

P.E.R.C. NO. 92-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
COUNTY OF BERGEN,

Respondent,

-and-

Docket No. CO-H-88-339

BERGEN COUNTY PBA LOCAL 134,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Bergen violated the New Jersey Employer-Employee Relations Act by transferring unit work done by employees represented by Bergen County PBA Local 134 to civilian employees without first negotiating with the PBA.

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BERGEN COUNTY PBA LOCAL 134,

Charging Party.

Appearances:

For the Respondent, DeMaria, Ellis, Hunt & Salsberg,  
attorneys (Richard Bauch, of counsel)

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

DECISION AND ORDER

On June 23, 1988, Bergen County PBA Local 134 filed an unfair practice charge against the County of Bergen. The PBA alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> by unilaterally transferring certain communications functions performed by PBA unit members to non-unit civilian employees.

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On August 10, 1988, a Complaint and Notice of Hearing issued. The hearing was postponed pending related litigation in the Superior Court. On September 21, 1989, the PBA moved for summary judgment. Hearing Examiner Susan Wood Osborn denied the motion and scheduled a hearing.

On August 23 and November 18, 1988, and April 3, 1990, the County filed an Answer and amended Answers. At the opening of the hearing, the County again amended its Answer. It denied the allegations and asserted that the communications work was not performed exclusively by sheriff's officers represented by the PBA and that the County had a managerial prerogative to reassign the duties as part of a reorganization.<sup>2/</sup>

On April 3, 4, and 23 and May 17 and 18, 1990, the Hearing Examiner conducted a hearing. The parties examined witnesses and introduced exhibits. They filed post-hearing briefs and replies by August 22, 1990.

On May 9, 1991, the Hearing Examiner issued her report and recommendations. H.E. No. 91-39, 17 NJPER 292 (¶22129 1991). She found that the County violated the Act when, for economic reasons, it shifted communications duties traditionally performed by sheriff's officers to non-unit civilian employees without first negotiating with the PBA. She recommended that we order the County to reassign the communications work to sheriff's officers.

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<sup>2/</sup> The County withdrew a contention that it was not the employer of sheriff's officers.

On May 20, 1991, the County requested a 30-day extension of time to decide whether to file exceptions. It noted that the county executive, county counsel and sheriff had all changed in the period after the record closed. An extension was granted until June 24, 1991. No exceptions or further requests for an extension of time were received.

We have reviewed the record. The Hearing Examiner's undisputed findings of fact (H.E. at 3-20) are accurate. We incorporate them.<sup>3/</sup>

N.J.S.A 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over mandatorily negotiable terms and conditions of employment. Preservation of unit work is mandatorily negotiable. See Rutgers, The State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (5/18/83); see also cases cited by Hearing Examiner at 20-21.

Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

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<sup>3/</sup> We add to finding no. 4 that NAWAS was designed as a method to notify law enforcement agencies of an enemy attack or of an accidental nuclear missile launch. We modify finding no. 17 to indicate that Garabedian was sheriff from November 1986 to December 1987 (3T58).

See also Hunterdon Cty. Freeholder Bd. and CWA, 116 N.J. 322, 338 (1989); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978). The Hearing Examiner found that sheriff's officers traditionally performed certain communications work. She also found that the work was shifted for economic reasons. Under those circumstances, and in the absence of exceptions, we find that the County had an obligation to negotiate with the PBA before transferring the work to non-unit employees. Because it did not first negotiate, it violated subsection 5.4(a)(5) and, derivatively, subsection 5.4(a)(1).

By way of remedy, we order the County to return the teletype and sheriff's communications operations work to PBA unit members within 30 days and to negotiate over any future proposals to transfer that work to non-unit employees. The County has the prerogative to determine where that work will be performed.

#### ORDER

The County of Bergen is ordered to:

A. Cease and desist from:

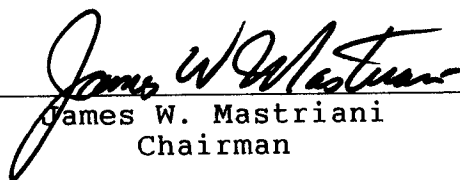
1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by transferring PBA Local 134 unit work to civilian employees without first negotiating with the PBA.

2. Refusing to negotiate in good faith with PBA Local 134 concerning terms and conditions of employment of unit employees, particularly by transferring PBA unit work to non-unit employees without first negotiating with the PBA.

B. Take this action:

1. Return the teletype and sheriff's communications operations work to sheriff's officers within 30 days.
2. Negotiate in good faith with the PBA before transferring unit work to non-unit employees.
3. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.
4. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Bertolino, Grandrimo, Regan, Smith and Wenzler voted in favor of this decision. Commissioner Goetting voted against this decision.

DATED: August 14, 1991  
Trenton, New Jersey  
ISSUED: August 15, 1991



# NOTICE TO EMPLOYEES



## PURSUANT TO

AN ORDER OF THE

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

AND IN ORDER TO EFFECTUATE THE POLICIES OF THE

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED,

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by transferring PBA Local 134 unit work to civilian employees without first negotiating with the PBA.

WE WILL NOT refuse to negotiate in good faith with PBA Local 134 concerning terms and conditions of employment of unit employees, particularly by transferring PBA unit work to non-unit employees without first negotiating with the PBA.

WE WILL return the teletype and sheriff's communications operations work to sheriff's officers within 30 days.

WE WILL negotiate in good faith with the PBA before transferring unit work to non-unit employees.

Docket No. CO-H-88-339

COUNTY OF BERGEN

(Public Employer)

Dated: \_\_\_\_\_

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

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

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

H.E. NO. 91-39

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

In the Matter of  
COUNTY OF BERGEN,

Respondent,

-and-

Docket Nos. CO-H-88-339

BERGEN COUNTY PBA LOCAL 134,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that Bergen County violated the New Jersey Employer-Employee Relations Act when it shifted communications duties traditionally performed by sheriff's officers to non-unit civilian employees without first negotiating with the PBA. The Hearing Examiner found that, although the civilians sporadically assisted the sheriff's officers in performing certain communications functions, the duties continued be sheriff's officers' unit work. Additionally, the Hearing Examiner found that the County shifted the work to civilians for economic reasons, not based on governmental policy considerations.

The Hearing Examiner recommends that the Commission order the County to reassign the communications work back to the sheriff's officers and order the County negotiate with PBA before shifting unit work outside the unit.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.



H.E. NO. 91-39

STATE OF NEW JERSEY  
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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Appearances:

For the Respondent  
DeMaria, Ellis, Hunt & Salsberg, Attorneys  
(Richard Bauch, of counsel)

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

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

On June 23, 1988, the Bergen County PBA Local 134 ("PBA") filed an Unfair Practice Charge with the Public Employment Relations Commission ("Commission") alleging that the County of Bergen ("County") violated subsections 5.4(a)(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). PBA alleges that the County eliminated sheriff's officers

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

positions and hired civilian employees to perform certain communications functions previously performed by the sheriff's officers. The PBA alleges that the County failed to negotiate with respect to shifting the unit work to non-unit civilian employees.

A Complaint and Notice of Hearing was issued on August 10, 1988. In September, 1988, the County requested to adjourn the hearing pending litigation in Superior Court wherein the Sheriff challenged the County's transfer of the communications operation. PBA Local 134 sought to intervene in the Superior Court matter and then also requested an adjournment pending the Court's ruling on its motion to intervene. Accordingly, on November 15, 1988, I adjourned the hearing without date. In July, 1989, the parties advised me that the Appellate Division affirmed the trial court's denial of PBA's motion to intervene in the Sheriff's complaint against the County. The Court subsequently dismissed the Sheriff's complaint and noted that it alleged certain unfair practices which are exclusively within this Commission's jurisdiction. On July 28, 1989, I set the matter for hearing.

On September 21, 1989, PBA filed a Motion for Summary Judgment which the Commission referred to me. Both parties filed briefs on the motion by November 22, 1989. On January 10, 1990, I found that there were factual issues in dispute. I denied the PBA's motion and scheduled the matter for hearing.

The County filed an Answer and amended Answers on August 23 and November 18, 1988, and April 3, 1990. At the opening of the

hearing, the County again amended its Answer. The County denied the allegations in the Complaint. It asserted that the communications work was not performed exclusively by sheriff's officers and the County had a managerial prerogative to reassign the duties as part of a reorganization. The County also initially denied that it was the proper respondent to the Complaint, and asserted that the sheriff, rather than the County, is the employer of sheriff's officers. At the hearing, it withdrew that defense and conceded it is an employer of sheriff's officers.

On April 3, 4, and 23 and May 17 and 18, 1990, I conducted a hearing. The parties examined witnesses and introduced exhibits.<sup>2/</sup> The County and the PBA submitted briefs and reply briefs by August 22, 1990.

Upon the entire record, I make the following:

FINDINGS OF FACT

1. The parties stipulated that Bergen County is a public employer under the Act and is the co-employer, with the County Sheriff, of sheriff's officers.
2. Bergen PBA Local 134 is the exclusive representative of a collective negotiations unit of correction officers, sheriff's Officers, sergeants and lieutenants (R-2 & R-3).

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<sup>2/</sup> Charging Party's exhibits are identified as "CP-"; Respondent's exhibits are identified as "R-"; jointly submitted exhibits are identified as "J-". Transcript citations "1T, 2T, 3T, 4T and 5T" refer to the transcripts of hearings on April 3, April 4, April 23, May 17 and May 18, 1990, respectively.

3. Civilian dispatchers are included in a county-wide, white-collar unit represented by New Jersey Employees Local Union No. 1.

4. The job description (J-1) for sheriff's officers defines the position as "...maintaining order and security in the courtroom, serving court process, criminal identification, ballistics and investigation and apprehension of violators of the law; does related work as required." The job description lists among the examples of work: "operates a variety of communication equipment to provide continuity in communications and proper flow of information between law enforcement and public safety agencies."

The PBA collective agreement provides for sheriff's officers salaries on a range from \$16,000 starting salary to \$31,000 maximum salary after the fourth year (R-3).

5. Until the spring of 1986, the sheriff's department operated a communications division housed in the County Court House. This communications office was staffed with twelve sheriff's officers, sergeants and lieutenants (2T9; 2T11).

The sheriff's communications division was responsible for the transmission of teletypes for all County law enforcement agencies and for all local police departments within Bergen County, as well as the FBI, the Secret Service, the Bureau of Alcohol,

Tobacco and Firearms, and the Immigration Office.<sup>3/</sup> Sheriff's communications officers were also responsible for maintaining, modifying and deleting computerized crime records in the National and State Crime Information Computers ("NCIC" and "SCIC"), and the County computer for all law enforcement agencies in Bergen County. Such records included wanted persons, missing persons, stolen cars, stolen property and other information. (1T7; 2T7-2T9)

In 1984, seven local police departments in Bergen County terminated use of the sheriff's office teletype service when they acquired their own equipment, training and State certification (2T66-2T67).

Since 1980, the sheriff's communications division also operated its own radio dispatch system to provide two-way communications with sheriff's officers in the field. It also provided radio communications for the County prosecutor's office fugitive squad. It handled emergent judge matters and other radio communications generally pertaining to the courthouse (2T9; 2T11). It provided motor vehicle and wanted person look-ups through its computer systems.<sup>4/</sup>

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<sup>3/</sup> "Sending teletype" refers to entering information into the National Law Enforcement Teletype System ("NLETS") and the New Jersey Law Enforcement Teletype System ("NJLETS") computer and transmitting it through a State-wide network in Trenton to all law enforcement agencies. Although the information is now transmitted through computer rather than teletype equipment, it is still referred to as "teletype." (5T10-5T11).

<sup>4/</sup> Before the 1980 acquisition of its own equipment, sheriff's officers used the County police radio room for field communications and motor vehicle checks (2T9;4T30).

Additionally, the sheriff's communications office responded to State-conducted daily tests of the early warning system (NAWAS)<sup>5/</sup> and State Police Emergency Network (SPEN) tests.

5. Prior to 1986 the County police department maintained its own communications office located in the County police headquarters at 66 Zabriski Street in Hackensack. It was staffed primarily by three civilian dispatchers, but police officers often operated the radio room when civilians were unavailable (4T32).

6. The County police radio room primarily received and dispatched calls to its County police officers. It also handled radio communications for the prosecutor's office (other than the fugitive squad) and handled the County medical examiner's calls. It also received teletyped messages and made inquiries into federal and State computer databases (2T-911; 4T29).

7. In 1986, County Police Chief Peter Neillands suggested to the County freeholders that costs could be cut by consolidating certain County law enforcement services, including investigative, canine and communications services (5T32-5T33). The County agreed to consolidate the various communications operations and appointed a committee composed of Chief Neillands, Deputy Chief Rickard, Lieutenant Kelly, (then) Sheriff William McDowell, and (then) Undersheriff Vahe Garabedian to plan the consolidation (2T12; 5T60).

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<sup>5/</sup> NAWAS is a system used for severe weather and natural disasters warnings.

Neillands' primary interest was getting his police officers out of the radio room and "back on the road."<sup>6/</sup> He wanted the sheriff's communications division to handle all radio communications (3T69-3T71). The committee agreed that the sheriff's department would "take over the County police communications operation." (3T72). The committee recommended the three civilian dispatchers be retained rather than laid off after the consolidation.<sup>7/</sup>

8. The County adopted the committee's consolidation plan and merged the two operations, equipment and personnel at the County police headquarters on April 9, 1986. The consolidated operation became known as the Bergen County Communications Center ("BCCC").

The twelve sheriff's officers working in the sheriff's communication division were transferred to the BCCC (2T13; 3T72-3T73). The three civilian dispatchers were retained. The County police officers were returned to patrol assignments and did not work in the BCCC again (2T15).

The consolidated operation existed from April, 1986 through December, 1987. The BCCC was staffed by the twelve sheriff's

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<sup>6/</sup> While Neillands' insisted his consolidation proposal was originally meant to be cost effective, he acknowledged that the "savings" was really obtained by not using his police officers for the radio operation (5T60-5T61).

<sup>7/</sup> Thomas Misskerg, one of the sheriff's communications officers, testified that Neillands originally wanted to eliminate the civilian dispatchers and use only sworn sheriff's officers because they can make a "legally binding decision" (2T13). However, since Misskerg was not part of the committee, I find that this testimony is uncorroborated hearsay.

officers, including a supervisor, and the three civilian dispatchers. Two sheriff's officers, a sheriff's officer-supervisor, and usually, but not always, a civilian dispatcher were on duty at any one time (4T36).

9. In March, 1986, Chief Neillands appointed Police Officer Eironhoffer as the police department's communications officer and liaison to the BCCC. Initially, Eironhoffer devoted about half of his time to setting up the office of emergency management. He was also in charge of the maintenance of the County radio system and the mobile units. He supervised two civilian radio technicians. (4T33). While he was often in the BCCC to check on radio equipment problems, he never talked to the sheriff's officers about their communications functions (4T33).<sup>8/</sup> Captain Rosencrantz supervised the sheriff's officers at the BCCC.

10. After the County consolidated the communications operations, the twelve sheriff's officers continued to perform all of their previous communications duties, including performing the teletype and computer entry operations, handling radio

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<sup>8/</sup> Eironhoffer and Neillands disagreed about how much responsibility Eironhoffer had to supervise the communications operations. I credit Eironhoffer's testimony that his job as communications officer consisted primarily of supervising the radio maintenance shop. Neillands testified that Eironhoffer was "in error" about that being his main responsibility. Neillands testified that he assigned Eironhoffer to "supervise the communications operation." I find that, at most, Eironhoffer was responsible for investigating the causes of the problems that developed at the BCCC and developing possible solutions for them. He was not responsible for supervising the overall operation of the facility.



communications with the sheriff's officers and responding to daily early warning system (NAWAS) and State Police Emergency Network (SPEN) tests. Sheriff's officers had the added responsibility of assisting the police civilian dispatchers with dispatching and responding to police radio calls. Vahe Garabedian, Sheriff from November 1986 through December, 1987, testified that the sheriff's officers duties did not change because of the consolidation. He testified, "All we did was take 'x' number of people from the sheriff's department and move them up to 66 Zabriski Street..."(3T72). Sgt. Misskerg, one of the sheriff's communications officers, also testified that the sheriff's officers continued to perform all of the functions that they had prior to the consolidation period (2T14-2T15). I find as a fact that the sheriff's officers continued to perform the duties that had before the consolidation period. They had the added responsibilities of receiving and dispatching police department calls and handling the prosecutor's office outside squad.

11. Witnesses disagreed in their respective characterizations of the extent to which civilian dispatchers assisted sheriff's officers with their traditional communications duties at the BCCC. Misskerg testified that the civilian police dispatchers did not perform communications work that had been traditionally performed by the sheriff's communications officers (2T13-2T14). Rather, civilians continued to receive and initiate County police radio calls and run motor vehicle, SCIC and NCIC

computer checks for their own police officers (2T14-2T15).

Garabedian testified that the civilian dispatchers "assisted in the dispatching from time to time", and did "some teletypes" and "whatever they were supposed to do there."<sup>9/</sup> (3T93-3T94).

Eironhoffer testified that civilian dispatchers and sheriff's officers were performing identical duties after the 1986 consolidation; i.e., sending teletypes, verifying NAWAS tests, answering the phone, talking on the radio (5T10).

The record shows that one civilian dispatcher did send a few teletypes during the 20-month period. Dispatcher Kris Johnson sent teletypes on November 23, 1986 (R-13), December 27, 1986 (R-14), December 31, 1986 (R-15), and April 14, 1987 (R-16). However, the record does not definitely establish that she or other dispatchers sent other teletypes.

The records of the NAWAS tests (R-17), recorded an average of three times daily in 1987, show that sheriff's officers recorded an average of 88 percent of the NAWAS tests conducted each month during 1987. However, Eironhoffer conceded that, unless there is a disaster, the NAWAS tests are a small part of the BCCC activities (5T20-5T25).

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<sup>9/</sup> Garabedian's additional statement, "They were to do most, if not all, of the [sheriff's officers' communications] functions, yes." is not credible. It implies the County police's intended to have the civilians fully participate in the sheriff's officers workload. The record does not otherwise support a conclusion that the civilians were directed to do sheriff's officers communications work.

One of the civilian dispatchers refused to learn how to perform any sheriff's officers' telecommunications functions and only answered police radio calls and responded to police inquiries (2T33-2T35).

I do not credit Misskerg's implication that the civilians never did sheriff's officer work. This is refuted by the documents submitted by the County. On the other hand, I cannot completely accept Eironhoffer's suggestion that the sheriff's officers and civilians were all doing the same thing. While not technically untruthful, this characterization somewhat overstates the facts.

I credit Garabedian's characterization that civilian dispatchers assisted in dispatching calls to the sheriff's officers from time to time, and did some teletypes. I find that, while there was some overlap in the duties of the sheriff's officers and the civilian dispatchers, the sheriff's officers continued to have primary responsibility for performing the duties they had before the consolidation. Civilian dispatchers continued to be primarily responsible for what they had always done--receiving and dispatching police department calls.

12. There was no common supervisor in charge of the BCCC. The sheriff's officers reported to Sheriff's Captain Rosencrantz, while the civilians reported to Police Chief Neillands. There was no common operations manual. The civilians came under the control of police department regulations, but the sheriff's officers were under the jurisdiction of the sheriff's directives (5T66-67).

13. Within two months after the consolidation, problems began to develop between the sheriffs' personnel and the police department personnel, including the police officers and the chief (3T91).<sup>10/</sup> Responses to police officers' inquiries were slow and the sheriff's officers failed to monitor the sheriff's department "secondary" radio band, leaving sheriff's officers calls from the field unanswered. <sup>11/</sup>

14. Although no written complaints or grievances were filed, many police officers complained to Neillands about the BCCC's handling of radio communications (5T52-53). As police patrol activities increased in the summer of 1986, complaints about the BCCC service increased.

Vincent DeRienzo, the County police PBA President, received numerous complaints from officers about the BCCC's failure to check officers' whereabouts and its frequent slow responses to requests for information. DeRienzo had similar experiences with BCCC radio responses. One sheriff's officer commented over the radio that

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<sup>10/</sup> Misskerg testified that there were no problems with the efficiency of sheriff's officers' work in the BCCC (2T21). I reject this. All other witnesses implicated the performance of the sheriff's officers as part of the BCCC's problems.

<sup>11/</sup> While Garabedian first testified that Neillands reported to him that "dispatchers" had turned down the sheriff's band, he later testified that it was sheriff's officers who failed to monitor the sheriff's band and civilians "had nothing to do with it." (3T71-75; 3T90-91; 3T93). I believe he simply misspoke the first time. It is unlikely Neillands would complain to the sheriff about nonperformance of his own police civilians.

police officers were trying to "break our chops." (4T26-4T27).

DeRienzo relayed these complaints to Neillands. Neillands monitored the radio and found there were some "glaring" problems. He directed Eironhoffer to investigate the problems and work out some solution with Captain Rosencrantz. (4T11-4T16).

15. Eironhoffer reported to Neillands that the main problem appeared to be a lack of direction. He also identified problems with radio procedures, problems with who was going to answer the phone, and problems with identity. Neillands asked him to put the problems in writing (4T36-4T37). He submitted a memorandum (R-5) to Neillands detailing the following problems:

1. The sheriff's officers assigned need more training in the operation of the radio console...
2. [sheriff's officers] attend to only one channel and do not hear calls on unselected frequencies...
3. There is a need of assignment of personnel to a identified task, and not the free for all situation that now occurs.
4. Radio procedure is poor...
5. Teletypes sent out has the sender as Bergen County Sheriff's Department... and not as County Communications Center (R-5).

16. When Eironhoffer went to Rosencrantz to discuss the problems, Rosencrantz replied, "We work for the sheriff. Go to the sheriff if you have any problems." (5T39).

When Neillands learned this, he talked to Rosencrantz. Rosencrantz told Neillands, that his job was to "the judges, to the teletypes, and if I get time, to do that. We had no idea of the

workload here. You guys are creating this to bust our chops." (5T40). Thereafter, Neillands was repeatedly told by sheriff's supervisors to keep out the the BCCC. (5T41-5T42). Neillands wrote to the sheriff requesting a meeting to resolve the BCCC problems. (5T56).

17. Between July, 1986 and December, 1987, a series of meetings were held between representatives of the County police (primarily Eironhoffer) and representatives of the sheriff to find solutions to the BCCC's problems.

At the first meeting, on July 22, 1986, Eironhoffer explained the problems existing at the BCCC. Garabedian expressed a desire to resolve the problems and suggested another meeting. At the next meeting on July 25, Eironhoffer made several suggestions to improve service. He suggested dividing the duties among the sheriff's officers. He suggested Rosencrantz participate in the work. Rosencrantz vetoed all suggestions for improvement. (4T49-4T50) After this meeting,<sup>12/</sup> Neillands called Undersheriff Garabedian to express his anger with the sheriff's department's lack of cooperation. He told Garabedian that it was a "bad mistake" and he wanted the sheriff's officers removed from the BCCC. (3T78).

Garabedian was elected sheriff in November, 1987. He then assigned Undersheriff Scolpino to work with Eironhoffer to find a

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<sup>12/</sup> Neillands referred to this meeting as July, 1987. While I do not credit Neillands's recollection of the date, I do credit his recollection of the substance.

solution to the BCCC problems. Eironhoffer met with Scolpino on December 16, 1986 (4T50-4T51).

18. On January 7, 1987, Sheriff Garabedian sent a memorandum (CP-1A) to County Executive McDowell<sup>13/</sup> suggesting that sheriff's officers and correction officers be "put back into their proper classifications' and replaced with civilians because "the cost would be much lower." He outlined four areas--jail records, identification bureau, communications, and commissary--in which sheriff's officers could be replaced with civilians." (CP-1A).

Garabedian explained that the memorandum was precipitated by a critical shortage of sheriff's officers in the jail and the courts (3T81-3T82). McDowell told the sheriff to look into it (3T82). Garabedian assigned Undersheriff Scolpino to investigate the possibility of replacing officers with civilians in those areas, including communications (3T83-3T84).

When Garabedian pointed out to Neillands that the use of civilians to replace sheriff's officers would effect significant savings, Neillands replied that he was only interested in a "working radio system", not in the savings (5T48-5T49).

19. When Eironhoffer met with Scolpino again on March 23, 1987, the discussions centered on the possibility of disbanding the consolidated operation. Scolpino pointed out he was having some difficulty keeping the positions at the BCCC filled because officers

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<sup>13/</sup> William McDowell, the former Sheriff, became the County Executive in January, 1987.

did not want to be assigned there (4T53).<sup>14/</sup> That meeting ended with the understanding that Eironhoffer and Scolpino would look into the possibility of hiring civilians (4T54).

They met again on June 25, 1987. That meeting centered on the concept of replacing sheriff's officers with civilians. Eironhoffer and Scolpino agreed that civilians would be better motivated than officers assigned to the BCCC involuntarily. That meeting ended with an agreement to look at communications centers in other counties for guidance. Eironhoffer visited other county communications centers in the State. He spoke to many communications specialists by telephone. He concluded that the whole operation should be turned over to a civilian force because civilians are better motivated and want to do the job (5T55-57).

On July 10, 1987, Scolpino and Eironhoffer met again. Eironhoffer described this meeting as the "culmination meeting." They agreed to propose hiring civilians (5T58). Scolpino asked Eironhoffer to research area salary ranges for civilian communications operators (4T61). After calling other towns, Eironhoffer recommended a salary of about \$20,000 (5T58, 4T61-4T62).

20. At a meeting on August 5, 1987, Eironhoffer and Scolpino presented Neillands with their plan to transfer the sheriff's officers out of the BCCC and hire an all-civilian workforce, including a civilian supervisor. Neillands approved the plan and submitted it to County Executive McDowell for his approval.

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<sup>14/</sup> One officer, Bill Hansen, told Eironhoffer he wanted to be reassigned from the BCCC. (4T54).



21. After McDowell approved the plan, Neillands directed Eironhoffer to begin a search for a communications supervisor and civilian communications operators (4T61-4T63). Ed Black, an experienced dispatcher, was offered the communications supervisor position (4T63-4T64). Black then prepared a communications procedures manual (R-9) which was presented to McDowell at a meeting with Eironhoffer, Scolpino and Neillands on December 1.

Seven new communications operators were hired. (4T65-67). The new officers received training and some were certified in the use of CJIS terminals. (4T67). After the civilians were trained, McDowell ordered the change to be implemented effective December 26, 1987.

22. Scolpino asked each sheriff's officer in the BCCC to indicate his reassignment preference (5T72). All officers were transferred back to other areas in the sheriff's department (3T84). On December 23, Chief Neillands issued an order transferring the BCCC to the County emergency management division and changing certain police radio procedures (CP-6). Effective December 26, 1987, all BCCC communications functions were taken over by police civilian personnel (2T17-2T18).

23. The PBA learned about the transfer of sheriff's officers out of the BCCC on December 23, 1987. The County did not offer to negotiate with the PBA concerning the shift of communications work to an all-civilian force (3T6; 5T52; 5T74).

24. In November, 1987, Robert Herb was elected Sheriff. Herb sent a letter (CP-3) to Garabedian asking that any changes in personnel assignments occur be held in abeyance. When Herb learned of the sheriff's officers transfers out of the BCCC, he was angry.

15/ On January 26, 1988, he wrote to McDowell objecting to the transfer of communications to civilians as "erosion of [sheriff's officer] duties and...politically motivated." (CP-7)

25. Nine civilian communications operators and the civilian supervisor now do all of the operations previously performed by the joint force at the BCCC. Seven new civilians were hired and two of the former civilians were retained (4T79). This permitted shifts of two civilians on duty at all times (4T79-4T80).

Neillands had no doubt that some of the sheriff's officers could have been trained to effectively and efficiently perform all of the communications center operations (5T75).

26. Black prepared a communications manual (R-9) outlining communications procedures, including the designation of channels, standardization of radio codes, status checks on the patrol

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15/ Neillands testified that he had spoken with Herb before issuing the December 23, 1987 transfer order and Herb had indicated that he had "no problem" with the change (5T72). The new Undersheriff, Keith Tansky testified that Herb was "furious" about the shift because he had not been consulted. Herb felt part of the Sheriff's office functions were being removed without his approval (1T130). I credit Tansky's testimony. It is logical, given Herb's letter asking for a freeze in personnel actions, that he objected. It is also consistent with Herb's actions in filing suit against the County over the removal of the communications work.

officers, the creation of "event cards" for each police incident, and teletype instructions. Most of the communications manual has been implemented (4T99).

Since December, 1987, mutual aid calls for area fire departments hazardous material notifications, nuclear power plant emergency notifications and flood warnings were added to the BCCC operations (4T105-4T114).

27. After the communications work was shifted to civilians, the sheriff's department continued to have some radio communications capability to its own staff through the investigation unit (3T85). The sheriff's office does not have a communications facility that can provide instant access and response to field officers. sheriff's officers must continue to go through the BCCC for certain computer information (2T19-20).

Computer access is now "limited" (2T69). The sheriff's office has access to all computerized information available to other law enforcement County agencies, including the Criminal Justice Information System, certain motor vehicle information, the SCIC and NCIC systems, wanted and missing person information and certain FBI information, all through the prosecutor's office. (2T70-2T72; 4T114-4T135; R-10; R-11)

The sheriff's office continues to receive teletypes through NJLETS. However, the sheriff's officers' function of sending the teletypes and updating the computer records continues to now be performed at the BCCC by civilians (2T21).

28. The 1987 changes greatly improved the level of services of the BCCC. Responses to radio communications were quicker and more accurate (5T45-5T46). Neillands believes returning sheriff's officers to the BCCC would have a disastrous impact on the morale of the police department (5T47). Neillands agreed, however, that sheriff's officers were capable of performing all of the BCCC functions effectively if they had been properly trained (5T75).

29. Twelve sheriff's officer positions were eliminated as a result of the reassignment of the communications work to civilians. The twelve sheriff's officers, including superiors, previously assigned to the BCCC were transferred into existing sheriff's officers positions. (3T7; 3T30; 3T105; 3T110).<sup>16/</sup>

#### ANALYSIS

The Commission and the Courts have held that shifting work from employees in one unit to employees outside the unit is mandatorily negotiable if it does not impinge on the employer's governmental policy determinations. Rutgers, The State University, P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd App. Div. Dkt. No. A-468-81T1 (1983); Middlesex Cty., P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part, App. Div. Dkt. No.

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<sup>16/</sup> PBA Local 134 President Wayne Yahm testified that twelve positions were lost when the County shifted the communications work to civilians (3T7). While Garabedian could not recall the number of authorized positions or how many were cut, his testimony does not refute Yahm's. Garabedian agreed that the twelve sheriff's officers in communications were transferred into authorized vacant positions (3T105).

A-3564-78 (1980); Rutgers, The State University, P.E.R.C. No. 79-72, 5 NJPER 186 (¶10103 1979), mot. for recon. den. P.E.R.C. No. 79-92, 5 NJPER 230 (¶10128 1979), aff'd App. Div. Dkt. No. A-3651-78 1980); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); City of Newark, P.E.R.C. No. 88-87, 14 NJPER 248 (¶19092 1988); City of Newark, P.E.R.C. No. 87-106, 14 NJPER 336 (¶19126 1988); City of Newark, P.E.R.C. No. 85-107, 11 NJPER 300 (¶16106 1985); Washington Tp., P.E.R.C. No. 83-166, 9 NJPER 402 (¶14183 1983); Monroe Tp. Bd.Ed., P.E.R.C. No. 81-145, 7 NJPER 357 (¶12161 1981); Passaic Co. Reg. H.S. Dist., P.E.R.C. No. 81-107, 7 NJPER 155 (¶12068 1981); Piscataway Tp. Bd.Ed., P.E.R.C. No. 78-81, 4 NJPER 246 (¶4124 1978); Middlesex Cty. College, P.E.R.C. No. 78-13, 4 NJPER 47 (¶4023 1977).

The question here is whether the County violated subsection 5.4(a)(5), and derivatively, 5.4(a)(1), of the Act by shifting the communications duties performed by sheriff's officers from the PBA unit to civilian employees in another County unit without first negotiating with the PBA.

The County contends that the communications work was not performed exclusively by sheriff's officers, but rather, both sheriff's officers and civilian dispatchers shared the communications work. The County relies on Town of Dover, P.E.R.C. No. 89-104, 15 NJPER 264 (¶ 20112 1989), in which the Commission found the Town did not violate the Act when it assigned additional dispatching duties to police officers who had historically shared those duties with civilian dispatchers.

This case is distinguishable from Dover. First, for many years prior to the 1986 consolidation, sheriff's officers had exclusive responsibility for certain communications work. They sent all of the teletypes for County agencies and local police department in Bergen County, handled radio communications for sheriff's officers in the field and for certain other County agencies, and answered daily NAWAS and SPEN tests. But for the relatively brief period of 16 months during the BCCC consolidation period, this work was traditionally sheriff's officers work.

Second, the sheriff's officers continued to perform the same work at the BCCC as they had performed at the sheriff's communications division. In Dover, the civilians and the police officers rotated the dispatch work. There were times when no dispatchers were present. Thus, dispatch work could not be identified as the civilians' "unit work". Here, the teletypes and sheriff's department radio communications work continued to be the primary responsibilities of the sheriff's officers.

Rosencrantz made it clear to Neillands that the sheriff's department was primarily responsible for the teletypes and for sheriff's office telecommunications, and secondarily, to help with the police department calls. (See fact number 16) Sheriff Garabedian clearly felt it was his officers' responsibility, not the civilian dispatchers', to monitor the sheriff's radio band and answer their calls. (See fact number 13) Further, when the County consolidated the operation, the facts show that the County did

not take steps to integrate the operation. The record does not show that civilians were trained for or directed to perform sheriff's officer communications work. The civilian force and the sheriff's officers did not work under a common supervisor or a common set of operating procedures.

Civilians sporadically assisted sheriff's officers in performing their traditional sheriff's office communications work. The record shows that at most, civilians performed a few teletype operations over the 20 months that they shared facilities. Civilians answered about 10 percent of the NAWAS tests, a small component of the sheriff's officers communications duties. The evidence shows that civilians did not regularly share in the work which had traditionally been sheriff's officers'. Moreover, the staffing ratio of sheriff's officers to civilians was twelve to three. One of the three dispatchers refused to help sheriff's officers with their work. Some dispatchers' occasional assistance to the sheriff's officers is not enough to destroy the integrity of traditional sheriff's communications as unit work.

It is true that sheriff's officers, in addition to their traditional responsibilities to the sheriff's department, also regularly responded to police calls, dispatched police officers, and responded to police radio communications. However, these additional duties were not traditional sheriff's officers duties. Nor does PBA claim that the police department communications functions--historically police department work--were illegally removed from the sheriff's officers.

I find that the sheriff's officers continued to perform their traditional communications responsibilities, including transmitting teletypes and responding to sheriff's officers' radio communications, throughout the consolidation period. It was this work that removed from the sheriff's officers and shifted to civilian personnel outside the PBA unit.

The County further argues that the reassignment of sheriff's communications officers work to civilians is inextricably part of its decision to reorganize the communications operations, and therefore, is a managerial prerogative. I find that the extent of the County's "reorganization" was simply the replacement of sheriff's officers with civilians. While the County did implement procedural changes in the communications operation, it did not change the nature of the services, particularly those services traditionally performed by the sheriff's officers.

The County also argues that its decision to transfer sheriff's officers work to civilians was not negotiable because it interferes with the County's ability to make policy concerning who should do the work.

The test to determine whether a police and fire matter is negotiable is set forth in Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981):

First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. [State v. State Supervisory Employees Ass'n, 78 N.J. 54, 81 (1978).] If an



item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term or condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and fire fighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable. In a case involving police and fire fighters, if an item is not mandatorily negotiable, one last determination must be made. If it places substantial limitations on government's policy-making powers, the item must always remain within managerial prerogatives and cannot be bargained away. However, if these governmental powers remain essentially unfettered by agreement on that item, then it is permissively negotiable. [Id. at 92-93; citations omitted]

In each of the preservation of unit work cases decided by the Commission, the employer's decision to shift work was found to be based only on economic considerations. Here, the County asserts that its decision to shift unit work to civilians was not economically motivated. It asserts it exercised its managerial prerogative to decide how the work could best be performed. It asserts that the problems with the sheriff's officers' performance lead it to a policy decision that civilians could better perform all communications services.

The record established that the County did have a legitimate problem with sheriff's officers performance of police-related radio communications. However, there is was no problem with the sheriff's officers performance of their traditional responsibilities to the teletypes and to the sheriff's

department--their unit work. I find that the decision to shift this unit work (as opposed to the police communications work) to civilians was economically motivated. In Garabedian's letter to the County Executive, he indicated that he wanted the sheriff's officers relieved of the communications responsibilities and "put them back into their proper job classification" because "the cost would be much lower."

Communications operations were part of the sheriff's officers duties as delineated in their job descriptions. The evidence suggests that the County did not consider any policy determinations in deciding to replace sheriff's officers with civilians to do the traditional sheriff's communications work. The County's decision to replace sheriff's officers with civilians, earning substantially less salary, was motivated by the County's desire to save money, not on a policy determination that civilian employees could more efficiently perform the sheriff's officer teletype and sheriff's radio communications work.

Finally, the County maintains that it simply reassigned sheriff's officers from one duty to another. It points out that no sheriff's officer lost his job as a result of the shift of unit work. While it is true that sheriff's officers were assigned to other sheriff's officers functions within the sheriff's department, and no officer was laid off, the work previously performed by twelve sheriff's officers is no longer part of the sheriff's officers PBA unit. The net effect to the unit was the loss of unit work and the

attendant loss of the twelve sheriff's officers communications positions.

Based upon the foregoing, I find that the shift of traditional sheriff's officer unit work to civilian employees is negotiable. The County had an obligation to first negotiate with the PBA before shifting the unit work out of the PBA unit. The County violated 5.4(a)(5) and derivatively, 5.4(a)(1) by its failure to negotiate before shifting the unit from to non-unit employees.

#### CONCLUSIONS

The County of Bergen violated 5.4 (a)(5) and derivatively, (a)(1) of the Act by failing to negotiate in good faith with the PBA before shifting sheriff's officers unit work to civilian employees in another negotiations unit.

#### RECOMMENDED ORDER

I recommend that the Commission ORDER:

A. That the County of Bergen cease:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, by transferring sheriff's officers unit work to civilian employees without negotiating with PBA Local 134.

2. Refusing to negotiate in good faith with the majority representative, and particularly refusing to negotiate in good faith with PBA Local 134 concerning shifting of unit work from the sheriff's officers to civilian employees.

B. That the Respondent take the following affirmative action:

1. Return the teletype and sheriff's communications operations work to sheriff's officers within 30 days.<sup>17/</sup>

2. Negotiate in good faith with PBA concerning shifting of unit work from the sheriff's officers to civilian employees.

3. Restore a sufficient number of sheriff's officers positions to the PBA unit to cover the workload of the traditional sheriff's officers communications functions.<sup>18/</sup>

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least thirty (30) consecutive

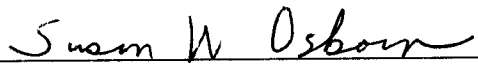
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<sup>17/</sup> The County argues that returning the sheriff's officers to the BCCC would have "disastrous" effects on the morale of the Police Department. I am not recommending that Sheriff's Officers necessarily have to be returned to the BCCC to satisfy this remedy. They have to be restored to their traditional communications duties of transmitting teletypes and sheriff's communications functions. The County has proven that the sheriff's office has the capability to resume both operations within the sheriff's office. Alternatively, the sheriff's officers could be returned to the BCCC to perform only their traditional communications and teletype duties.

<sup>18/</sup> It may not be necessary to restore all twelve positions to cover the traditional sheriff's officers' communications work. In any event, the County retains its right to eliminate sheriff's officer positions provided it does not shift the work outside the unit without first negotiating with the PBA.

days. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within ten (10) days of receipt what steps the Respondent has taken to comply herewith.

  
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Susan Wood Osborn  
Hearing Examiner

Dated: May 9, 1991  
Trenton, New Jersey

# NOTICE TO ALL EMPLOYEES

## PURSUANT TO

### AN ORDER OF THE

### PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to negotiate with the PBA Local 134 over the shifting of sheriff's officers' communications duties to civilian employees outside its negotiations unit prior to such negotiations.

WE WILL return the teletype operations and sheriff's communications work to sheriff's officers within 30 days.

WE WILL restore a sufficient number of sheriff's officers positions to the PBA unit to cover the workload of the traditional sheriff's officers communications functions.

WE WILL negotiate in good faith with PBA Local 134 concerning shifting of unit work from the sheriff's officers to civilian employees.

Docket No. CO-H-88-339

COUNTY OF BERGEN

(Public Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Title)

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

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