

P.E.R.C. NO. 93-41

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OLD BRIDGE,

Respondent,

-and-

OLD BRIDGE PBA LOCAL NO. 127,

Docket No. CO-H-89-32

Charging Party,

-and-

JERRY PALUMBO,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission concludes that the Township of Old Bridge has not complied with the Commission's Order in P.E.R.C. No. 90-102, 16 NJPER 307 (¶21127 1990) by assigning John T. Grossmann to administer the Township's alarm ordinance.

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JERRY PALUMBO,

Intervenor.

Appearances:

For the Respondent, William S. Ruggiero, Township Attorney, on the exceptions

For the Charging Party, Balk, Oxfeld, Mandell & Cohen, attorneys (Sanford R. Oxfeld, of counsel)

For the Intervenor, Yacker & Granata, attorneys (Louis E. Granata, of counsel)

DECISION AND ORDER

On May 15, 1990, we held that the Township of Old Bridge had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when its police chief transferred John T. Grossmann from the detective bureau to the patrol bureau in retaliation for Grossmann's filing a grievance. P.E.R.C. No. 90-102, 16 NJPER 307 (¶21127 1990). We ordered the Township to rescind the transfer and reinstate Grossmann to his prior position

in the detective bureau. On February 22, 1991, our order was enforced by the Honorable Paul G. Levy, Presiding Judge of the Chancery Division of the Superior Court in Mercer County.

A dispute then arose over whether there had been compliance. The PBA provided evidence that Grossmann had been assigned to the detective bureau in name only, not in fact. Neither the Township nor the chief presented contrary material facts. Given the PBA's evidence, we applied for supplemental relief before Judge Levy pursuant to R. 1:10-5. On the return date of the order to show cause, we were served with the responsive affidavits and brief of the chief of police. Those papers contained material factual allegations that had not been submitted to us previously. Given the disputed facts and the PBA's request for a hearing, we withdrew our application for relief so that we could conduct our own inquiry into the new factual allegations. On July 3, 1991, pursuant to N.J.A.C. 19:14-10.2, the Chairman ordered a hearing to resolve the factual disputes and to determine whether the Township had complied with the enforced order. On September 18, 1992, our order in P.E.R.C. No. 90-102 was affirmed by the Appellate Division. A-5353-89-T2.

On August 6, 1991 and March 24, April 7, and April 9, 1992, Hearing Examiner Stuart Reichman conducted the compliance hearing. Charging party Old Bridge PBA Local No. 127 and intervenor Police Chief Jerry Palumbo examined witnesses and introduced exhibits. The Township did not participate. Post-hearing briefs were filed by May 27, 1992.

On July 28, 1992, the Hearing Examiner found that the Township had not complied with our order. H.E. No. 93-5, 18 NJPER 415 (¶23191 1992). He recommended that we take steps to ensure that the Township and the chief return Grossmann to his prior position in the detective bureau. Specifically, the Hearing Examiner suggested that compliance would be achieved by assigning Grossmann to the detective assignment he performed before he was illegally transferred: administering the alcoholic beverage control ordinance and conducting auto theft investigations.

On August 4, 1992, the chief filed exceptions. He argues that he has the discretion under contract and statute to prescribe the duties and assignments of all subordinates. He claims that the Hearing Examiner erred by finding that reinstating Grossmann to his "prior position" meant reinstating him to his prior "duty assignment." He urges that we find that compliance has been met by assigning Grossmann to the detective bureau.

On August 24, 1992, the Township filed exceptions even though it had not previously participated in the compliance proceedings. It claims that a finding of fact was erroneous. It states that the new administration is trying to restore a proper balance between the legitimate rights of the employees and their organizations and the legitimate right of the chief to manage the operations of the police department. It asserts that the Hearing Examiner appears to view the assignment to administer the Township's alarm ordinance as a lesser police function and that assigning

Grossmann to that function continued the retaliation found in P.E.R.C. No. 90-102. It suggests that if the record supports a finding of continued retaliation, a specific finding to that effect should be made. Finally, the Township argues that if we find that assignment to alarm ordinance enforcement constitutes continued retaliation, we should order the chief to assign Grossmann any other detective duties traditionally performed by Old Bridge detectives. It suggests that any remedy which is more specific would be improper and would embroil us in new actions anytime future staffing decisions touch upon Grossmann's employment.

We have reviewed the record. The Hearing Examiner's findings of fact (H.E. at 3-15) are accurate and supported by the record. We incorporate them here.

The Township has an ordinance that requires anyone installing a burglar or fire alarm to register it and pay a fee. The ordinance also provides for penalties after the third false alarm. Administration of the ordinance involves receiving completed registration forms and the fee, delivering the fee to the finance department, filing the registration form and entering the information into a computer, sending warning notices after a third false alarm, and issuing a summons after a fourth false alarm. The officer issuing a summons may have to appear in court.

Captain James Lynch first administered the alarm ordinance. At that time, he was in charge of the crime prevention

unit in the planning and administration bureau. He was assisted by police officers assigned to light duty or a part-time civilian clerk. In 1989, Lynch was reassigned to the detective bureau. At that time, neither he nor any of the detectives administered the alarm ordinance.

After an indictment unrelated to this case, Sergeant Michael Moser and Patrol Officer Arthur Carullo were enrolled in pretrial intervention ("PTI") and allowed to return to work on May 29, 1990. The chief restricted their duties while they were on PTI: they were not allowed to carry weapons, police identification or badges, and they were not allowed to wear uniforms. Moser was assigned to administer the alarm ordinance. He was not considered a detective and was not included on the detective overtime list. On July 23, 1990, Moser was reassigned to assist the police director in his office. Carullo took over administering the alarm ordinance. Carullo was never made a detective and was considered part of the planning and administration bureau for purposes of overtime.^{1/}

^{1/} We specifically adopt the Hearing Examiner's findings that Moser and Carullo did not receive detective stipends while administering the alarm ordinance. Both officers testified unequivocally to that effect (2T21; 2T24). The Township has attached two payroll notices to its exceptions which indicate that Moser and Carullo were temporarily transferred from patrol to juvenile with a \$1000 increase effective May 29, 1990. The Township suggests that if Moser and Carullo received detective pay stipends while administering the alarm ordinance, then Grossmann is not the first detective to administer the ordinance. However, neither of these notices is in the record and they appear to contradict other

On December 14, 1990, in anticipation of Carullo's return to the patrol division, the chief invited patrol officers to apply for an opening in the planning and administration bureau to administer the alarm ordinance. Applications were due by January 15, 1991. The position was not filled. On February 19, 1991, just three days before the Superior Court enforced our order returning Grossmann to the detective bureau, responsibility for administration of the alarm ordinance was shifted from the planning and administration bureau to the detective bureau. The chief acknowledged that the detective bureau did not, at that time, have adequate staffing to administer the ordinance. When Grossmann was returned to the detective bureau pursuant to our enforced order, he became the first detective to be assigned to administer the alarm ordinance. We conclude that that assignment does not comply with our order in P.E.R.C. No. 90-102. We specifically ordered that Grossmann be reinstated to his prior position in the detective bureau. Instead he was assigned to perform duties that do not

1/ Footnote Continued From Previous Page

evidence. For example, another memorandum and Carullo's testimony indicate that he was not temporarily assigned to the detective division until July 23, 1990 (P-3; 2T23-2T25). Furthermore, even if Moser and Carullo received a stipend while they were temporarily assigned to administer the alarm ordinance, their duties as police officers were so restricted while they were on PTI that we cannot find that they were functioning as detectives.

resemble traditional detective duties and that had never been performed by Old Bridge detectives.^{2/}

We recognize that the chief has certain statutory rights to assign the duties and functions of his subordinates. But those rights are not absolute. Public employees also have certain statutory rights, including the right to engage in protected activity without threat of reprisal. We agree with the Township that it is important to recognize the proper balance between the legitimate rights of the employees and their organizations and the legitimate right of the chief to manage the operations of the police department. Our order in P.E.R.C. No. 90-102 was an attempt to restore that balance after we found that the Township, through its police chief, had discriminatorily transferred Grossmann from the detective bureau to the patrol bureau in retaliation for his filing a grievance. We now find that our order has been circumvented. Rather than return Grossmann to his prior duties or assign him other duties traditionally performed by Old Bridge detectives, the employer assigned him alarm ordinance duties previously performed by civilian clerks, officers on light duty, or officers on PTI. Those duties are qualitatively different from all other detective duties.

^{2/} We note that Grossmann does receive overtime assignments normally performed by detectives and he is also one of two detectives assigned to arson investigations. These assignments comport with our order, but they do not make Grossmann a detective since the normal duties he is assigned to perform 40 hours a week are not detective duties.

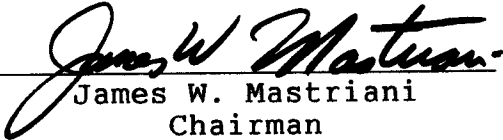
Although technically those duties now fall within the detective bureau, they were not transferred to that bureau until just three days before the summary enforcement of our order in P.E.R.C. No. 90-102. Enforcement of our order was undoubtedly expected because, under R. 4:67-6(c)(3), the validity of our order was not justiciable in the enforcement proceeding. Furthermore, the chief has offered no operational reason for transferring the duties to the detective bureau. Under all these circumstances, we conclude that Grossmann has not been reinstated to his prior position in the detective bureau.

We agree with the Hearing Examiner that the Township would be complying with our order in P.E.R.C. No. 90-102 if it assigned Grossmann to the same duties he performed before he was transferred out of the detective bureau in 1988. But that is not the only assignment within the detective bureau that could constitute compliance. Another assignment to perform duties traditionally performed by Old Bridge detectives could suffice and could preserve the appropriate balance between the legitimate right of employees not to be punished for protected activity and the legitimate right of the chief to manage the operation of the police department in a non-discriminatory fashion. Neither our order nor this decision is intended to preclude a legitimate reorganization of the department based upon sound governmental policy determinations.

We conclude that the Township of Old Bridge has not complied with our order in P.E.R.C. No. 90-102 by assigning John T.

Grossmann to administer the alarm ordinance. We issue no further order because the purpose of this proceeding was to determine whether the Township had complied. We expect the Township will now assign Grossmann to duties traditionally performed by Old Bridge detectives. It should notify the Chairman within 20 days of what further steps it has taken to comply with our order in P.E.R.C. No. 90-102.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Grandrimo and Regan were not present.

DATED: November 25, 1992
Trenton, New Jersey
ISSUED: November 25, 1992

H.E. NO. 93-5

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

In the Matter of

TOWNSHIP OF OLD BRIDGE

Respondent,

-and-

OLD BRIDGE PBA LOCAL NO. 127,

Docket No. CO-H-89-32

Charging Party,

-and-

JERRY PALUMBO,

Intervenor.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Township of Old Bridge and Intervenor, Chief of Police, are not in compliance with the Commission order directing that Detective John Grossmann be returned to his prior position in the Detective Bureau.

H.E. NO. 93-5

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

In the Matter of

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OLD BRIDGE PBA LOCAL NO. 127,

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Appearances:

For the Respondent, no appearance

For the Charging Party, Balk, Oxfeld & Cohen, Attorneys
(Sanford R. Oxfeld, of counsel)

For the Intervenor, Yacker & Granata, Attorneys
(Louis E. Granata, of counsel)

**COMPLIANCE HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION**

On May 15, 1990, the Public Employment Relations Commission found that the Township of Old Bridge committed an unfair practice when, among other things, it transferred John T. Grossmann in retaliation for filing a grievance. The Commission ordered the Township to rescind Grossmann's transfer from the Detective Bureau to the Patrol Bureau and reinstate him to his prior position in the

Detective Bureau. Tp. of Old Bridge, P.E.R.C. No. 90-102, 16 NJPER 307 (¶21127 1990). On February 22, 1991, Judge Paul G. Levy, Chancery Division, New Jersey Superior Court, issued an order enforcing the Commission's May 15, 1990 order. On June 27, 1991, the Commission withdrew its previously filed application for supplemental relief in this matter as the result of material factual allegations submitted by the intervenor which had not been previously submitted to the Commission before its application for supplemental relief. In light of the intervenor's submission and a request from Local No. 127 for a hearing, the Commission undertook its own inquiry in order to determine whether any further action was warranted.

On July 3, 1991, pursuant to N.J.A.C. 19:14-10.2, the Chairman had determined that a hearing was appropriate to ascertain whether the Respondent has complied with the Commission's Order in Tp. of Old Bridge, P.E.R.C. No. 90-102. I conducted hearings on August 6, 1991, March 24, April 7, and April 9, 1992. The parties examined witnesses and introduced exhibits. They waived oral argument. Briefs were filed by May 27, 1992.

FINDINGS OF FACT

1. James Lynch retired from the Old Bridge Township Police Department on April 1, 1990 (1T22).^{1/} Dennis Cronin was promoted to replace Lynch (4T8). Several years before Lynch retired, he and Deputy Chief Napolli were instrumental in drafting the false alarm ordinance adopted by the council in Old Bridge Tp. (1T29). The ordinance provided for any person or business installing a burglar or fire alarm system to fill out a registration form and pay a registration fee (3BT11). The ordinance also contained a schedule of penalties imposed after the third false alarm in any calendar year (1T29; 3BT13). Beginning in 1981 or 1982 Lynch was in charge of the Crime Prevention Unit which was contained in the Planning and Administration Bureau (1T29; 1T43). While in the Planning and Administration Bureau, Lynch was assigned the responsibility of administering the alarm ordinance (1T30-1T31). At various times, Lynch would be assisted in administering the alarm ordinance by police officers assigned to light duty or a part-time civilian clerk (1T31; 2T6-2T8).

2. In March or April 1989, Lynch was reassigned from the Planning and Administration Bureau to be in charge of the Detective

^{1/} The transcript citation 1T1 refers to the transcript developed on August 6, 1991, at p. 1, citations 2T, 3AT, 3BT, and 4T refer to the transcripts developed on March 24, April 7 for Donald Fritz's testimony, April 7 for John Grossmann's testimony, and April 9, 1992, respectively. Documents received in evidence marked "R" refer to documents offered by the Respondent, documents marked "P" were offered by the Petitioner, and documents marked "I" were offered by the Intervenor.

Bureau (1T27). Lynch continued in the Detective Bureau until September or October, 1989 (1T33). While Lynch was in the Detective Bureau neither he nor any of the detectives had any responsibility for the administration of the alarm ordinance (1T36-1T38; 1T55; 1T58;-1T59).

3. While Lynch was serving as Detective Bureau Commander, Chief Jerry Palumbo issued a memorandum to all patrol officers inviting them to apply for job assignments in the Detective Bureau (P2). The memorandum set forth a job description for detectives. The job description, in relevant part, states the following:

MAJOR RESPONSIBILITY: review, investigate and report on all incidents/cases as assigned.

ILLUSTRATION OF KEY DUTIES: The duties and responsibilities of a detective shall include, but not limited to:

1. Review and investigate all criminal cases or incidents which have been assigned.
2. Report on the findings and/or progress of cases/incidents.
3. Prepare completed reports for review and/or transport to appropriate outside agencies.
4. Investigate specific crimes, as directed by the Bureau Commander.

Section 2:7 of the Police Department's Rules and Regulations for Detective/Plain clothes Officer (P18) describe the assignment as follows:

Under direction, is assigned to investigative or technical units and is responsible for the investigation and clearance of criminal and

non-criminal complaints, or other duties which may be assigned because of a particular expertise.

1. Shall intelligently and thoroughly investigate each assignment, initiating the investigation by prompt contact with the complainant.
2. Shall keep detailed day-to-day records of his investigations, acquainting supervisors and interested units with information developed.
3. Uses all legal means at his disposal to detect and solve crime and prosecute offenders, thoroughly investigating information received from any source, follow through to completion, if possible, all cases assigned.
4. Must study and apply sound investigative techniques and improve his efficiency by attention to: a) use of records and reports; b) conduct of interviews; c) cultivation of informants; d) development of perceptive abilities; and e) proper collection, identification, analysis, preservation and presentation of evidence.
5. Shall prepare all cases in a manner which ensures the best possible presentation in court.
6. Shall learn the rules of evidence, court procedure and the art of testifying, which make for an effective witness. He shall also cooperate with the prosecution in trial preparation.
7. Notwithstanding his assignment he shall provide an immediate response to an emergent or observed need for police service.
8. When from time to time he shall be called upon to serve in a uniformed capacity he shall be governed by all rules pertinent to his regular assignment and those governing uniformed police officers.

Lynch conceded that while he was responsible for administering the alarm ordinance he did conduct "investigations," albeit on the most elementary level, in order to determine whether the ordinance had been violated. The "investigation" consisted of looking in the file to determine whether the reported false alarm was more than the third incident emanating from the business or residence (1T58). While Lynch did not believe that the assignment of administering the alarm ordinance fell within the detective job description as set forth in P2, he conceded that the job description does call for the officer to "review" incidents assigned and that reviewing a miscellaneous service report^{2/} could conceivably fall within the detective's job description (1T56; 1T58; 1T69-1T70).

4. On September 27, 1989, an indictment was returned against Sgt. Michael Moser for matters unrelated to this case. As the result of that indictment, he was enrolled in the Pretrial Intervention Program (PTI) and was allowed to return to work on May 29, 1990 (2T12). While the terms of the PTI did not limit Moser's police authority or duties, Chief Palumbo did. Palumbo told Moser that he would not be given his full police duties during the term of the PTI enrollment. Palumbo did not allow Moser to carry a weapon, police identification or badge nor was he allowed to wear a uniform (2T13; 2T22).

^{2/} A Miscellaneous Service Report (MSR) is a report prepared by a police officer describing an incident. The MSR is submitted at the end of the officer's shift to his superior.

5. On May 29, 1990, Moser was assigned to administer the alarm ordinance (2T5-2T6). Moser reported to Capt. Dennis Cronin, Detective Bureau Commander (2T11; 2T19-2T20). For the two months that Moser was assigned to administer the alarm ordinance, he assisted citizens with completing the alarm application, logged applications into the computer and registered alarms (2T13-2T14). During this time, Moser was not considered a "detective" sergeant; he was not included on the detective overtime list, and did not receive the detective pay stipend (2T14; 2T21).

6. In March, 1989, Officer Arthur Carullo was indicted (2T37). Subsequently, Carullo was enrolled in PTI. During the time that Carullo was in PTI, Palumbo limited his police authority and duties. Such limitations were not part of the terms of the PTI (2T50). Carullo could not carry a weapon, wear a uniform or conduct patrol duties (2T33; 2T38). When the term of enrollment in PTI expired, Carullo was reassigned to the patrol unit with full police authority (2T54). Prior to Carullo's indictment, he was assigned to the patrol unit (2T40-2T41).

7. On July 23, 1990, during the period of his enrollment in PTI, Carullo was assigned to administer the alarm ordinance, replacing Moser (2T23-2T24; P3). While Carullo was assigned to the Detective Bureau and reported to Capt. Cronin, he was never made a detective. Carullo was considered part of the Planning and Administration Bureau for purposes of overtime while he administered the alarm ordinance (P4; 2T29-2T30).

8. The Juvenile Bureau is part of the Detective Bureau although it is physically separate. The computer work station used in the administration of the alarm ordinance is located in the Juvenile Bureau. Both Moser and Carullo were physically located at the computer work station to administer the alarm ordinance. Although Moser and Carullo were situated in the Juvenile Bureau they had no responsibilities related to juvenile aid and their work was limited to administration of the alarm ordinance (2T15; 2T29). When Grossmann was assigned to administer the alarm ordinance, he was likewise located at the computer work station in the Juvenile Bureau (3BT10; 3BT17; 4T26-4T27; 4T61-4T62). On the police department listing of employees' telephone extensions (P5), Carullo is shown as a police officer and not a detective and is assigned a telephone line which runs directly to his desk rather than the extension which through the police switchboard. P5 designates Carullo's telephone number as that for "alarms." When Grossmann was assigned to administer the alarm ordinance, he was assigned the same direct telephone line that Carullo had used (CP-15). An internal extension telephone is available for Grossmann's use on the desk opposite his, a few feet away. Carullo was told by Deputy Chief Napolli, Capt. Cronin and Lt. Bonafonti that he was not serving as a detective (2T34). In or about January 1991, Carullo was reassigned from the alarm ordinance administration function to the Patrol Division (2T34; 2T54). On December 14, 1990, in anticipation of Carullo's move to the Patrol Division, Chief Palumbo issued a memorandum to

all police personnel inviting officers to apply for an opening in the Planning and Administration Bureau with the primary responsibility being the administration of the alarm ordinance (P6). Carullo never received the stipend paid to detectives nor did he carry a detective's gold badge (2T24).

9. In July or August, 1988, John Grossmann was transferred from the Detective Bureau to the Patrol Bureau (3BT4; 3BT37). That transfer was the subject of an unfair practice charge which resulted in the Commission finding that the Township had violated the Act by transferring Grossmann in retaliation for filing a grievance. Tp. of Old Bridge. On May 15, 1990, the Commission ordered the Township to rescind the transfer of Grossmann from the Detective Bureau to the Patrol Bureau and reinstate him to his prior position in the Detective Bureau. The Commission's order was not immediately implemented and became the subject of litigation. On March 4, 1991, Grossmann was reassigned to the Detective Bureau (3BT26; 4T9).

10. Prior to his reassignment in 1988, Grossmann was performing detective functions relating to stolen car investigations and administering the Township's alcoholic beverage control ordinance (3BT5). Grossmann was assigned a vehicle (3BT6). While administering the alcoholic beverage control ordinance, Grossmann's responsibilities included receiving and processing applications, meeting with bar owners, checking on license renewals and, when necessary, preparing cases to rescind licensure (3BT56-3BT58). On

occasion, Grossmann would arrange for road patrol officers to visit a bar in order to check for underage drinkers. At times Grossmann would conduct surveillance operations in an effort to identify underage drinkers (3BT55-3BT56). Since Grossmann's transfer out of the Detective Bureau in 1988, Det. Miller has been assigned the responsibility of investigating vehicle thefts and administering the alcoholic beverage control ordinance (3BT5-3BT6).

11. On or about February 19, 1991, the responsibility for the administration of the alarm ordinance was moved from the Planning and Administration Bureau to the Detective Bureau (4T14; 4T38; 4T44-4T45; I7). Although the alarm ordinance responsibility was assigned to the Detective Bureau, it was acknowledged that the Bureau did not have adequate staffing to handle the function at that time (I7). Upon Grossmann's transfer back to the Detective Bureau, he was assigned to administer the alarm ordinance (3BT8; 4T9; 4T19). Grossmann is the first detective to have ever been assigned to administer the alarm ordinance (3BT78).

12. In administering the alarm ordinance, Grossmann's duties include receiving completed registration forms along with the \$10 registration fee; delivering the money to the Finance Department; filing the registration form and entering the information contained on the form into the computer (3BT11-3BT12). Grossmann initiates this process by sending businesses and residents having alarm systems installed a letter apprising them of the alarm ordinance and their obligation to register (P8; 3BT12-3BT13). When

an alarmed location accrues three false alarms Grossmann sends a letter notifying the person of the penalties incurred resulting from four or more false alarms (P9; 3BT13-3BT14). When Grossmann receives a MSR indicating a false alarm, he must review the information contained in either the file or the computer for that particular location in order to determine the number of false alarms received during the course of that calendar year and thus determine whether it is appropriate to issue a summons (3BT14; 3BT63-3BT64). If Grossmann determines that a summons should issue, he prepares the document, takes it to the municipal court where the court clerk signs the summons, retains a copy and gives it to the records clerk to mail to the alleged offender. Grossmann keeps a copy of the summons for his records (3BT65). Grossmann's appearance in court would only be necessary where the person receiving the summons would decide to contest it. When Grossmann was first assigned to administer the alarm ordinance, he was required to appear in court almost weekly. Currently, court appearances are infrequent (3BT65-3BT66). Preparation for the court appearances merely requires Grossmann to bring the MSRs to the courtroom (3BT66).

13. During most of calendar year 1991, Lt. Donald Fritz was responsible for reviewing the previous day's reports received in the Detective Bureau and assigning those cases to a detective for investigation (3AT5). Cronin told Fritz to limit Grossmann's

assignments to only matters related to the administration of the alarm ordinance (3AT7; 3AT13).^{3/}

14. No detectives are assigned to work on the midnight to 8 a.m. shift, weekends or holidays (3BT21). Consequently, a rotating overtime list has been developed to identify the detective to be called should the need arise during those times when no detective is assigned to work (3BT21). Grossmann is included on the detectives' overtime list and on those occasions when detectives were needed, Grossmann has been called when his name was on the top of the list. Grossmann has been assigned three investigations as the result of his being called from the overtime list. He was assigned to investigate a motor vehicle accident, a homicide and a sexual assault (3BT22-3BT213). The sexual assault was later reassigned to another detective for completion (3BT23). Grossmann has received special training in arson investigation (3BT71). Cronin added Grossmann's name to a memorandum which named certain detectives as those to be called initially in order to investigate particular crimes. Grossmann was named as one of the two detectives

^{3/} Cronin testified that since he felt that it had taken Moser and Carullo a great amount of time to learn the alarm ordinance system, he told Fritz to assign only alarm ordinance cases to Grossmann. Cronin said that he believed that this directive would enable Grossmann to learn the alarm ordinance system more quickly (4T19). I do not credit Cronin's explanation. The record does not contain evidence indicating that either Moser, Carullo or Grossmann had difficulty learning the procedures used to administer the alarm function. Further, a review of the administration procedures detailed in the record clearly shows that the process is not difficult to master.

to be contacted for serious-type arsons (I9; 4T16). The one arson case which Grossmann investigated was initially reported on an MSR as a false fire alarm and later turned out to be an arson (3AT15-3AT16; 3AT24).

15. Detectives receive a gold badge and a \$1000 base pay stipend. Grossmann has a gold detective's badge and receives the stipend (3BT21). Cronin assigned Grossmann to administer the alarm ordinance (4T31). Palumbo never told Cronin how to assign Grossmann (4T20; 4T64).

16. It is acknowledged that the Chief has the authority to make functional assignments among the various organizational subdivisions (1T43-1T44; 1T54; 3BT43-3BT44; 4T17; 4T40). Likewise, the Bureau Commander makes duty assignments to subordinates within his Bureau, as is typical in a para-military structure (1T50). Detectives within the Detective Bureau may be assigned to either the Criminal Investigation Unit or the Juvenile Aid Unit based solely on the determination of the Bureau Commander (3BT46; 3BT48-3BT49).

17. While Lynch was detective Bureau Commander each detective was assigned to use a specific vehicle (1T31). However, a particular vehicle could be assigned to more than one detective (1T32; 1T64). Notwithstanding a detective's vehicle assignment, any detective can use any available vehicle (1T66).

18. Before Grossmann was transferred from the Detective Bureau to the Patrol Bureau in 1988, a vehicle was assigned to him (3BT6). Since Grossmann's return to the Detective Bureau, he has

not had a particular vehicle assigned (3BT6). During calendar year 1991, approximately ten vehicles were assigned to the Bureau for twelve detectives (3AT19; 4T9). As of January 30, 1992, eleven vehicles were assigned to the Detective Bureau (P10). P10 is a list which matches vehicles and detectives. The purpose of the list is to indicate the detective who is responsible for ensuring that the vehicle assigned receives proper maintenance (3AT20; 4T22-4T23).^{4/} P10 does not signify that a particular vehicle is exclusively assigned to the designated detective (3AT21; 4T22-4T23). However, the detective assigned to maintain the vehicle usually serves as its primary driver (4T54). Detectives are not permitted to use the vehicles for personal purposes (3AT21). While Grossmann was not assigned maintenance responsibilities for any vehicle, he can use any detective vehicle available and has done so (3AT18-3AT19; 4T23-4T25).^{5/} On one occasion Grossmann was using a Detective Bureau car when he was contacted and told to return to the police building. Upon return Sgt. Leslie told Grossmann to ask before taking a vehicle (3B20). Cronin was unaware of this incident (4T24-4T25).

^{4/} P10 shows that on January 30, 1992, no detective was assigned the maintenance responsibility for vehicle no. 57. Vehicle no. 57 was in the repair shop for several months and, by the time of the April 9, 1992 hearing had only been returned to service for a few weeks (4T24).

^{5/} Neither Grossmann nor any other detective other than Det. McGovern may use vehicle number 52 since that vehicle is designated as the "death by auto" vehicle and contains specialized equipment (3BT69).

19. Detectives work two rotating shifts: day and evening (3BT17). No detectives are assigned during the midnight shift; if one is needed, s/he is called in on overtime. Grossmann works only days (3BT21). His request to also work an evening shift was denied (3BT82).

20. When Grossmann was assigned to the Patrol Division in 1988, there were 17 detectives in the Detective Bureau (4T10). In March 1991 when he was returned to the Detective Bureau, 12 detectives were assigned (4T9).

ANALYSIS

The purpose of this proceeding is to determine whether the Township of Old Bridge, an employer who has been found to have committed unfair practices within the meaning of the Act, is in compliance with the Commission's remedial order. On May 15, 1990, the Commission found that the Township violated the Act when it transferred Grossmann in retaliation for filing a grievance. The Commission ordered the Township to rescind Grossmann's transfer from the Detective Bureau to the Patrol Bureau and reinstate him to his prior position in the Detective Bureau. The Township has taken no position in the instant proceeding. However, the Intervenor, Chief Palumbo, argues that upon Grossmann's return to the Detective Bureau full and complete compliance with the Commission's order has been achieved and no further action is necessary. Local No. 127 asserts that notwithstanding certain superficial changes to Grossmann's circumstances, the Commission's award has not been effected.

The plain language of the Commission's Order states that Grossmann must be reinstated to his prior position in the Detective Bureau. Some meaning must be ascribed to all words in the Commission's Order. It is undisputed that Grossmann's prior position in the Detective Bureau involved responsibilities pertaining to enforcement of the ABC ordinance and auto theft investigations. Those functions continue in the Detective Bureau currently. However, when Grossmann was returned to the Detective Bureau, he was not returned to his prior position. I note that the record contains no evidence indicating the Grossmann was not properly performing his assigned duties prior to his reassignment out of the Detective Bureau in 1988.

The Commission has considered timing an important indication of motivation. City of Margate, H.E. No. 87-46, 13 NJPER 149 (¶18067 1987), adopted P.E.R.C. No. 87-145, 13 NJPER 498 (¶18183 1987); Borough of Glassboro, P.E.R.C. No. 86-141, 12 NJPER 517, 519 (¶17193 1986). In this case the timing of events is suspect. For years, the alarm ordinance administration function was assigned to the Planning and Administration Bureau. On February 19, 1991, just three days before Judge Levy's order enforcing the Commission's order to move Grossmann back to his position in the Detective Bureau, the Chief moved a function which had never been performed by a detective into the Detective Bureau. This functional realignment takes place notwithstanding the fact that it was acknowledged there was insufficient staff to perform that work. It is reasonable to

conclude that the movement of the alarm ordinance function was done in anticipation of Grossmann's arrival which occurred on March 4, 1991, thereby avoiding the full impact of the Commission's Order.

The Intervenor argues that compliance with the Commission's Order can be achieved without having to assign Grossmann to any specific duty, time or work area. The Intervenor argues that by simply placing Grossmann in the Detective Bureau, it achieves compliance with the Commission's Order. Indeed, Grossmann's current work circumstance includes more than the mere placement in the Detective Bureau. Grossmann possesses the detective's gold badge, receives the \$1000 stipend and is included on the rotating overtime list of detectives. However, when Grossmann's actual duties are compared with those set forth in the detective's job description or the department's rules and regulations for detectives/plain clothes officer, it is difficult to conclude that Grossmann is actually performing as a detective. The function in which Grossmann now serves has historically been included in the Planning and Administration Bureau and not the Detective Bureau. Further, the responsibility of administering the alarm ordinance had previously been performed by a civilian part-time clerk, non-detective police officers on light duty, or police officers who were limited in their exercise of full police authority. With regard to Sgt. Moser and Officer Carullo, notwithstanding the fact that they reported to the Detective Bureau Commander while they performed the alarm ordinance function, they were not considered detectives. The facts establish that Grossmann is doing the same work as Moser and Carullo.

The Intervenor notes that the number of employees in the Police Department has contracted during the time that Grossmann was assigned to the Patrol Bureau. From the time that Grossmann was assigned to the Patrol Bureau in 1988 until the time that he returned in March 1991, five fewer detectives were assigned to the Bureau. However, the contraction in the size of the Detective Bureau does not change the fact that Grossmann's prior work responsibilities, ABC ordinance enforcement and auto theft, continue in the Detective Bureau. The mere fact that the size of the Detective Bureau has been reduced does not provide any rationale for Grossmann not to have been returned to his prior position to perform functions which continue in the Detective Bureau.

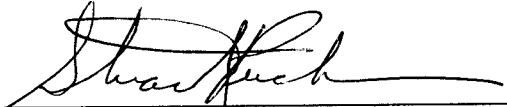
The Intervenor claims that the Chief of Police has the obligation and the statutory authority to assign work within the department as he determines to be appropriate. I agree that the Chief has authority to make such assignments on a non-discriminatory basis. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 (1978). See also In re Bridgewater Tp., 95 N.J. 235 (1984). The Chief has the authority to assign the alarm ordinance responsibility to the Detective Bureau and require detectives to perform that work. However, the issue here is not whether the Chief has authority to assign his personnel, rather it is whether the Chief is in compliance with a Commission order remediating an unfair practice. In the context of remediating an unfair practice, Grossmann is entitled to special considerations. He is entitled to

the status quo ante which represents return to his previous position as ordered by the Commission. Grossmann has not been returned to his previous position and, consequently, neither the Township nor the Intervenor is in compliance with the Commission's order.

RECOMMENDATION

I find that the Township is not in compliance with the Commission's Order. In order to comply with the Commission's Order, the Township must return Grossmann to his prior position in the Detective Bureau. Thus, in addition to the other indicia of detective status Grossmann now enjoys (e.g. gold badge, inclusion on the detective's overtime list and stipend), compliance in Grossmann's case would be achieved by assigning him to administer the ABC ordinance and conduct auto theft investigations.

I recommend that the Commission take those steps necessary to ensure that the Respondent and the Intervenor adhere to the Order issued in Tp. of Old Bridge, P.E.R.C. No. 90-102.



Stuart Reichman
Hearing Examiner

Dated: July 28, 1992
Trenton, New Jersey