

P.E.R.C. NO. 2000-10

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,

Respondent,

-and-

Docket No. CO-H-97-106

JERSEY CITY POLICE SUPERIOR  
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the City of Jersey City. The Complaint was based on an unfair practice charge filed by the Jersey City Police Superior Officers Association. The charge alleged that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally shifting certain law enforcement unit work to non-unit civilian employees. Applying City of Jersey City v. Jersey City P.O.B.A., 154 N.J. 555 (1998), the Commission finds that the City acted for primarily operational reasons and had no obligation to negotiate before transferring two superior officers and filling their former posts with civilian employees.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

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

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

DECISION

On October 1, 1996, the Jersey City Police Superior Officers Association filed an unfair practice charge against the City of Jersey City. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> when it unilaterally shifted certain law enforcement unit work performed

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

by Deputy Chief Peter Behrens and Captain Thomas Leigh to non-unit, civilian employees.

On October 6, 1998, a Complaint and Notice of Hearing issued. The City filed an Answer denying that it had violated the Act and asserting that its actions constituted inherent policy determinations that would be impermissibly hampered by negotiations.

On November 9, 1998, Hearing Examiner Edmund G. Gerber conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post hearing briefs.

On January 8, 1999, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 99-15, 25 NJPER 105 (¶30045 1999). He found that the City civilianized the work performed by the superior officers for primarily operational rather than economic reasons. Applying City of Jersey City v. Jersey City P.O.B.A., 154 N.J. 555 (1998), he concluded that the City had no obligation to negotiate with the Association over using civilian employees to perform work previously done by Behrens and Leigh.

On February 5, 1999, the Association filed exceptions. On February 17, the City filed an answering brief urging adoption of the Hearing Examiner's recommendation and asserting that the allegation regarding Leigh is untimely.

We have reviewed the record. We adopt the Hearing Examiner's findings of fact (H.E. at 2-8) including those based on

his crediting of the testimony of police director Michael Moriarity. The differences in the testimony between Moriarity and the two officers concerning the nature of their jobs and their place in the law enforcement process are largely differences of opinion rather than fact. We reject the Association's exceptions based on those differing perspectives. We adopt the Hearing Examiner's recommendation to dismiss the Complaint for the reasons set forth in this decision.

Jersey City held that this employer had a managerial prerogative to reorganize its police department to combat crime by increasing the number of police officers in field positions. The Association argues that the facts of this case distinguish it from Jersey City. It has filed three main exceptions in support of that contention: (1) the City's economic savings resulting from the civilianization of the posts held by Leigh and Behrens were the primary, if not exclusive reason for civilianization; (2) the duties of the positions involved critical law enforcement functions that could not be performed by civilians; and (3) civilianization did not implicate any managerial prerogatives nor did it result in the assignment of additional police to patrol positions.


The Hearing Examiner addressed these contentions. H.E. No. 99-15 at 9. We accept his finding that the City acted for primarily operational reasons and that the assessment as to

whether a position previously assigned to a law enforcement officer could be performed by a civilian was a managerial judgment.<sup>2/</sup> These operational and managerial decisions were the exercise of the employer's managerial prerogatives. On this record, the City had no obligation to negotiate before transferring Leigh and Behrens to positions in the patrol division and filling their former posts with civilian employees.<sup>3/</sup>

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. Commissioner Boose was not present.

DATED: July 29, 1999  
Trenton, New Jersey  
ISSUED: July 30, 1999

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<sup>2/</sup> The Hearing Examiner focused on the City's overall costs in assessing whether the motivation for the personnel moves was economic. Even assuming that the City realized the savings portrayed by the Association, we agree with the Hearing Examiner that the City's reasons were primarily operational.

<sup>3/</sup> Because we find that the City had no obligation to negotiate over these personnel moves, we need not deal with its contention that the portion of the Complaint related to Leigh was untimely.

H.E. NO. 99-15

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

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CITY OF JERSEY CITY,

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-and-

Docket No. CO-H-97-106

JERSEY CITY PSOA,

Charging Party.

**SYNOPSIS**

A Hearing Examiner recommends the Commission dismiss an unfair practice charge filed by the Jersey City Superior Officers Association against the City of Jersey City. The Association alleged the City transferred work formerly performed by Superior Officer to civilian employee and refused to negotiate with it concerning this transfer of work. The Association alleges the transfers were motivated by reasons of economy. However, the evidence adduced at the hearing proved the City transferred the work to enhance police effectiveness and performance. Therefore, the transfer of unit work was a managerial prerogative and the City had no obligation to negotiate.

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

H.E. NO. 99-15

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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JERSEY CITY PSO, A,

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Appearances:

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

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

HEARING EXAMINER'S REPORT  
AND RECOMMENDED DECISION

On October 1, 1996, the Jersey City Police Superior Officers Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the City of Jersey City engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1) & (5)<sup>1/</sup> when on April 29, 1996 and July 8, 1996, respectively, it unilaterally shifted certain law

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

enforcement unit work performed by Inspector Behrens and Captain Thomas Leigh to non-unit, civilian employees. The City has refused to negotiate with the Association concerning this transfer of unit work.

A Complaint and Notice of Hearing was issued on this charge on October 6, 1998<sup>2/</sup>

The City filed an Answer to the Complaint on November 4, 1998. It admits the transfers but contends that the actions constituted an inherent policy determination that would be impermissibly hampered by negotiations.<sup>3/</sup>

A hearing was conducted on November 9, 1998 at which time both sides had the opportunity to present evidence, examine witnesses and argue orally. Both sides submitted briefs by December 23, 1998.

Based upon the record I make the following

#### FINDINGS OF FACT

Deputy Chief Thomas Leigh served as the Training Bureau Commander from November 1994 through September 1996. During this

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<sup>2/</sup> The charge was pended until the New Jersey Supreme Court issued City of Jersey City v. Jersey City P.O.B.A., 154 N.J. 555 (1998).

<sup>3/</sup> The City also argued that the second count of the charge is untimely but never introduced evidence or otherwise made argument on this defense.



assignment he held the rank of Captain. His duties included supervising the pistol range, the Police Academy, and the Training Bureau. Specifically, Leigh oversaw attendance at all three units. Leigh oversaw in service training throughout the department. He was responsible for training and qualifying every patrol officer to use their service weapon and for certifying every emergency services unit with their heavy weapons. Much of this training is State mandated and goes on year round. He assisted with recruit drug testing. Leigh presided at all promotion ceremonies, including the graduation of police cadets.

In Leigh's opinion, coordinating this training is quite difficult. When officers are pulled from patrol to receive weapons training it interferes with normal police operations. When a civilian issues such a directive the difficulties increase significantly (T15). Leigh recounted the difficulties a civilian range master had with police training officers assigned to the pistol range.

Robert Oras was a sergeant in the City police department, assigned to the Training Bureau. He retired in June of 1995, but was rehired as a civilian and continued to work in the Training Bureau. When Leigh was transferred out of the Bureau, in September, 1996, Oras assumed the duties of running the department. This was the first time a civilian was assigned to function as the commander of the Training Bureau.

Oras, as a civilian, had difficulty getting units of the department to comply with his directives and on many occasions Leigh interceded on his behalf (T18-T20).

Oras's annual salary as civilian director was \$38,000 while Leigh earned \$86,000 a year at the time of his transfer. If Leigh as a Deputy Chief remained Commander of the Police Training Bureau his current salary would be over \$100,000 while Oras earns approximately \$47,000 (T 95-95).

Leigh testified that he is not "aware" of any additional officers being assigned to patrol as a result of the "civilianization" of his position (T18).

Deputy Chief Peter Behrens served as the Commander of the Support Services Bureau, at the rank of Inspector, from May 1995 until April 26, 1996. The Bureau is comprised of all units which support patrol and investigative operations; the Central Complaint Bureau, the Police Academy, the Bureau of Criminal Identification, the radio room, the property room, the record room, municipal court services, the Criminal Justice Information System and all data processing within the police department.

The Bureau of Criminal Identification investigates crime scenes, processes prisoners and performs background checks. About 23 officers worked in BCI when Behrens commanded the Bureau. Behrens believes that a police background is necessary to run BCI effectively.

The Central Complaint Room received over 500,000 citizen complaint and service calls (T37). Berhens oversaw that operation. He oversaw 33 police dispatchers, about 6 police sergeants, a police captain, and a lieutenant. Berhens believes that it would be difficult for a civilian to oversee the dispatching and receipt of calls in a manner consistent with State mandated guidelines.

The Criminal Justice Information System is the statewide system of automobile and criminal information that is administered by the State Police. A police sergeant administers civilian computer operators. Berhens believes police training is helpful to administer this unit because of the sensitive information that is available. This unit is audited by the State Police.

The Records Room contains all police records and files. No police officers are assigned to the Records Room.

The Property Room stores any property that is recovered from crime scenes, evidence of crimes and recovered stolen property. In addition, the private property of prisoners is stored there. A sergeant, approximately six officers and three or four civilians staff the property room.

As Commander of Support Services, Berhens oversaw all training. He believes that a background as a police officer is vital to assess appropriate in-service training. Training topics were often triggered by complaints received from the internal affairs unit and reports from officers in the field.

Berhens earned approximately \$94,000 a year as Support Services Bureau Commander. When he was transferred out of Support Services he was assigned to the position of Chief in Charge. He does not perform patrol duties nor does he constitute a police presence on the street. He was replaced by Harold Keenan, a retired police officer. Keenan died in office and was replaced by another civilian, David Gambert. Gambert performs the same duties performed by Berhans at an annual salary of \$55,000. No civilian has ever performed Division Commander responsibilities prior Berhens transfer in 1996.

I found both Leigh and and Berhens to be credible witnesses. However their testimony as to the necessity of a police background to perform the disputed positions is opinion, and although honestly held, these opinions cannot be simply accepted as fact.

Michael Moriarity was the City's only witness. As Director of Police for the City he determined to hire a civilian as Training Bureau Commander. He testified that it was part of the overall goal of his administration and that of the Jersey City mayor, to enhance the operational efficiency of the department by putting the maximum number of police officers on the street (T52). Accordingly, Moriarity first identified positions that did not need traditional police functions, e.g., the power of arrest and the need to carry a handgun (T 53). He next began reassigning officers in those positions to operational positions

and filled the vacant support positions with civilians. At the same time, Moriarity tried to shift those jobs in the Operations and Detective Divisions which were not operational to Support Division.

Moriarity testified and I find that both the Training Bureau Commander and the Support Services Commander positions were almost wholly administrative in nature. They prepared budgets, purchased equipment, prepared training curriculums, dealt with complaints and purchased equipment (T54). Moriarity acknowledges a disparity in the salaries of the police officers who were removed from these positions and the civilians who replaced them. However, he testified that the transfers were not motivated by economics (T55-T56).

Most of Moriarity's contact with the Training Bureau was through Bob Oras who had demonstrated the most initiative and control of the day to day operations of the Bureau. Oras was selected for that reason (T60).

Moriarity moved Berhens out of Support Services because he refused to civilianize the radio room. His civilian replacement, Harold Keenan, was Deputy Director of Police and Moriarity had faith that Keenan would carry out "the projects that needed to be done" (T61). Keenan's successor, David Gambert is a civilian attorney who worked for the police department and whose work was known to Moriarity.

These transfers did not result in overall cost savings to the City. The police department is now paying the civilian salaries as well as the salaries of the transferred officers. As Moriarity testified, "it's just that the sworn officer is now in the street" (T55 & T56). The City did not reduce Leigh or Berhens in rank and the number of officers in the department has increased. When Moriarity became Director there were 828 officers in the department and when the current class in the Academy is sworn, there will be 900.

Moriarity was also a credible witness. There is a conflict in his testimony with that of Leigh and Berhens as to the wisdom of privatization and, inferentially, Moriarity's motivation. Lee and Berhens testified as to their opinions of that motivation. Moriarity testified as to his own thought processes. Moriarity's testimony is bolstered by several significant facts. Neither the size of the police force nor its budget were reduced by the transfers and reassignment of duties. Also, although the transfers of Leigh and Berhens did not directly result in additional officers on patrol, they were moved into the patrol division thereby supplementing the available manpower of that division. Based upon all the evidence before me I find that Moriarity made the transfers primarily for greater operational efficiency.<sup>4/</sup>

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<sup>4/</sup> Berhen's refusal to "civilianize the radio room" interfered with Moriarity's plan for greater efficiency.

LEGAL ANALYSIS

In City of Jersey City v. Jersey City Police Officers Benevolent Association, 154 N.J. 555 (1998), the Supreme Court ruled upon an employer's obligation to negotiate when it "civilianizes" duties performed by police officers. The Court recognized that "because police officers are different from other public employees, the scope of discretion accorded to the public entities that administer police departments is necessarily broad." Jersey City at 572. Accordingly, when an employer reorganizes its police force primarily for the purpose of improving effectiveness and performance, (i.e., a primarily non-economic reason), the employer's actions constitute an inherent policy determination that is non-negotiable. Jersey City at 573.

The POBA argues the facts here are distinguishable from Jersey City in that: 1) the primary motivation, if not the exclusive reason, for the civilianization of the two positions at issue is economic; 2) the positions at issue here were critically important police operational duties that could never be successfully performed by civilian personnel; and 3) there were no managerial prerogatives implicated by the City's decision to civilianize the two positions at issue since no additional personnel were assigned to patrol positions as a result of the shifting of unit work.

Jersey City holds that if a police department is reorganized to enhance police effectiveness and performance and not primarily for economic reasons, the reorganization is an inherently managerial function and not subject to negotiations.

I have already found that the City's motivations were not primarily economic but were motivated by operational efficiency. In this context, Moriarity's use of the term "operational efficiency" is equivalent to enhancing "police effectiveness and performance." Jersey City

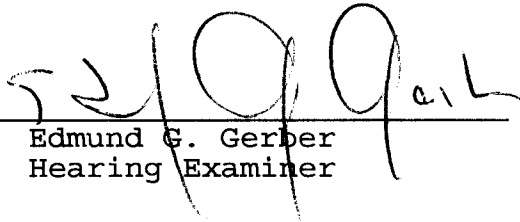
Accordingly, the City's actions were non-negotiable.

Although the Association argues that civilians cannot adequately perform the duties of the Training Bureau Commander or the Support Services Commander, an employee organization does not have standing to challenge the wisdom of an employer's good faith managerial decisions.

Accordingly, I find that the City of Jersey City did not violate the Act.

RECOMMENDATION

I recommend the Complaint be dismissed.

  
Edmund G. Gerber  
Hearing Examiner

Dated: January 8, 1999  
Trenton, New Jersey