewer and learned that it was because Silver had been a member of the MAPPS unit for a part of the evaluation period (3T52-3T53).

62. On February 4, 2004, Walls filed two grievances, grieving the undocumented comments in Siegelski's evaluation, and objecting to the assignment of Lieutenant Silver as one of Wall's reviewers (CP28; 3T55-3T56). By September 2004, the grievances were heard by a hearing officer and then partially upheld by Superintendent Joseph Fuentes (CP-28).

63. Between February and April 2004, Walls worked for Captain Stephen Serrao, who replaced Hunt as head of the MAPPS unit (3T102-3T103, 5T53-5T54). At that point, Lieutenant Colonel Tom Gilbert was aware that there had been a reportable incident filed against Walls, that it had led to an internal investigation and was unresolved (6T138). Gilbert thought the matter implicated Walls' integrity and raised "issues of a serious nature" (6T125-6T126, 6T138). Superintendent Fuentes and Gilbert decided that Walls should be temporarily moved elsewhere in the Division until the investigation was complete (6T138). Gilbert was concerned about Walls remaining in the superintendent's office because MAPPS' purpose, at least in part, was to become the cornerstone of the Division's integrity program (6T138).

64. Between February and April 2004, Gilbert and Serrao met to discuss Walls' continuation in the MAPPS unit (6T139). Serrao wanted Walls to stay in the unit but Gilbert directed Serrao to temporarily reassign him until the outcome of the investigation, retaining his acting sergeant title (5T64, 5T68-5T69, 6T139). Serrao disagreed with the decision and thought the misconduct investigation seemed to be "a lot about nothing" (3T104, 5T58, 5T60-5T61). Serrao acknowledged that a member's falsification of time sheets so he can work overtime is a more significant infraction than minimally inaccurate recording of hours (5T115). He also agreed that an intentional falsification of time records is a more serious issue than a mere six-hour rule violation, and

that if a supervisor is confronted with a situation where a member admitted he was "covering his time" the supervisor would "be left with very little leeway except to take action on it" (5T116-5T117). The supervisor, according to Serrao, would have to report the incident (5T117). Serrao acknowledged that he did not personally know whether the investigation of Walls concerned more serious issues than a six-hour rule violation (5T117-5T118).

65. Serrao pursued an alternative of detaching Walls on paper only, having him physically remain at his station and continue his regular MAPPS' duties (5T74-5T75, 5T95-5T99). When Gilbert realized that Walls was still working on MAPPS and had not been detached as he ordered, Gilbert reiterated his order to Serrao (5T68-5T69, 6T142)<sup>12/</sup>.

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<sup>12/</sup> Serrao claims that Gilbert approved the detachment on-paper-only plan. Gilbert disputed this assertion and I credit Gilbert's testimony as more likely to be true because Gilbert appeared to recall the situation unequivocally, whereas Serrao's recollection was less equivocal and Gilbert's testimony was internally more consistent (5T100-5T106). Gilbert admitted he was unhappy with Serrao and believed Serrao had gone around him, and I infer that he thought Serrao had disregarded his clear order (6T141-6T142). Serrao told Walls that Gilbert made derogatory comments about him (3T63-3T64, 3T67). Serrao believed that Gilbert's anger was directed at Walls but I do not credit this testimony and do not find that Gilbert was angry with Walls but that he was angry with Serrao (5T68-5T70, 6T142, 6T161-6T169). Gilbert decided Serrao's actions were inconsistent with the superintendent's goals and, thereafter, Serrao was reassigned (5T84-5T85, 6T169). Serrao was not disciplined (6T169). Serrao admitted that he had gone directly to the superintendent about Walls' situation (5T66-5T67, 5T95).



66. In April 2004, Walls was detached from the MAPPS unit to the Information Technology Bureau in the Records and Identification Section (3T63). Walls maintained his acting status through his reassignment (5T71-5T72).

67. Walls believes that because he was detached from MAPPS in April 2004, he missed out on a promotional opportunity to be advanced to "acting sergeant first class" as assistant head of the MAPPS unit (3T76-3T80, 5T11). Walls logically explained how a temporary detachment can inhibit promotions: the primary unit will not promote someone who is temporarily reassigned and the new unit views such members as only transiently part of their unit and are unlikely to promote them (3T76-3T80, 5T9, 5T72-5T73). Walls was not promoted to sergeant first class in the MAPPS unit when, in April 2004, a vacant position became available (3T80, 5T74, 6T166-6T167). The Division's policy is to delay promotions of members who are being internally investigated or have unresolved disciplinary charges (3T80, 4T117, 6T80, 6T166-6T167).

68. On March 10, 2004, a hearing was held over the summary disciplinary action (3T60-3T61). Walls, represented by counsel, had a full opportunity to put on his defenses before Hearing Officer Captain Michael R. Nutt (4T126). On April 22, 2004, Captain Nutt found that only some of the charges were proven (3T60-3T61, 4T126; R-10). He recommended a three-day suspension

and written reprimand, a reduction of the previously recommended penalty (4T129-4T130; R-10).

69. On July 28, 2004, after the instant charge was filed, Superintendent Fuentes issued a decision that the Division would not act on Captain Nutt's recommendation but would transfer the appeal to the Office of Administrative Law (OAL). An Appellate Division decision had restricted the Superintendent from designating captains as hearing officers in lieu of personally conducting hearings or transferring them to the OAL (4T127-4T129; R-13). Walls acknowledged that the Superintendent's decision was proper (4T129).

70. On April 7, 2005, before an OAL hearing could be held, Walls and the Division entered into a negotiated voluntary plea agreement wherein Walls voluntarily pled that on three occasions between May 5 and July 19, 2003, he had worked without being off the six hours before and after overtime detail. In exchange he received a lower penalty that cleared the way for his promotion (3T69-3T72, 4T130-4T132; R-15). On June 2, 2005, Walls was promoted to sergeant, retroactive to January 3, 2004 (1T56).

71. Lieutenant Colonel Gilbert and Superintendent Fuentes approved the settlement of Walls' disciplinary appeal, the reduction of the charges, and later, they facilitated and approved his promotion (6T150).

72. Since the charge was filed, Walls was promoted twice - to sergeant and acting sergeant first class (6T150).

ANALYSIS

The STFA argues that the Division retaliated against Acting Sergeant Kevin Walls for his advocacy on behalf of the STFA and for filing his own grievances by bringing disciplinary charges, mishandling his grievances, reassigning him and refusing to promote him. The State denies that it was motivated by union animus in any of its' actions and asserts that the delay in Walls' promotion and his reassignment were related to the charge that he misrepresented time records to qualify for overtime several times. When the disciplinary appeal he filed was resolved, the Division promoted him, retroactive to the original date he would have been promoted. The State denies that the grievances were mishandled. For the reasons below, I conclude that the STFA did not prove that animus towards Sergeant Walls' protected activity was a substantial or motivating factor in the Division's actions.

N.J.S.A. 34:13A-5.4(c) provides that no complaint shall issue based on any unfair practice occurring more than six months before the filing of an unfair practice charge. The charge contains more than 30 allegations that occurred prior to November 10, 2003, six months before the charge was filed on May 10, 2004. Charging Party did not allege it was prevented from filing within a timely period as to any of these allegations. These allegations are untimely and I recommend they be dismissed. I

allowed "untimely" evidence into the record so that the relevant background to the timely allegations could be established.

Public employees and their organizations have a statutory right to use their negotiated grievance procedures and to participate actively in the collective negotiations process.

N.J.S.A. 34:13A-5.3. Retaliation for engaging in protected activity violates 5.4a(1) and (3) of the Act.

In re Bridgewater Tp., 95 N.J. 235, 244 (1984) (Bridgewater), sets forth the elements a charging party must prove to establish a violation of 5.4a(3). Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct or circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of protected activity. Id. at 246. If the employer does not present any evidence of a motive not illegal under our Act, or if its explanation has been rejected as a pretext, a violation may be found, without further analysis. Sometimes however, the record demonstrates that both unlawful motive under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place in the

absence of protected conduct. Id. at 242. The affirmative defense however, need not be considered unless the charging party has proved on the record as a whole, that union animus was a motivating or substantial reason for the personnel action.

Here, no direct evidence demonstrates that the State refused to promote Walls, mishandled his grievances or brought disciplinary charges against him in retaliation for his activities as an STFA official or for filing his own grievances. I must next assess the circumstantial evidence to determine if the Act was violated.

STFA has proven the first two Bridgewater elements, Walls engaged in protected activity and the Division was aware of his activity. Specifically, between 1999 and January 2002, Walls held positions with the STFA and pursued grievances on behalf of unit employees and acted as their representative in grievance meetings and arbitration hearings, which were attended by employer representatives. During this period, he had regular contact with Lieutenant Colonel Thomas Gilbert, the Division's labor relations officer. They disagreed over certain issues. Beginning in October 2003, Walls filed grievances and special reports objecting to the investigation of misconduct against him; to his performance evaluation and to the Division's handling of his grievances between November 2003 and May 2004.

The circumstantial evidence in this record does not support the allegation that officials in the Division of State Police

were hostile to Walls' protected activity. I base this conclusion upon consideration of all the evidence, including that offered by the public employer and the credibility determinations and inferences drawn. Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115, 116 (¶18050 1987).

I find insignificant and irrelevant the remarks attributed to the following members as too remote in time and unconnected to any personnel actions within the statutory period: Major Albert Kernagis, Captain Glen Miller, Atlantic City Expressway Station Commander Lieutenant Francis, Troop Commander Lieutenant Richard Gilbert, OER Director Philip Whitcomb, Major Fred Madden and Colonel Dunbar. No evidence established that these officials played any role in the timely adverse personnel actions that befell Sergeant Walls between November 10, 2003 and May 10, 2004.

Walls began working with Lieutenant Michael Siegelski in the MAPPS unit in July 2002. By August 2003, Siegelski and Captain John Hunt formally recommended that Walls be promoted, and Siegelski helped him avoid having to attend "charm school" (finding nos. 18, 20, 24, 25 and 26). No evidence shows Siegelski was aware of Walls' prior active roles in the STFA. Siegelski's 2003 performance evaluation was both critical and complimentary. Walls thought overall that Siegelski was complimentary and supported his efforts to be promoted.

The inquiry regarding Walls' alleged inappropriate relationship with another employee does not evince hostility. I

found reasonable Siegelski and Hunt's concern that an inappropriate personal relationship within the MAPPS unit would have jeopardized the integrity of the unit. Upon Walls' denial of an inappropriate relationship, the subject was quickly dropped.

I did not credit an alleged threat attributed to Hunt after a model troop initiative committee meeting (finding nos. 16 and 17). Hunt is also alleged to have mishandled Walls' grievances but the evidence does not demonstrate that he did mishandle them, or Hunt's alleged union animus. Hunt sought advice from the Division's labor relations unit in his handling of one of Walls' grievances (finding no. 52). In another instance, Hunt's delayed response does not rise to a level that demonstrates intentional sabotage of the grievance procedure and Walls was not prejudiced by the delay (finding no. 46).

Siegelski initiated the inquiry into Walls' E-dailies and he issued both a reportable incident form and a performance notice that led to the OPS' misconduct investigation. Siegelski did not testify. No legally competent evidence supports Siegelski's alleged animus (see, finding no. 54).

The STFA argues that the Division's decision to initiate an internal investigation instead of applying the sanctions contained within an SOP governing overtime was not within the normal course of business. Actions outside the normal course of business may lead to inference of animus. Bridgewater Tp.

However, Gilbert and Serrao testified that falsifying records, a charge made against, Walls is a more serious infraction than those included in the SOP. Walls admitted that he was charged with falsifying time records (finding no. 41). Serrao stated that a supervisor faced with that more serious infraction would have to file a reportable incident, which could lead to an internal investigation (finding no. 62). Gilbert also stated that the allegations were serious (finding no. 63). Accordingly, I find that in these circumstances, the decision to initiate an internal investigatory process was not outside the normal course of business.

Charging Party also argues that at the time he was on the STFA executive Board, Walls had numerous confrontations with Lieutenant Colonel Tom Gilbert and when Gilbert became a supervisor in Walls' chain of command, he used his authority to retaliate against Walls. The record establishes that the two disagreed about issues, but does not show the alleged "numerous" confrontations. I did not find that Gilbert was hostile to Walls' because of his protected activity. To the contrary, Walls and Gilbert portrayed their relationship as business-like. Gilbert was directly involved in Walls' advancement to acting sergeant, Gilbert facilitated Walls' retention of the acting title during the investigatory process, and he facilitated and approved the plea agreement and ultimate promotion of Walls' to sergeant.



Walls' problems began when Lieutenant Siegelski found improprieties in his E-dailies. None of the evidence suggests Gilbert had a role in the detection of these discrepancies. Gilbert learned of the issue after the charges had been initiated. Sergeant Kearny, an OPS investigator, conducted an investigation and his report substantiated some of Siegelski's initial allegations against Walls. Gilbert did not interfere with the investigation. Three higher-level OPS supervisors approved Kearny's report, and Hearing Officer Michael Nutt also found violations and ordered discipline. No evidence suggests that Gilbert interfered with the OPS reviewers or with Nutt's hearing and report.

Kearny had no animus to Walls' protected activities and was not even aware of them until he met Walls. Walls and Siegelski had a good relationship until the E-dailies problems began. The evidence does not prove that Siegelski was hostile to Walls' protected activity. Siegelski had written favorable commendations about Walls in 2002 and 2003, in support of Walls' promotion (finding no. 24; CP-10). I infer that their relationship deteriorated after the disciplinary charges but I do not infer that Siegelski was hostile to Walls' protected activity.

Charging Party also asserts that the fact that the discipline was ultimately reduced to a performance notice, which is not even considered discipline, shows that the summary

disciplinary charges, in lieu of following the SOP, were unfounded. The voluntary settlement of disputes is encouraged as a matter of policy in the Act. The settlement of the charges was long after the unfair practice was filed. In settling disputes, parties' motivations are complex and unknowable, and, thus, settlements are unreliable mechanisms from which to infer facts or motives. Thus, I will not infer that the Division's decision to reduce the penalty in settlement discussions establishes that the entire disciplinary process was suspect or that the reduced penalty was fair. Similarly, I will not infer that Sergeant Walls' decision to admit responsibility establishes his guilt.

I also do not find that the decision to detach Walls to another unit in April 2004, an allegation not pled in the unfair practice charge, was motivated by hostility towards Walls' protected activities. Gilbert credibly identified his concerns and explained his dispute with Serrao's actions.

Charging Party argues that Walls was working out of title and he should have been promoted in February 2003 because the unit was designed to have a sergeant's position. He believed he was functioning as a sergeant then. This allegation is untimely and I decline to consider it. N.J.S.A. 34:13A-5.4(c)).

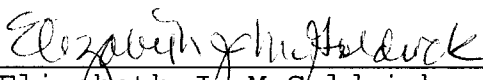
In this record, Charging Party mainly relied upon subjective, uncorroborated anecdotal evidence to prove the State's alleged animus towards Sergeant Walls' protected activity. Through its witnesses, the State rebutted many of

Sergeant Walls' assertions. The relatively remote timing of Walls' STFA representational activities to the timely allegations of negative personnel actions does not bolster the claimed animus. The objective documentary evidence supports that Walls was afforded adequate due process of his grievances and disciplinary appeals. I found that the State's conduct was not outside its normal course of business. Accordingly, I conclude that the State was not hostile towards walls' protected activity.

Having found that the STFA did not establish that the Division was hostile to Walls' protected activity, I recommend that the complaint be dismissed.

RECOMMENDATION

I recommend that the Complaint be dismissed.

  
Elizabeth J. McGoldrick  
Hearing Examiner

DATED: March 18, 2010  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 29, 2010.