

H.E. NO. 99-14

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

In the Matter of

TOWNSHIP OF CHERRY HILL,

Respondent,

-and-

Docket No. CO-H-97-119

FOP LODGE NO. 28,

Charging Party.

SYNOPSIS

A Hearing Examiner grants a Motion for Summary Judgment brought by the Township of Cherry Hill. FOP Lodge No. 28 had filed an unfair practice alleging the Township committed an unfair practice when it refused to negotiate a transfer of work to a civilian employee. The Hearing Examiner found the transfer was a reorganization a transfer for greater efficiency and therefore not negotiable.

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.

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Appearances:

For the Respondent, Markowitz & Richman, attorneys  
(Stephen C. Richman, of counsel)

For the Charging Party, Gruccio, Pepper, Giovinazzi,  
DeSanto & Farnoly, attorneys  
(Lawrence Pepper, Jr., of counsel)

HEARING EXAMINER'S RECOMMENDED DECISION  
ON MOTION FOR SUMMARY JUDGMENT

On October 16, 1996, the Fraternal Order of Police,  
Cherry Hill Lodge No. 28 filed an Unfair Practice Charge with the  
Public Employment Relations Commission alleging that the Township  
of Cherry Hill committed an unfair practice within the meaning of  
N.J.S.A. 34:13A-5.4(a)(1) & (5)<sup>1/</sup> when on or about May 28, 1996,

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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."

the Township unilaterally and without consultation or negotiation with the FOP, transferred duties traditionally performed by unit members to non-unit employees of the Township. It appearing that the allegations of the charge if true would constitute an unfair practice, a Complaint and Notice of Hearing was issued on February 11, 1997.

On October 15, 1998,<sup>2/</sup> the Township filed a Motion for Summary Judgment and brief with a supporting certification. On November 6, 1998, the FOP filed a Cross-Motion for Summary Judgment and brief with exhibits and on November 19, 1998, the Township filed a letter brief in opposition to the FOP's cross-motion for summary judgment. On December 9, 1998, Commission Chair Millicent Wasell referred these motions to me as Hearing Examiner.

The FOP charge relates to the transfer of the Headquarters Officer position from a police officer to a civilian employee, in January 1996. The position was held by a police corporal as far back as 1987. Police officers still fill the Headquarters Officer position on the second and third shiftd. It is not disputed that the Township made this transfer of unit work without negotiating with the FOP.

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<sup>2/</sup> By mutual agreement of the parties, proceedings in this matter were adjourned until the Supreme Court issued its decision in Jersey City, infra.

The Township submitted the certification of William Moffet, the Chief of Police of Cherry Hill. He certifies that the Headquarters Officer's duties were ministerial and included primarily clerical responsibilities such as answering the telephone and computer data entry. There is no state or local mandate which requires that the Headquarters Officer's position be filled by a police officer. The position does not require processing prisoners or duties requiring police training.

The civilian assigned to the Headquarter Officer position in 1996 was James Powell, a retired police officer.

Moffet certifies that the Township's motivation in "civilianizing" the Headquarters Officer position was to increase police presence in the field. The position's salary is partially funded by a federal grant received from the Cops Making Officer Redeployment Effective, or CopsMore program. The grant is intended to get more police officers on the street by funding the civilianization of non-police functions performed by officers within the department.

Moffet also certified that since this civilianization, the Township has increased the number of sworn police officers. Prior to this action and within the past six years, the Township has civilianized four positions formerly held by police officers: the Budget and Procurement Officer, the Management Information System Specialist, the Investigative Agent and the Training Coordinator. The FOP did not object to any of these moves.

Finally, the Township cites Article 4 of the collective negotiations agreement between the parties, the Management Rights clause:

The Township hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the Laws and Constitution of the State of New Jersey and of the united States, including, without limiting the generality of the foregoing, the following rights: [t]o the executive management and administrative control of the Township Government and its properties and facilities, and the activities of an employee; [t]o hire all employees, subject to the provisions of the law, to determine their qualifications and conditions for continued employment, or assignment, and to promote and transfer employees; [t]o suspend, demote, discharge or take other disciplinary action for good and just cause according to law.

The agreement does not contain a work preservation clause.

The FOP did not submit any certifications in support of its arguments. It did however, submit documentary exhibits.

It traced the history of the Headquarters Officer position through police department General Orders back to 1974. The FOP asserts that from 1975 to 1987, the Headquarters Officer was the equivalent of the Communications Officer. Although the police department General Orders seem to indicate the Communications Officer position would be held by a member of the force,<sup>3/</sup> the FOP

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<sup>3/</sup> The General Orders list certain duties, such as maintaining security within the communications area, which seem be traditional police duties and state "the Communications Officer is to be filled by rank of police officer".

never introduced evidence contradicting Moffet's certification that a civilian filled the Headquarters Officer position from 1975 to 1987.

The FOP asserts that the Township's motives for civilianizing the first shift Headquarters Officers position were purely economic. The last officer to fill the position earned \$50,000 a year while the civilian Headquarters Officer position earns \$25,000 a year. It argues there is no general department-wide reorganization nor is there evidence that any other position has been civilianized.

The FOP also disputes the manner and timing in which Powell became the civilian Headquarters Officer although again it failed to provide significant evidence in support of its argument.

#### ANALYSIS

In City of Jersey City v. Jersey City Police Officers Benevolent Association, 154 N.J. 555 (1998), the Supreme Court addressed an employer's obligation to negotiate when it transfers non-police duties performed by police to civilians. 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, for primarily non-economic reason, the employer's actions constitute an inherent policy determination that is non-negotiable. Jersey City at 573.

Here, the Township saved a substantial amount of money in salary when it civilianized the Headquarters Officer position but, as Moffet certified, the transfer was designed to get more cops on the street and the number of police on the force has actually increased. No significant evidence was submitted by the FOP to place this motivation in dispute.

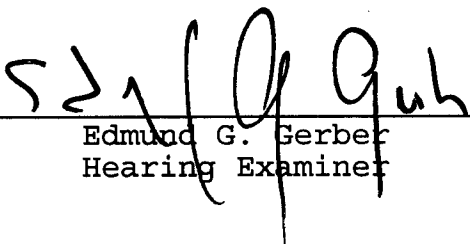
In ruling upon motions for summary judgment, I must consider whether "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit me to resolve the alleged disputed issue in favor of the non-moving party." If there were a material question of fact before me I would have to deny the outstanding motion. Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520 (1995), State of New Jersey (Dept. of Human Services v. C.W.A., P.E.R.C. No. 97-106, 23 NJPER 194 (128096 1975). "While genuine issues of material fact preclude the granting of summary judgement, ...those that are 'of an insubstantial nature do not'" Brill at 530.

I find that the Township has established that its transfer of unit work was primarily motivated by a desire for a greater police presence in the community. Such motivation make its action a non-negotiable managerial prerogative. Accordingly, its Motion for

Summary Judgment is granted. Conversely, the FOP's Cross-Motion for Summary Judgment is not supported by the record before me. The FOP Motion is denied

DECISION

Accordingly, I grant the Motion for Summary Judgment of the Township of Cherry Hill. All allegations against Respondent Township are dismissed.

  
Edmund G. Gerber  
Hearing Examiner

Dated: December 24, 1998  
Trenton, New Jersey