

P.E.R.C. NO. 88-124

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JACKSON TOWNSHIP,

Respondent,

-and-

Docket No. C0-H-87-278

JACKSON TOWNSHIP
PBA, LOCAL 168,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that Jackson Township violated the New Jersey Employer-Employee Relations Act when it (1) interfered with Jackson Township PBA, Local 168's representation of a police officer at a disciplinary hearing; (2) refused to permit PBA representation at a disciplinary interview; (3) restricted the right of PBA representatives to express opinions to the public and the media, and (4) failed to return the PBA president's leave of absence slips in a timely manner.

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Appearances:

For the Respondent, Gerald L. Dorf, P.C. (Gerald L. Dorf,
of counsel; Patrick E. Daly, on the brief)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks, Esqs. (Mark J. Blunda, of counsel)

DECISION AND ORDER

On March 23, 1987, the Jackson Township PBA, Local 168 ("PBA") filed an unfair practice charge against the Township of Jackson ("Township"). The charge alleges the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), and (3),^{1/} when:
(1) its Public Safety Director Joseph Indiero turned off a tape

^{1/} 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; and (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

recorder during Patrol Officer Robert Farley's grievance hearing and stated that the PBA does not run the department; (2) it denied Patrol Officer Clayton Dewyea union representation during a meeting and then used the information gathered at that meeting to file disciplinary charges against him; (3) it brought disciplinary charges against PBA President John Kloiber for expressing his opinions to the media; (4) it charged Kloiber for exercising his right to attend PBA conventions; (5) it discriminatorily enforced parking policies against Kloiber; (6) it scheduled a meeting with Kloiber for his day off and then cancelled the meeting when he arrived; (7) it discriminatorily verified Kloiber's sickness; (8) it failed to timely process Kloiber's requests for leaves of absence, and (9) Indiero directed Township employees to monitor Kloiber's activities. On the first day of hearing, the PBA amended the charge to allege that the Township discriminated against Kloiber by scheduling meetings on his day off.

On April 30, 1987, a Complaint and Notice of Hearing issued. On May 21, the Township filed its Answer denying the substantive allegations in the Complaint.

On July 1, 2, 14, August 3, September 2, 3, October 5, 8, November 5, 12 and December 1, 1987, Hearing Examiner Ira W. Mintz conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post-hearing briefs.

On May 8, 1988, the Hearing Examiner issued his report, recommending that the Commission find certain violations, but

dismiss other aspects of the Complaint. H.E. No. 88-49, 14 NJPER ____ (¶ ____ 1988). Specifically, he recommended finding that the Township violated the Act when it: (1) interfered with the PBA's representation of a police officer at a disciplinary hearing; (2) refused to permit PBA representation at a disciplinary interview; (3) restricted the right of PBA representatives to express opinions to the public and the media, and (4) failed to return Kloiber's leave of absence slips in a timely manner. As a remedy, he recommended an order requiring the Township to cease and desist committing such violations, post a notice and rescind the unlawful orders restricting access to the media. He recommended that the rest of the Complaint be dismissed because the PBA did not prove the allegations and some charges were untimely.

The Hearing Examiner served his report on the parties and informed them that exceptions were due on or before April 25, 1988. Neither party filed exceptions.

We have reviewed the record. The Hearing Examiner's comprehensive findings of fact (pp. 3-38) are accurate. We adopt and incorporate them here. Under all this case's circumstances and in the absence of exceptions, we agree with his conclusions of law.^{2/}

ORDER

The Township of Jackson is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing police employees in the exercise of the rights guaranteed to them by the New

2/ We need not order the posting of a notice.

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with PBA President Kloiber's representation of Officer Robert Farley at a disciplinary hearing; failing to provide PBA representation to Officer Clayton Dewyea after it became apparent an interview might reasonably result in discipline; issuing general orders that unduly restricted the right of PBA representatives to express opinions to the public and media, and failing to return PBA President Kloiber's leave of absence slips in a timely manner.

2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to return PBA President Kloiber's leave of absence slips in a timely manner.


B. Take the following affirmative action:

1. Rescind revised General Orders 86-71 and 86-65, issued February 18, 1987.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

The remaining allegations in the Complaint are dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: Trenton, New Jersey
May 25, 1988
ISSUED: May 26, 1988

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

In the Matter of

JACKSON TOWNSHIP,

Respondent,

-and-

Docket No. C0-H-87-278

JACKSON TOWNSHIP PBA,
LOCAL 168,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that Jackson Township violated subsection 5.4(a)(1) of the New Jersey Employer-Employee Relations Act by interfering with PBA President Kloiber's representation of Officer Farley at a disciplinary hearing; by failing to provide PBA representation to Officer Dewyea after it became apparent an interview might reasonably result in discipline and issuing general orders that unduly restricted the right of PBA representatives to express opinions to the public. The Hearing Examiner also recommends the Commission find that Jackson Township violated subsections 5.4(a)(1) and (3) when it failed to return PBA President Kloiber's leave of absence slips in a timely manner.

The Hearing Examiner further recommends that the Commission find that Jackson Township did not violate subsections 5.4(a)(1), (2) or (3) when it charged PBA President Kloiber for failing to submit a certification of PBA convention attendance; required Kloiber to move his car from a no parking zone; scheduled a meeting and postponed it, and monitored employees. The Hearing Examiner recommends the Commission dismiss as untimely charges that Jackson Township violated subsections 5.4(a)(1), (2) and (3) when in August 1986 it charged Kloiber for expressing his opinions to the media and called him to verify his sick leave.

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. 88-49

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

In the Matter of

JACKSON TOWNSHIP,

Respondent,

-and-

Docket No. C0-H-87-278

JACKSON TOWNSHIP PBA,
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Appearances:

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of counsel; Patrick E. Daly, on the brief)

For the Charging Party, Oxfeld, Cohen, Blunda, Friedman,
LeVine & Brooks (Mark J. Blunda, of counsel)

HEARING EXAMINER'S RECOMMENDED
REPORT AND DECISION

On March 23, 1987 the Jackson Township PBA, Local 168
("PBA") filed an unfair practice charge against the Township of
Jackson ("Township"). It alleges the Township violated the New
Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,
specifically subsections 5.4(a)(1), (2), and (3),^{1/} when: (1) its

^{1/} 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; (2) Dominating or

Footnote Continued on Next Page

Public Safety Director Joseph Indiero turned off a tape recorder during Patrol Officer Robert Farley's grievance hearing and stated that the PBA does not run the department; (2) it denied Patrol Officer Clayton Dewyea union representation during a meeting and then used the information gathered at that meeting to file disciplinary charges against him; (3) it brought disciplinary charges against PBA President John Kloiber for expressing his opinions to the media; (4) it charged Kloiber for exercising his right to attend PBA conventions; (5) it discriminatorily enforced parking policies against Kloiber; (6) it scheduled a meeting with Kloiber for his day off and then cancelled the meeting when he arrived; (7) it discriminatorily verified Kloiber's sickness; (8) it failed to timely process Kloiber's requests for leaves of absence, and (9) Indiero directed Township employees to monitor Kloiber's activities.

On April 30, 1987, a Complaint and Notice of Hearing issued. On May 21, the Township filed its Answer denying the substantive allegations in the Complaint.

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1/ Footnote Continued From Previous Page

interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act.

matter.^{2/} On the first day of hearing, the PBA amended the Complaint as follows:

Respondent has harassed and discriminated against the PBA president by scheduling meetings with the PBA president on his days off and when he had the shift off, limited to April, 1987, December 22, 1986 and a date between February 5 and March 9, 1987 [TA97].

The Township denied this allegation.

At the conclusion of the hearing, the parties waived oral argument but filed post-hearing briefs. On February 25, 1988, the Township filed a reply brief. On March 2, the PBA indicated it would not file a reply. Upon the entire record, I make the following:

FINDINGS OF FACT

1. The PBA is the majority representative of the Township's police officers.
2. John Kloiber is a police officer employed by the Township and has been president of the PBA for three years (TA18).
3. The Township is governed by a five member Township Committee. Rosalyn Olsen was elected to the Committee in November 1985 and on January 1, 1987 was appointed by the Committee to be Police Commissioner (TD113-TD114).
4. Until his retirement in February 1986, Chief Walter McCurdy headed the Township's police department (TG7). To ensure

^{2/} TA refers to the transcript of July 1; TB to July 2; TC to July 14; TD to August 3; TE to September 2; TF to September 3; TG to October 5; TH to October 8; TI to November 5; TJ to November 12, and TK to December 1.

more responsibility and accountability, the Township replaced the chief's position with a director of public safety (TD119).

5. Effective January 1, 1986, the Township appointed Sergeant Joseph C. Indiero as director (TD120) for a one year term. He was granted a leave of absence from his 16 year police officer position. The PBA supported Indiero's appointment (TD124).^{3/} When Indiero was a police officer, he and Kloiber were on the same squad. Prior to January 1986, they did not have serious disagreements (TH131-TH132). Early in his administration, Indiero had several "sensible, normal" meetings with Kloiber (TH135).

6. Indiero made several changes in the department's organization and operation. He issued new and revised orders to increase accountability and effectiveness (TG31).

7. Prior to January 1986, information regarding certain disciplinary charges against Captain William G. Mulligan appeared in the newspapers. Aware of this and the necessity for a comprehensive press policy, Indiero encouraged Chief McCurdy to issue the department's first press release policy on January 15, 1986 (R-4). General Order No. 86-65 began:

PRESS RELEASE

The department recognizes the careful balance of the public's right to know and the danger of giving too much information to the media. The policy of this

^{3/} Indiero testified he had seen nothing in writing or anything formally indicating PBA support. However, Police Commissioner Olsen credibly testified the Township Committee felt very supported by the PBA in appointing Indiero (TH124).

department is to provide information to the media concerning the administration of justice while still protecting basic individual rights or not endangering a police investigation.

It then outlined details of media contact with shift commanders, the detective bureau and traffic safety. It concluded with this section on personnel matters:

No member of the police department shall discuss police personnel matters with the media or the public without the permission of the Chief of Police or Director of Public Safety.

8. In February 1986, Captain Samuel DePasquale became commander of the operations bureau which includes the patrol unit, traffic safety, school crossing guards, special police, auxiliary police and police cadets (TE7-TE8).

9. In March 1986, Indiero issued General Order 86-87 which changed overtime procedures. The PBA grieved the changes.

Under the parties' collective negotiations agreement, grievances not resolved by the superior officer are reviewed by the Township Administrator and then the Township Committee. The procedure ends in binding arbitration (J-1).

The Director's position on the overtime grievance was sustained by the Administrator and Committee. The PBA submitted the grievance to arbitration and in 1987, the arbitrator ordered the payment of backpay to certain officers affected by the order (TH144).

10. On June 25, 1986, Indiero issued a revised General Order No. 86-71(g) entitled "Chain of Command" (R-28).

It provided, in part:

It shall also be established that no member of the department shall contact, in writing or verbally, any municipal or higher governmental official, or their representatives, when said communication pertains to departmental matters, without first adhering to the chain of command set down in the Jackson Township Police Department.

It shall also be established that no member of the department shall contact, in writing or verbally, any representative of the public media (newspapers, magazines, radio and/or television) to discuss any police personnel matter, without first obtaining permission from the Director of Public Safety.

The above described procedure will be followed by the lowest ranking member of the department to the highest, and from the highest to the lowest. The Director of Public Safety will be the only exception to this chain of command.

All members of the Jackson Township Police Department shall adhere strictly to this general order.

11. On July 25, 1986, Captain DePasquale issued a memorandum directing watch commanders not to approve officers' leave requests to attend funerals of slain officers unless a copy of the teletype message concerning the slain officer is attached. Article XX, Union Business, Section 8 of the contract provides for such leaves for the PBA president and state delegate or, if unavailable, two other PBA members but does not include requirements for supplying certification. Indiero did not recall whether he discussed the memo with DePasquale before it issued or ordered DePasquale to issue it (TH185).

12. On July 29, 1986, DePasquale issued a memorandum to all watch commanders (R-20) regarding traffic summonses. It stated:

As you are aware, traffic enforcement falls within the realm of duties to be performed by Patrolmen assigned to the Patrol Unit. An effective traffic enforcement program targeting serious moving traffic violations can make a substantial difference in the type and frequency of motor vehicle accidents. It should also reduce the number of fatalities, serious injuries, and the amount of property damage.

Accomplishment of the above goal will result in the reduction of time spent by patrolmen investigating accidents, thus allowing them the opportunity to devote additional time to their numerous other duties.

Effective immediately, you are to instruct the patrolmen under your command to issue traffic summonses for motor vehicle violations, which occur during their tour of duty. An observant patrolman should be able to identify motor vehicle infractions during an eight hour tour of duty. Therefore, any patrolman who is unable to issue traffic summonses during a given tour, shall submit a memo through the chain of command, to the Operations Bureau Commander. Said memo shall be submitted prior to the officer going off duty, and will explain in detail the reasons for failing to observe traffic violations and issue summonses. Watch Commanders will initial the memo and make comments as to the validity of the officers reasons prior to forwarding same to the Bureau Commander. [Emphasis added]

A reporter for the Asbury Park Press telephoned Kloiber and stated she received an anonymous call that morning about the summons issue and wanted a comment. Kloiber told her he would only comment after she spoke to the Director. Kloiber later gave her a press release (TA27-TA28).

On July 31, 1986, Kloiber wrote a memorandum to DePasquale indicating that the PBA felt that the order was "some sort of a 'Quota System'" and requesting information regarding compliance (R-21).

On July 31, 1986, an article appeared in the Asbury Park Press headlined "Jackson PBA says ticket rule 'quota system'" (R-28). It quoted Kloiber, as PBA president, stating, "[i]f it's not a quota system, I don't know what is. ...[N]ow an officer is going to write a summons so he doesn't get charged." Kloiber stated he expected the department would discipline him for commenting on the matter. Indiero was described as denying the measure was a quota system, stating the order did not mention any number of tickets officers must issue, and explaining the order was necessary to help reduce the number of traffic fatalities, serious accidents and property damage in the Township. The Ocean County Police Chiefs Association President and Township Mayor A. Bruce Cottrell were also quoted.

On August 1, 1986, another article appeared in the Asbury Park Press (R-28). It quoted Kloiber as stating "I speak for the men. They feel it's a quota system." The article also reported on Kloiber's July 31 memo to DePasquale (R-21) and reiterated Indiero's position that the order was a response to public anger about speeding on Township roads and necessary because "some men aren't doing their job in the area of traffic enforcement." In both the July 31 and August 30 articles, Indiero reportedly referred to a three-part program of engineering, education and enforcement he was designing to cut down on serious accidents, but "the PBA jumped the gun" (R-28). DePasquale did not recall discussing such a program with the Director (TF88). The August 1 article further reported

that Indiero said Kloiber was entitled to file a grievance. "'I believe in following the proper procedure,' he said. 'If he's (Kloiber) done that, it will be followed.'"

On August 4, 1986, DePasquale sent a memorandum to Kloiber explaining the reason for the program and stating that if the PBA disagreed, the grievance procedure should be followed (R-22).

On August 5, 1986, DePasquale sent a memorandum to Indiero recommending Kloiber be suspended for five days (R-28). He charged that Kloiber violated: General Order 86-65 by discussing police personnel matters with the media without the Director's permission; General Order 86-71 by contacting the media to discuss a police matter without the Director's permission; Township Code 24-32(15) by refusing to obey proper orders; Township Code 24-32(18) by failing to comply with proper orders, and Township Code 24-31(c) by conducting himself in a manner subversive to the good order and discipline of the police department. DePasquale stated Kloiber's "quota system" accusations were not only erroneous, but misleading to the public and police officers. DePasquale felt Kloiber was creating a problem and hurting the day-to-day operations of the department and the public in general and that to him it was subversive to the general order and discipline of the department (TF68).

On August 6, 1986, Indiero certified DePasquale's charges against Kloiber and set a hearing date (R-30). Indiero did not recall whether he discussed the charges with DePasquale before

issuing them. He claimed that Kloiber was charged as a "patrolman," not as PBA president. Although the articles referred to Kloiber's being president and "speaking for the men," Indiero also claimed that he had no knowledge of a membership sanction to give a statement and did not know whether Kloiber was speaking as PBA president (TI116-TI122). I cannot credit Indiero's technical excuse for not knowing that Kloiber was representing the PBA. It is simply not believable given the content of the newspaper articles and the context of the parties' relationship.

Sometime after the August 6, 1986 disciplinary charges against Kloiber were brought, the Asbury Park Press ran an editorial entitled, "Is it a quota? No ticket explanation rule ill-conceived." DePasquale did not believe the editorial was an important topic, but merely "that man's opinion" (TF73-TF74). He and Indiero discussed it. I find that DePasquale's testimony was an attempt to minimize the importance of any adverse publicity created by the new policy. I also find that subsequent events, including the policy's rescission, was caused in part by the public and press response.

13. On August 8, 1986, DePasquale issued a memorandum to watch commanders directing that they review the General Order (R-2) on sick leave, especially the section on verification by telephone call to the employee's residence (R-3, R-26). Calls were to be on a taped line and appropriate disciplinary action taken if a violation occurred. Article V, Section 2 of the parties' contract provides

that the employer may take reasonable steps to verify illness of employees on sick leave (J-1).

14. On August 19, 1986, the Ocean County Observer, a morning newspaper, printed an article entitled "Tickets soar after memo to policemen" (TF69). There had been a tremendous increase in summonses issued (TE43).

15. On August 19, 1986, Kloiber and PBA trustee Brownlee called in sick from their scheduled 4 p.m. to midnight shift (TA88). DePasquale ordered Sergeant David Burns to telephone them to "make sure the guys are home" (TE189).^{4/} At 6:30 p.m., Burns telephoned Kloiber's home. Kloiber's wife answered. Burns explained the purpose of his call and, after being told Kloiber was sleeping, asked Kloiber's wife to have Kloiber contact him when he awakened (TC115). Kloiber later returned the call, upset because the phone call distressed his family. Kloiber requested and Burns prepared a report of the incident (R-1). The report described the incident as harassment and referred to N.J.S.A. 2C:33-4.^{5/}

^{4/} There was no testimony regarding details of the call to Brownlee.

^{5/} N.J.S.A. 2C:33-4 provides, in part:
A person commits a petty disorderly person offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or disdain.

Kloiber did not refer to Title 2C in his telephone call. Burns did not show Kloiber a copy of the report (TA121; TA123; TC135), but Kloiber ultimately got one (TA127).

Burns did not routinely verify illness (TC108). Kloiber did not remember ever before being called at home to verify illness (TA89). Officer Farley had never, in his eighteen years on the force, been called at home to verify illness (TB177). When Captain Mulligan, a 21 year veteran, was in charge of the operations bureau, his policy was to ask for illness verification after a week or two, but not for a one-day illness. Mulligan was directed once by Chief McCurdy to call an officer and was present when Indiero had DePasquale arrange for a home call (TB122-TB124). Indiero once called Mulligan: not to see if he was ill, but to ask a question (TB156-TB157). Indiero once called Sergeant Torre and Mulligan directed Torre to submit a memorandum explaining the nature of his absence and why he did not answer the phone.

Indiero testified he had called captains Mulligan, Regan, Applegate and DePasquale when they were out sick for two reasons: to confirm the officer is home and to inquire as to when he would return. He claimed "[t]here is absolutely no reason why I would call a Commander at home to discuss any emergency business because in his place there is always an Acting Commander" (TG78). I do not credit that testimony. Before July 1987, Mulligan filled in for DePasquale, and Indiero had very little trust in Mulligan (TG69; TH37-TH40). Also, the commanders are "rarely out sick" and logic

dictates they may have some necessary information unknown by their replacements. I do not believe Indiero would telephone DePasquale, his "right hand," to verify illness. I credit DePasquale's testimony that Indiero had called him and in the course of the conversation had asked how he was doing, how long he thought he would be out and said "I've got a problem" (TE197-TE198).

16. On August 20, 1986, an article appeared in the Ocean County Times Observer entitled "Jackson policeman charges harassment" (R-31). It stated that PBA President Kloiber filed a harassment complaint after the sick leave verification call. According to the article, Kloiber claimed the verification policy was being enforced selectively. He reportedly called in sick two days after Indiero's August 6 charges, but was not called at home. That same day, DePasquale issued his illness verification memorandum.

On August 21, 1986, DePasquale wrote a memorandum to Indiero recommending charges against Kloiber for violating General Orders 86-65 and 86-71 by discussing police personnel matters with the media without the Director's permission; and the Township Code by discussing departmental and personnel matters without the Director's permission, disregarding and refusing to obey departmental orders, imparting erroneous and misleading information to the public, and generating an official police report, with full knowledge that the report was without justification or foundation. DePasquale recommended a six month suspension (R-31).

On August 26, 1986, Indiero issued a Preliminary Notice of Disciplinary Action concerning the illness verification incident incorporating DePasquale's allegations, but recommending a 30 day suspension and setting September 18, 1986 for a hearing, if requested (R-32).

17. On September 3, 1986, DePasquale issued a memorandum stating, in part:

Upon reviewing the monthly Activity Report for August, 1986, it is apparent that there has been compliance with our Traffic Enforcement Program by all patrolmen assigned to the Patrol Unit. Therefore, it will no longer be necessary for patrolmen to submit a memo as outlined in my original directive. However, the enforcement program remains in effect and productivity will be monitored. If a reoccurrence of our initial problem arises, and it becomes necessary to reimpose the memo provisions, I will not hesitate to do same (R-25).

DePasquale discussed the modification with Indiero. DePasquale told Indiero that "in the interest of alleviating some of the problems that some of the patrolmen felt were created by this memo, we could eliminate it because there was compliance.... [S]ome of the patrolmen...felt the memo requirement sort of punished everybody, when it wasn't everyone that wasn't enforcing...serious moving traffic violations (TF84)." DePasquale believed that two-thirds of the Department was not doing their job in the area of traffic enforcement. Kloiber asked the Director to identify the officers needing correction, but Indiero did not do so (TF85).

On September 15, 1986, the Asbury Park Press ran an editorial applauding the order rescission entitled "No more quotas" (TF89). It stated, in part:

[W]hile Kloiber's publicizing of the policy may have been embarrassing to his superiors, it hardly was 'subversive.' He shouldn't have been made a scapegoat for the controversy that followed the issuance of the order (TF89-TF90).

18. On March 19, 1970, an article had appeared in the Jackson News entitled "PBA Says Statement Is 'Misleading' (CP-6). It concerned an automatic increment to be received by police officers and the PBA's opinion that the Township Committee had failed to negotiate in good faith.^{6/}

19. On September 16, 1986, Officer Dewyea was interviewed by Lieutenant Richard Dyott about an off-duty automobile accident involving Officer Christopher Dunton. Indiero had noticed the duty roster recorded Dunton as reporting to work at 3:15 p.m. while the accident report (R-39) indicated the accident occurred at 3:35 p.m. (TF5). Indiero directed Dyott to conduct an investigation. Dunton and Sergeant Burns were the target of that investigation (TF33-TF34). Both were interviewed in the presence of PBA President Kloiber (R35). Dewyea and Brownlee were interviewed, but neither was a target of Dyott's investigation (TF10, TC94-TC95).

Dyott interviewed Dewyea to find out what time the accident occurred (TF10). Dewyea asked, "Am I going to need PBA representation." Dyott informed him that he did not, that he was not the subject of the investigation (TC88; TF9). Dewyea made no

^{6/} Two other newspaper articles from the PBA press release file were identified but not admitted into evidence (CP-5 and CP-7 for identification).

further request for a representative (TF9) and answered Dyott's questions. In the course of the interview, Dewyea reported that Dunton, not he, had filled out the accident report (TF11). After that admission, Dyott knew, "it was a different ballgame" (TF33). Dyott did not then tell Dewyea he should get a representative or that he was now the target of an investigation (TF33). Dyott reported to Indiero, and based on Dewyea's statement was charged in January 1987, found guilty on January 21, 1987, and given a written reprimand (R-36; TC88). On March 5, 1987, Township Administrator William Santos sustained the discipline (R-38).

20. Article XX, Section 4 of the parties' contract provides that the Township will grant time off with pay to the PBA President and other delegates to attend the PBA state or national conventions as provided in N.J.S.A. 11:26C-4 [now N.J.S.A. 11A:6-10] (J-1).

Kloiber advised the department of the upcoming PBA state convention (TA46). On September 2, 1986, DePasquale issued a memorandum to Kloiber which stated:

Please submit names of Local 168 delegates chosen to attend the State PBA Convention. Dates of convention and location should also be supplied.

That same date, DePasquale, at Indiero's direction (TB126), sent Kloiber another memorandum which stated:

Upon your return from the above convention, it is requested that you submit a letter of attendance for the dates on which you were present at the convention (CP-8).

On September 4, Kloiber wrote DePasquale that he and Officers Christ and Speidel would be attending and the respective dates (CP-10).

The past two years, when Captain Mulligan headed the patrol division, Kloiber hand-delivered the certificate of attendance to Mulligan (TB162). According to Mulligan, Kloiber "didn't have to do it that way, whatever he wanted to do, but that is the way he wanted to deliver it to me at those times" (TB163).

Three or four days after returning from the convention, Kloiber placed a copy of the certification in an envelope addressed to DePasquale in a slot of a shelf unit used for interoffice correspondence (TA47; TE146-TE147). DePasquale picked things up from the shelf every morning (TE148), but never received the certification (TE84). Indiero felt important letters could be slipped through the mail slot in DePasquale's door (TG55).

21. On October 23, 1986, Township Attorney Thomas G. Gannon sent a letter to PBA Attorney Holzapfel and Director Indiero (CP-31). He confirmed the terms of the settlement regarding the August 6 and 26 charges against Kloiber. He stated, in part:

The charges enumerated in the August 6th notice to Patrolman Kloiber, specifically violations of Township Code Nos. 24-31 (15 & 18) and 24-31C will be withdrawn....

Charges of August 6, 1986 dealing with violations of General Order No. 86-65 (Press Releases) and General Order No. 86-71 (Chain of Command) will be resolved with a notation attached to the Complaint form indicating the following:

"Patrolman Kloiber recognizes that there was a technical violation of General Order Nos. 86-65 and 86-71G which occurred as a result of a misinterpretation of those orders by the patrolman. In light of said misinterpretation, the Jackson Township Police Department agrees that there is no necessity for any further disciplinary action or imposition of penalty."

It has been further agreed that the Director will review General Order Nos. 86-65 and 86-71 and will amend those Orders to provide that in the event there is a disagreement with the decision of the Director of Public Safety with his enforcement of these Orders that there will be a mandatory appeal to the Township Administrator who will then render a final decision.

With regard to the August 26 charges, Kloiber was to receive a letter of reprimand for generating an official police report knowing it was "without justification or foundation." All other charges were to be dismissed and Kloiber was to waive any appeal rights available under Civil Service or any other statutes. The letter concluded:

If the forgoing meets with the approval of yourself, I would ask that you drop me a short note to that effect.

Gannon claimed the letter "was to set forth in principle what appeared to be the agreement" between himself, Holzapfel, Kloiber and Indiero (TK-115). Gannon wanted Holzapfel and Indiero to respond if they "had a problem or in effect let me know if it is okay" (TK17). Holzapfel viewed CP-31 as a settlement (TK45). Settlement discussions had been detailed to the point of deciding whether notices would be on pink (disciplinary) paper (TK107-TK108).

22. On October 23, 1986, Captain Mulligan issued a memorandum to watch commanders advising them that telephone conversations in the briefing room and sergeant's room were now being recorded. He stated, in part:

You are to assure the members of your platoons that the purpose of taping these lines is strictly for

recording police related matters and there is no unseen reasons for this action (R-66).

Previously, two untaped lines were available to police officers. Now, if they wanted to make private calls, they had to use a public telephone outside the building (TJ15). Indiero claimed the recording was in case any complaints of improper statements were lodged against officers or citizens (TJ14). He was not certain if the taping was at his direction (TI36), but conceded he approved it. He was not certain who recommended it, and had no recollection or documentation that there had been complaints (TI37). Indiero's outgoing calls were not recorded (TJ84).

23. Along with other renovations, Indiero had two doors removed from the downstairs section of police headquarters. One was removed from the sergeant's office which had a desk, telephone, and portable radio rack. Officers used it for report writing. The door's outer trim was damaged. The other door was removed from the processing room for prisoners. Indiero had a bench constructed for handcuffing prisoners. The door was removed for the officers' safety.

24. On November 7, 1986, DePasquale sent a memorandum to Indiero recommending a one day suspension for Kloiber, Christ and Speidel for failing to comply with his directive to submit a certification of PBA convention attendance (CP-128). On November 26, 1986, Kloiber was formally charged concerning the convention certification (CP-12A). Christ and Speidel were also charged (CP-13). DePasquale did not know why it took three weeks for the charges to issue (TE156).

During the period between the end of the convention and the charges, DePasquale did not approach any of the officers about the certification (TE86-TE87; TE151). DePasquale felt that if every time he issued a directive and didn't get compliance he had to keep chasing officers around he would never get anything done (TE87). He could have gone to them and requested it, but he believed they just didn't want to comply (TE87-TE88). DePasquale never doubted the officers attended the convention, but was upset he had not gotten the certification (TE152-TE153).

Although Kloiber had a copy of the certification, he did not present it to DePasquale after the formal charges. Kloiber felt that, "[a]fter they waited two months to charge me, I see no reason to go up and see why do we have to go to a hearing, here is a copy" (TA165). "My feeling is let's have a hearing and produce this document and find out why he didn't come to us and ask us if in fact where was it." (TA166). Kloiber was "perturbed" (TA166).

25. Around September 1986, DePasquale summoned Sergeant Burns into his office and asked why Kloiber was in the radio room (TC101). Burns explained that Kloiber was performing temporary radio relief. DePasquale told Burns that Indiero had inquired why Kloiber was in the radio room on various occasions and had told DePasquale that Burns should not feel intimidated by Kloiber; that sometimes Kloiber has a tendency to throw his weight around. Burns assured DePasquale he was not intimidated by Kloiber or any other officer under his command (TC101-TC102). DePasquale also asked

whether Kloiber had typed communications to Indiero or Santos on patrol time. Burns said no. Burns inferred that DePasquale wanted him to "do your bidding for you so far as Kloiber goes" (TC103). Burns perceived an atmosphere where the "PBA President was to be watched closer than certain other officers for violation of departmental rules" (TC104). The lieutenant in charge of the shift never questioned Burns about Kloiber's conduct, but DePasquale did (TC107). DePasquale questioned Burns about other officers, but not always about the same things as with Kloiber (TC105).^{7/}

26. During the summer of 1986, Mulligan was called into Indiero's office.^{8/} He credibly testified that:

[T]he Director has us in his office and on numerous occasions he expressed to me his unhappiness with Patrolman Kloiber, Patrolman Christ, Patrolman Speidel and Patrolman Baird. In fact, the most recent situation being charges that were brought against several officers and a dispatcher, the questions were put to myself and Captain DePasquale that Patrolman Kloiber was involved with a situation, it was almost like an obsession with Patrolman Kloiber's name along with these other officers, more so Patrolman Kloiber than these other officers, but they were brought up also (TB130).

27. Santos also credibly testified about Indiero's attitude toward the PBA:

^{7/} When Indiero became Director, he reassigned Burns from the detective to the patrol unit. The fact that he had been reassigned did not affect Burns' credibility.

^{8/} When Indiero became Director, disciplinary charges were pending against Mulligan. Indiero initiated moving Mulligan from suspension with pay to without (TG19). The charges were based on information received from Officers Kloiber, Christ and Baird (TB140).

In basic terms, I think two particular phrases stand out, that Patrolman Kloiber's action is subversive to the actions of the Police Department and disruptive. And in some of his statements and so forth are nothing less than an attempt to intimidate both the Director and the Township (TC32).

Santos found no evidence of Kloiber's intimidating or harassing; he believed Kloiber was simply pursuing his role as PBA President (TC76).

28. Indiero telephoned dispatcher Patricia O'Connor at home and questioned whether her daughter, who had applied for a job, lived within Jackson Township (TC5). O'Connor credibly testified that Indiero then:

Indicated to me that he was aware of the fact that I worked a lot of different hours -- a lot of overtime and that from time to time became aware of things that should be brought to his attention (TC5).

Indiero did not indicate what types of things, but O'Connor felt that he wanted her to listen to conversations in the radio room and then report back to him. She told Indiero she resented the implication. He responded that he didn't mean it in that respect. O'Connor hung up. Her daughter did not get the job (TC5-TC7). O'Connor believed there were certain people that reported back to Indiero but she did not want to be involved (TC7-TC8). The only conversations she could overhear would be brief ones at shift changes (TC25).

O'Connor's daughter, Tammy Jamison, received a telephone call from someone who identified himself as Indiero. He informed her she would not be receiving the dispatchers job because she lived

outside the Township (TK6-TK7). Jamison then called her mother who expressed regret that her disagreement with Indiero had caused Jamison not to get hired (TK9-TK10). Jamison disagreed with her mother and told her the reason was her residence (TK20), although she had a lingering doubt because other Township employees live outside the Township (TK21). The dispatcher hired lived outside the Township (TG136). She had dispatching experience. Jamison did not.

Jamison denied fabricating her testimony and agreed to submit to a polygraph examination concerning that testimony (TK11-TK13). She even conceded that taking a swipe at Indiero might help her mother in the discipline proceedings she faced, but denied that was why she was testifying (TK32-TK34).

Indiero denied ever calling O'Connor or Jamison at home (TH16). He claimed that O'Connor testified falsely and opined that she did so because she was facing severe disciplinary charges (TH17). He further claimed he "would never place my trust in a civilian dispatcher. I would have to be a fool to even think...to ask her any particular question dealing with delicate matters (TG133-TG134).

I credit O'Connor and Jamison's version of these events. Although there were some contradictions in their testimony,^{9/} both were extremely credible under intense cross-examination. Their

^{9/} O'Connor believed Indiero called in late September or early October. Jamison believed it was in late spring or summer.

testimony was consistent with others' describing Indiero's desire to know just what was going on in his department. Indiero, on the other hand, was often very technical in his responses, often evasive. For example, when asked on cross-examination whether he had reported the PBA to the Ocean County prosecutor or the Attorney General's office, Indiero responded that he was not sure exactly what counsel was talking about (TH164-TH165). When pressed, he added that if counsel were more specific then he would be able to give him an answer (TH165). Indiero later testified on redirect that he forwarded to Township Attorney Gannon information regarding the PBA's solicitation of funds and that Gannon referred the matter to the prosecutor and the Attorney General's office (TJ49-TJ50).

29. On December 4, 1986, Indiero sent a letter to Holzapfel (R-60) forwarding copies of all documents concerning final settlement of Kloiber's August 6 and 26 charges. The letter indicates that Indiero enclosed a copy of a Disciplinary Action Notice to serve as final settlement of the August 6 charges. He indicated the notice would contain the agreed on language in Gannon's October 23 letter (CP-31; supra finding no. 21). The letter also indicates Indiero enclosed a Disciplinary Action Notice for the August 26 charges to coincide with CP-31. Indiero's letter did not mention withdrawal of the August 6 charges.

On December 4, Indiero issued to Kloiber Disciplinary Action Notices regarding the August 6 and August 26 charges (CP-3; CP-32). CP-3 tracked Gannon's language (CP-31) but deleted the words "or imposition of penalty."

30. On December 8, 1986, Christ requested, by memorandum, a postponement of his December 22, 1986 convention certification hearing before Captain Applegate because his "witness, Patrolmen John Kloiber PBA President" would not be available on that date (R-57).

On December 9, 1986, Applegate asked, by memorandum, whether Kloiber was to be present as a representative and why he could not attend on the scheduled date (CP-15). Kloiber responded, by memorandum dated December 9, that all future correspondence should be directed to him as PBA representative. In addition to a postponement, Kloiber requested that Applegate and Indiero not be hearing officers because of a statement Applegate made to the press that "he knows what is behind this whole thing and that the officer that precipitated this thing and who will be dealt with at the proper time." Instead, Kloiber requested Township Administrator William Santos hear the case (CP-16). On December 10, Christ's hearing was rescheduled to January 6, 1987. Speidel and Kloiber's hearings were also rescheduled (R-59; R-58).

31. On December 9, 1986, Holzapfel wrote to Gannon that he had reviewed with Kloiber the forms supplied by Indiero and that they were acceptable (R-61). Holzapfel had Kloiber sign Indiero's letter (R-60; R-61).

32. On December 9, 1986, Santos sent a memorandum to Kloiber, with copies to the Township Committee, Clerk and Attorney and Indiero, advising him that Mayor Cottrell and the Township

Committee requested Kloiber and other PBA representatives meet with the Township Committee on December 22. Officer Christ testified that the PBA requested the meeting (TJ120). Santos asked them to be fully prepared to discuss their concerns with Indiero at the meeting (R-13). Indiero testified he did not know the purpose of the meeting and made no effort to inquire. This was the same night the Committee decided Indiero's reappointment. I cannot credit Indiero's claimed disinterest. I found him to be a man with a strong need to know about and control what was going on.

33. On December 17, 1986, a Final Notice of Disciplinary Action was served regarding Kloiber's August 26 charges. It indicated that charges relating to violations of General Order 86-65 and 86-71 and Township Code 24-32(15), (18) and (23) were dismissed, and that the charges relating to Township Code 24-31C were sustained, "wherein Kloiber conducted himself in a manner subversive to good order and discipline of the police dept. by imparting erroneous and misleading information to the public and by generating an official police report without justification" (CP-4).

34. On December 18, 1986, a hearing was held before Indiero on charges filed against Officer Farley for allegedly failing to properly care for a department vehicle. In the course of stopping an automobile, Farley had an accident resulting in \$800 damage to a police car (TG38). Kloiber represented Farley in the hearing which was tape recorded, as are all departmental hearings (TG34-TG35; R-18; R-19). Indiero first called DePasquale who

explained the department's case against Farley. Indiero then called Farley to describe what happened. Indiero then questioned him. Kloiber asked Farley a few questions and then asked DePasquale whether he had questioned the other driver. Farley asked DePasquale whether the investigating officer had told DePasquale that in that officer's opinion, the accident was not Farley's fault. DePasquale stated the investigating officer thought the accident was unavoidable. Indiero immediately stated "We're going beyond the scope of the facts." Kloiber disagreed. Indiero asserted that he had a right to cut off questioning if it went "beyond the scope"; noted the appeal process; shut the tape, and ended the hearing (R-19). Kloiber became angry and requested the tape be turned back on so he could ask questions in Farley's defense. He then informed Indiero he wanted a copy of the tape (TB190).

35. On December 22, 1986, PBA representatives met with the Township Committee. They complained about working conditions (TJ110) and about Indiero's allegedly untruthful statements (TJ120-TJ122) and spoke against Indiero's reappointment (TJ118). Indiero did not recall any specifics raised by the PBA at the meeting (TH192). The Committee later voted unanimously to give Indiero a three-year contract (TH193).

36. On January 5, 1987, Applegate conducted the convention certification hearing for Kloiber. DePasquale acted as prosecutor. Mulligan testified for the defense as to the practice regarding hand-delivery of certifications (TB162). During the hearing Kloiber

presented a Convention Certificate of Attendance (CP-11; R-55). CP-11 is a photocopy and was admitted during the PBA's case-in-chief. R-55 is the original document submitted at Kloiber's hearing and admitted during the Township's case-in-chief. Neither document is dated. Both have this notation in the corner, "Sent September 14, 1986 John Kloiber." Kloiber assumes it was put in the slot that date, but was not certain (TA52-TA53). Because he now had the certification, DePasquale requested the charges be dropped and the other two hearings cancelled (TE89-TE90). Applegate granted DePasquale's dismissal motion (CP-14).

Indiero told DePasquale he was "not thrilled" that they had spent so much time going through with the charges and then dropped them (TE92). DePasquale told Mulligan that Indiero was not very happy that the charges were dismissed and that DePasquale should have pursued them (TB129). Indiero told Mulligan that the charges should not have been dismissed and that the excuse of losing things in the mail had been used too often in the past (TB129). Indiero testified he did not express any anger, dissatisfaction or unhappiness at DePasquale's decision to drop the charges. I credit DePasquale and Mulligan's recollection of Indiero's response. DePasquale especially had no reason to fabricate Indiero's response to his action.

37. On January 14, 1987, Indiero issued a report finding Farley guilty as charged and imposing a written reprimand (CP-17-CP-18).

On January 16, 1987, Farley and Kloiber appealed Indiero's decision to Township Administrator Santos (CP-1). They charged Farley was found guilty before the hearing was over and denied the right to present a proper defense (CP-1). That same day, Farley requested a copy of the transcript from Indiero (CP-19).

On January 20, 1987, Indiero issued a memorandum to Santos. He stated, in part:

Farley was not only given a full and fair hearing based on all testimony and documentation, but that all the facts were presented at the hearing. The only time that the tape recorder was finally turned off was when Patrolman Kloiber was in the process of becoming argumentative and antagonistic against the undersigned (R-17).

On February 9, 1987, Santos dismissed the charges against Farley. He found that Indiero had not indicated Farley was guilty before the hearing ended, but that there was not a "full and complete hearing" (CP-2). Santos directed that all record of the proceedings be removed from Farley's personnel file (CP-2). Santos concluded, after listening to the tape, that at no time did Kloiber become loud, abusive or disrespectful to anyone at the hearing. Having listened to the tape (R-19), I credit Santos' assessment of Kloiber's conduct.

38. Indiero testified that Santos' determination:

was totally in error, obviously I feel that and perhaps it was biased. I couldn't testify for sure. When we talk bias, what are we talking about, our own assumptions (TH105).

Indiero also testified that Santos testified falsely because of his "close relationship with PBA President Kloiber (TH72) and because Indiero recommended to the Township Committee that a Disciplinary Trial Board be established which would have taken away Santos' responsibility for hearing police appeals (TH72-TH73). Indiero's proposal was on his own "behalf so that there could be no question as far as the integrity of the disciplinary system, and at the same time also remove any favoritism that perhaps the Administrator may have as a result of his friendships with the PBA President" (TH75). Indiero explained that he had seen Kloiber have coffee with Santos several times a week and speak to Santos on the telephone; Santos had copied Kloiber on some correspondence to the Township committee; Santos had once approved overtime pay for police and told Kloiber before the department head, and Santos and Kloiber had talked informally about contract negotiations (TH78-TH88). Indiero also testified that Santos had commented to the media about problems in the police department and stated that some of the problems against Indiero had turned to hate. Indiero further testified he was going to refer to his attorney the legality of Santos' comments.

I reject Indiero's characterization of Santos' testimony and alleged bias. Santos' "close relationship" with Kloiber was strictly a relationship between labor and management representatives that exhibited healthy rather than deteriorating manifestations. My independent analysis of the Farley tape and incident convinces me that Santos had a more accurate ability to assess the parties' relationship.

39. While a police officer, Indiero was once brought up on disciplinary charges by Captain Mulligan. Captain Applegate found him guilty and Santos reversed that determination (TH107-TH101).

40. Police officers are entitled to various types of leave including vacation and compensatory. Also, PBA officials are entitled to union leave (J-1). On January 13, 1986, PBA attorney Holzapfel wrote Santos concerning difficulties Kloiber was having getting leave slips returned (R-14; TH135). Holzapfel claimed it was harassment of a union officer. Indiero initiated an investigation. There was no animosity between him and Kloiber at that time (TH136; R-14). On January 16, Applegate wrote Indiero that he was unaware of any such problem and knew of no complaints, but suggested Kloiber contact him if there is a problem (R-16). On January 17, Indiero informed Kloiber, by memorandum, of Applegate's response and offered his assistance (R-15).

Under Article IX, section 13 (J-1) of the parties contract, leaves of five days or less can be approved by the watch commander. These leaves are still processed up the chain of command. On July 11, 1986, Indiero revised the general order regarding leave requests in part to alleviate any problems (TG88-TG89). The only limitation on the granting of short-term leave requests was minimum staffing requirements (TA101-TA102). Kloiber's short-term leaves were often taken before final "approval" by DePasquale and Indiero (R-34). Kloiber claimed that even though his leaves were never denied, he did not get them back as other officers would (TA92). Other

officers normally got their slips back within two days (TA93). While Kloiber's slips may have been approved within one or two days (R34), his complaint goes to when they were returned to him.

When Kloiber was assigned to Sergeant Burns' squad, Kloiber complained about the leave slip problem (TC100). Leave slips are normally returned the day after submission. Kloiber called Mulligan a half-dozen times asking if leaves were approved; an unusual number of calls to get from one officer (TB117-TB119).

41. A small storage shed near police headquarters is currently used for storing garbage collected by municipal employees. The shed had been used to store the department's motorcycle. To preserve access to the shed, the department had a "No Parking-Driveway" sign posted on the shed and yellow hash marks painted in front of the doors (R-6; R-7). An employee complained to DePasquale about officers parking in front of the door, making it difficult to enter the shed (TE96). On January 14, 1987, DePasquale issued a memorandum instructing watch commanders to inform personnel not to park there (R-33). After the order issued, Kloiber parked in that spot and was ordered not to park there by DePasquale (TA178-TA179; TE180-TE186). Kloiber told DePasquale it was snowing and there were no other available spots. Kloiber accused Indiero of telling DePasquale to make him move the car. DePasquale had been in his office and could not see the spot, while Indiero had two minutes earlier come across the street (TA66). Kloiber moved his car (TE184). He was not disciplined. DePasquale asked three other

employees to move their cars but did not recall whether that was after the unfair practice charge was filed (TE180-TE181). Neither Kloiber nor Mulligan knew of any other officers being asked to move their cars (TA68-TA69; TB121-TB122). However, Kloiber was not sure others parked there and could not be sure others were not asked to move (TB92-TB93).

42. On January 6, 1987 Indiero issued a memorandum to Kloiber acknowledging Kloiber's interest in meeting with Indiero about personnel matters (R-8). Indiero told Kloiber to feel free to contact Indiero's secretary to make an appointment. On January 20, Kloiber went to the secretary to schedule a meeting for January 22. He asked her to "get back to me and let me know if it's okay with him." Neither the secretary nor Indiero confirmed the meeting. Kloiber assumed that meant it was on. The day of the meeting there was a snowstorm and Township employees were sent home early (R-10). When Kloiber arrived, Indiero was gone (TA85). On January 26, Kloiber wrote Indiero and complained that Indiero "did not have the decency to advise us if the meeting was either postponed or cancelled." He requested Indiero reschedule (R-9). The next day, Indiero responded by memorandum (R-10) and explained that no meeting had been scheduled, but if it had been, Kloiber would have been notified had a cancellation been necessary. He further advised Kloiber he was available on February 10 at 3:00 p.m. and requested Kloiber confirm in writing. On February 2, Kloiber responded, by memorandum (R-11), stating that Indiero should "have had the

courtesy to notify me "if it was not Mutually Convenient." He proposed a meeting for 3:30 p.m. on February 10 and invited Indiero to a PBA meeting of his choice to discuss issues of importance to all concerned. Indiero agreed to the change in time and thanked Kloiber for the invitation to attend a PBA meeting. He stated he was "looking forward to a cordial working relationship between the PBA and myself" (R-12).

At the hearing, Kloiber testified that when he saw the unfair practice charge, he realized he was working on January 22 and that the allegation that it was his day off was wrong. He claimed, however, the alleged practice of scheduling meetings on his day off happened on other occasions (TB28-TB30).

43. Kloiber was not sure if Applegate scheduled a meeting involving Speidel for December 22, 1986 (TB47). He thought Speidel was scheduled to meet with DePasquale on April 1, 1987 (TB49). Kloiber informed DePasquale, he was to be on vacation in Michigan that day. The meeting had previously been rescheduled at Speidel's request (TB54). DePasquale indicated the meeting would proceed. Kloiber delayed his departure (TB49-TB51).

Kloiber testified that on the day Dewyea was scheduled for a hearing, Kloiber had the day off and his son was sick. He asked Christ to represent Dewyea (TB56). Dewyea was interviewed on July 23 and September 16, 1986 (R-37).

44. On January 17, 1987, Indiero wrote to Gannon (R-63) regarding the revision of orders stemming from Kloiber's August

charges. He stated that the elimination of the requirement of Director's approval before public discussion precluded the necessity of including a mandatory appeal to the Township Administrator. He further stated "this practice can be very time consuming for the Administrator and could, perhaps, tend to impair the operations of the Department by interfering with the ability of management to maintain discipline...."

On February 6, 1987, Gannon responded. He approved the paragraph dealing with personnel matters. He suggested a minor modification in the paragraph proscribing disparaging, unfavorable or disrespectful comments. He did not mention the mandatory appeals process.

45. On February 18, 1987, Indiero issued the revised "Chain of Command" General Order 86-71. It stated, in part:

It shall be established that members of the police department shall not publicly disparage or comment unfavorably or disrespectfully on any official action taken by the Director of Public Safety and/or superior officers, pursuant to the authority vested with the Director, nor on the rules, regulations, procedures or directives of the police department. ...The Director...will be the only exception to this Chain of Command (R-29).

46. On February 18, 1987, Indiero issued the revised "Press Release" General Order No. 86-65. It now provided:

It shall be established that members of the Police Department shall not publicly disparage or comment unfavorably or disrespectfully on any official action taken by the Director of Public Safety and/or superior officers, pursuant to the authority vested with he Director, nor on the rules, regulations, procedures or directives of the police department (R-5).

Indiero eliminated the agreed-upon mandatory appeal to the Township Administrator of disputes over his enforcement of the two revised orders.

47. On February 27, 1987, PBA representatives met with attorney Mark Blunda concerning possible representation of the PBA (TJ156-TJ160). Attorney Holzapfel was about to be appointed Ocean County prosecutor.

48. On March 16, 1987, Indiero initiated an investigation into possible misconduct of several police officers and a dispatcher.

49. On March 23, 1987, the Commission received the unfair practice charge in this matter dated March 19.

50. On June 1, 1987, PBA representatives attended a Township Committee meeting and attempted to discuss personnel matters. They complained about Indiero's harassing them (TH199). At the hearing, Indiero initially denied taking down the names of PBA members who spoke out. He was then presented with a newspaper article that stated, "Indiero sat silently by himself checking off the names of the officers at the meeting." He then stated he had been informed that 98 percent of the PBA had expressed a lack of confidence in his administration and that he was attempting to see exactly what percentage of the PBA attended the meeting (TI54-TI56).

Mulligan also spoke at the Township Committee meeting. On June 22, 1987, Mulligan was called into Indiero's office and told that Indiero was not happy with him (TB131). Indiero told Mulligan that as a divisional commander, Mulligan should not express his

feelings publicly. Indiero said that he had informants in the department keeping an eye on Mulligan and others. Mulligan felt that "[i]n essence I was not to talk to certain patrol officers, I was not to get involved with them...or else" (TB133). The "or else" referred to charges or demotion (TB133). Mulligan assumed the "certain officers" meant the PBA and Kloiber (TB134).^{10/}

51. On July 8, 1987, Indiero wrote to the Township Committee complaining about the PBA's conduct. He stated, in part:

These malicious public attacks on me can only be construed as a desperate attempt to disrupt the good order and discipline of the Police Department, and to further misinform the public about our internal administrative matters.

* * *

It has been brought to my attention that certain members of the Police Department are once again organizing a public demonstration for July 13, 1987. I am sure you will agree that there is a proper forum to hear complaints and air grievances, and it is not by Police Officers demonstrating at public meetings and putting paid advertisements in local newspapers, criticizing their police administration and providing the public with misleading facts.

I am certain that this type of behavior by these Police Officers is devastating to the morale of the Police Department and I further believe that if all legal measures are not taken by the Township to put a stop to this unlawful behavior, the public will lose total respect for its Police Department. I respectfully request that the Township Committee consider the following proposals:

^{10/} Both parties questioned witnesses about post-charge conduct. Although such conduct cannot be the basis for finding any unfair practice, it may otherwise be relevant. Indiero claimed that Mulligan's testimony regarding the "threats" was false (TH24). I credit Mulligan's testimony in its own right and because it comports with other testimony. Indiero's sweeping statements were simply not credible. For example, in this context, he claimed Mulligan, not he, was obsessed with Kloiber (TH25). There is nothing in Indiero's testimony or the record to support that claim.

(1) That the Township Attorney obtain a Restraining Order from the Superior Court, forbidding police unions and/or members from these intimidating tactics that have been deployed against the Township Committee and me;

(2) That the Mayor and/or Police Commissioner contact a retired Chief of Police from outside the Ocean County area, and request that a survey and evaluation of our Police Department be conducted;

(3) That I be allowed to contact the State Commission of Investigation, and request that they conduct a thorough investigation of the Jackson Township Police Department.

I encourage them to examine all documentation relevant to my administration, and they will have my full cooperation (CP-30).

ANALYSIS

The thrust of this unfair practice charge is that the Township, primarily through its director of public safety and commander of the operations bureau, attempted to interfere with the exercise of protected rights and discriminated against the PBA president to discourage the exercise of those rights.

N.J.S.A. 34:13A-5.4(a)(1) prohibits public employers from "interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by this act." Those rights include:

[T]he right, freely and without fear of penalty or reprimand, to form, join and assist any employee organization or to refrain from any such activity... [N.J.S.A. 34:13A-5.3].

An employer violates subsection 5.4(a)(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification. UMDNJ - Rutgers Medical School, P.E.R.C. No. 87-87, 13 NJPER 115 (¶18050 1987); Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986); New Jersey

Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979). Gorman, Basic Text on Labor Law, at 132-34 (1976). The charging party need not prove an illegal motive. Morris, The Developing Labor Law, at 75-78 (2d ed. 1983).

Subsection 5.4(a)(3) prohibits public employers from "discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of rights guaranteed them by this act." In re Bridgewater Tp. 95 N.J. 235 (1984) established the test for determining if employer conduct is discriminatory.

Under Bridgewater, no violation will be found unless the charging party has proved, by a preponderance of the evidence on the entire record, that protected conduct was a substantial or motivating factor in the adverse action. This may be done by direct evidence or by circumstantial evidence showing that the employee engaged in protected activity, the employer knew of this activity and the employer was hostile toward the exercise of the protected rights. Id. at 246.

If the employer did not present any evidence of a motive not illegal under our Act or if its explanation has been rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. In these dual motive cases, the employer will not have violated the Act if it can prove,

by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected conduct. Id. at 242. This affirmative defense, however, need not be considered unless the charging party has proved, on the record as a whole, that anti-union animus was a motivating or substantial reason for the personnel action.

While the Complaint specifically alleges a series of unlawful acts, this case really involves allegations of a pattern of alleged unlawful conduct. Each allegation, although treated separately, will therefore be examined in the entire context of the parties' relationship.

Background

The PBA initially supported Indiero's appointment. He and PBA President Kloiber, who had worked together as officers, initially had no serious disagreements and had several "sensible, normal" meetings. Indiero made a number of changes in the department and the record does not indicate PBA resistance.

The relationship took a nose dive in August 1986, when DePasquale issued the traffic summons memorandum and Kloiber spoke to the press. Despite Indiero's claim that he did not know whether Kloiber was representing the PBA, I find that Kloiber was engaged in protected activity, the department knew about it and was hostile to it. Kloiber's actions were a legitimate exercise of rights protected by the Act.

Employee speech is often an essential means of achieving group goals and to deny protection to this type of activity would seriously interfere with the rights guaranteed by section 5.3. See Emarco, Inc., 284 NLRB No. 91, 125 LRRM 1311, 1313 (1987); cf. NLRB v. Electrical Workers IBEW Local 1229 (Jefferson Standard), 346 U.S. 464 (1953). In addition, there is a long line of cases protecting public employees' constitutional right to speak to the media. Czurlanis v. Albanese, 721 F. 2d 98 (3d Cir. 1983); Gasparinetti v. Kerr, 568 F. 2d 311 (3d Cir. 1977), cert. den. 436 U.S. 903 (1978); Salerno v. O'Rourke, 555 F. Supp. 750 (D.C.N.J. 1983); Williams v. Civil Service Comm'n, 66 N.J. 152 (1974); Hall v. Pennsauken Tp., 176 N.J. Super. 229 (App. Div. 1980); Ramirez v. Hudson Cty., 167 N.J. Super. 435 (1979). That constitutional protection bolsters the independent statutory protections in our Act afforded union representatives to speak out, as equals, about management-labor relations disputes.

After the summons incident, the parties' relationship continued to deteriorate. Kloiber called in sick on August 8, two days after Indiero charged him for speaking to the media. That same day, DePasquale reminded the watch commanders to verify sick leave. Such verification was not routinely done. Kloiber's prior absences had never before been verified. On August 19, DePasquale ordered Burns to call Kloiber and Brownlee at home. The timing, coupled with the earlier evidence of hostility, convinces me that this departure from normal practice was motivated by Kloiber's role as PBA president.

Indiero then repeatedly asked about Kloiber's activities. Mulligan thought Indiero was obsessed with Kloiber's name. Santos reported that Indiero felt Kloiber was subversive and disruptive to the action of the department. Against this backdrop of confrontation and hostility, I address the Complaint's individual allegations.

Farley Hearing

The Township argues that Kloiber was not harmed by Indiero's abrupt ending of Farley's disciplinary hearing and that even if Indiero erred, it was corrected at a higher level, citing NLRB v. Los Angeles - Yuma Freight Lines, 446 F.2d 210, 77 LRRM 3076 (6th Cir. 1971).

I agree that Indiero's conduct toward Kloiber did not violate subsection 5.4(a)(3) because Indiero's action did not affect Kloiber's hire or tenure of employment, or any term or condition of employment. Instead, Indiero's action was directed solely at Kloiber's ability to fully represent Farley at a disciplinary hearing.

There is no question in my mind that Indiero unfairly ended the disciplinary hearing. In fact, Santos rescinded the reprimand and expunged Farley's record. That expungement means that Indiero's action also had no effect on Farley's terms and conditions of employment.

The Commission has often held that where the parties' contract has a self-executing grievance procedure, the employer's

failure to act at an intermediate step of the procedure is not an unfair practice. See, e.g., New Jersey Transit Bus Operations, Inc., P.E.R.C. No. 86-129, 12 NJPER 442 (¶ 17164 1986); see also NLRB v Yuma. This allegation, however, does not involve the refusal to hear a grievance. Instead, it charges that Indiero's conduct in abruptly cutting off examination tended to interfere with the exercise of protected rights.

The incident took place in the midst of escalating tension between the PBA and the Director. The PBA had just been invited to air their complaints about Indiero at a Township Council meeting. The Director had just served a final disciplinary notice regarding Kloiber's illness verification dispute. In his memorandum to Santos (R-17), Indiero misrepresented Kloiber's conduct as "argumentative and antagonistic." Indiero was displeased with Kloiber's representation and cut it off.

A majority representative has a right, in fact a duty, to fairly represent unit employees. Cf. Fair Lawn Bd. of Ed., P.E.R.C. No. 84-138, 10 NJPER 351 (¶15163 1984); Vaca v. Sipes, 386 U.S. 171 (1967). I find that Indiero's action was both intended to and did interfere with Kloiber's ability to provide that representation. Accordingly, I recommend the Commission find the Township violated subsection 5.4(a)(1) of the Act.

Dewyea's Right to Representation

In East Brunswick Bd. of Ed., P.E.R.C. No. 80-31, 5 NJPER 398 (¶10206 1979), aff'd in part, rev'd in part, App. Div. Dkt. No.

A-280-79 (6/18/80), the Commission held that an employer violated subsection 5.4(a)(1) when it denied an employee's request for union representation at an interview which the employee could reasonably believe might result in discipline. It relied on NLRB v. Weingarten, Inc., 420 U.S. 251, 88 LRRM 2689 (1975). Since East Brunswick, the Commission has applied the Weingarten rule in cases where the employee (1) requests a representative and (2) has a reasonable belief, measured by objective standards, that the interview may result in discipline. See 88 LRRM at 2691.

Dewyea's question whether he needed a representative was a sufficiently direct request for representation to meet the East Brunswick test. It put Dyott on notice of Dewyea's interest in having someone from the PBA represent him during the interview. NLRB v. Illinois Bell Telephone Co., 674 F.2d 618, 109 LRRM 3244 (7th Cir. 1982). Once that request was made, Dewyea did not have to reiterate it during the interview. Consolidated Freightways, 264 NLRB No. 76, 111 LRRM 1289 (1982).

But a request for representation is not enough. The employee must also have a reasonable belief that the interview may result in discipline. At the beginning of the interview, Dewyea did not have such a belief. Dyott, in good faith, told Dewyea he was not the target of the investigation. He wasn't. However, the interview was transformed and became a "different ballgame" when Dewyea mentioned that he did not complete the accident report. Because Dyott was on notice of Dewyea's earlier request, he had a

duty to inform Dewyea that the character of the interview had changed. By continuing to ask questions, in light of the outstanding request for representation and now that discipline might result, Dyott violated Dewyea's Weingarten rights.^{11/}

The Township argues this allegation is untimely because the interview took place more than six months before the filing of the charge. N.J.S.A. 34:13A-5.4 provides, in part:

[N]o complaint shall issue based upon any unfair practice occurring more than 6 months prior to the filing of the charge unless the person aggrieved thereby was prevented from filing such charge in which event the 6 months period shall be computed from the day he was no longer so prevented.

Dewyea was not charged until January 1987. Before then, he did not know that the information he gave might be used against him. Whether I view the statute of limitations as running from the filing of the charges, or from the interview, but being tolled by Dewyea's being prevented from filing because he did not know of the charges, the allegation is timely.

I now consider whether the Township's violation justifies an order rescinding the reprimand.

The Commission has adopted the test the NLRB set forth in Kraft Food, Inc., 251 NLRB No. 6, 105 LRRM 1233 (1980) for

^{11/} Weingarten violations do not require proof of motive and this finding is not meant to impute bad faith to Dyott's action. He had routinely provided representation when he believed the employee was the target of an investigation. Here, he was faced with an unusual situation where the character of the interview changed mid-stream.

determining the remedy for Weingarten violations. See, e.g., Camden Cty. Vo-Tech, P.E.R.C. No. 82-16, 7 NJPER 466 (¶ 12205 1981). Kraft Food provides:

Initially, we determine whether the General Counsel has made a prima facie showing that a make-whole remedy such as reinstatement, backpay, and expungement of all disciplinary records is warranted. The General Counsel can make this showing by providing that respondent conducted an investigatory interview in violation of Weingarten and that the employee whose rights were violated was subsequently disciplined for the conduct which was the subject of the unlawful interview.

In the face of such a showing, the burden shifts to the respondent. Thus, in order to negate the prima facie showing of the appropriateness of a make-whole remedy, the respondent must demonstrate that its decision to discipline the employee in question was not based on information obtained at the unlawful interview. Where the respondent meets its burden, a make-whole remedy will not be ordered. Instead, we will provide our traditional cease-and-desist order in remedy of the 8(a)(1) violation. [105 LRRM at 1233]

The PBA has not proved that Dewyea was disciplined based on information obtained during the second part of the interview. Dewyea volunteered, while he was not the target of the investigation, that Dunton, not he, wrote the report. That information was not gathered in violation of Weingarten and was the basis for the reprimand. Accordingly, a cease and desist order

regarding the second part of the interview is the only appropriate remedy.^{12/}

Press Release and Chain of Command General Orders

The PBA alleges that the Township harassed and discriminated against Kloiber by charging him for expressing his opinions to the media. Kloiber was charged on August 6 and 26, 1986; more than six months before the filing of the unfair practice charge. Thus, the allegation relating to the bringing of charges is untimely.

Indiero, however, issued his revised "Chain of Command" and "Press Release" general orders one month before the PBA filed its charge. Those orders unduly restricted the right of PBA

^{12/} In Taracorp Industries, 273 NLRB No. 54, 117 LRRM 1497 (1984), the NLRB overruled its Kraft Food test concerning reinstatement and backpay. It concluded it has no authority to order reinstatement and backpay for a Weingarten violation unless the discipline is in retaliation for exercising Weingarten rights. It relies on Section 10(c) of the Labor Management Relations Act, 29 U.S.C. §141 et seq., which provides:

No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause.

I need not decide whether Kraft Food is still an appropriate guide here. First, our Act does not have a similar section 10(c) proviso. Second, I have already found that the discipline flowed from a lawful interview.

representatives to express opinions to the public and media concerning issues important to the PBA and those it represents. The PBA did not see the regulations prior to issuance. Nor did it consent to them when it settled the charges against Kloiber.

Courts have found overbroad similar regulations prohibiting "disparaging comments" based on constitutional grounds alone. See, e.g., Gasparinetti; Hall. Here, there is the additional statutory protection afforded employee representatives to act for and represent employee interests. N.J.S.A. 34:13A-5.3. The Township has a significant interest in regulating some speech of police officers, see Gasparinetti, but these orders sweep too broadly in banning all unfavorable comments. Accordingly, I find that the revised orders tend to interfere with protected rights without a legitimate business justification and without PBA consent. I recommend the Commission find a violation of subsection 5.4(a)(1) and order their rescission.

Convention Certification

Kloiber was charged for failing to comply with DePasquale's request to submit a certification of PBA convention attendance. Under Bridgewater, I must first decide if the charges were motivated by Kloiber's PBA activity. If they were, I must then decide if the Township would have charged him even absent that activity.

DePasquale charged the PBA representatives, including Kloiber, not because he doubted they attended the convention, but because he felt they did not want to comply with his request

(TE87-TE88). DePasquale chose to charge rather than ask for the certification, not because he wanted to intimidate, but because he did not want to appear to be used or intimidated by the PBA. I note that when presented with the certification, DePasquale requested the charges be dropped. Thus, while this dispute was petty and could have been resolved easier, faster and simpler, I am not convinced that DePasquale's action violated either subsection 5.4(a)(1) or (3).

Parking Near the Shed

There is no dispute that parking in front of the storage shed is officially prohibited. There is also not doubt in my mind that the Township has the right to ask employees to move their cars from the no parking zone. The dispute here is whether the Township violated the Act when it had Kloiber, but not other employees, move his car.

I find that the Township's action did not independently violate subsection 5.4(a)(1). That subsection ignores motive and excuses employer conduct that tends to interfere with protected rights if the employer has a legitimate and substantial business justification for its action. The Township had a legitimate and substantial business reason for keeping cars from blocking the shed's entrance.

Subsection 5.4(a)(3) requires a different analysis. Whether the employer's action had a legitimate business justification for its action does not decide the issue. Instead the test asks whether the employer would have taken the same action absent the employee's protected conduct. 95 N.J. at 242.

Here, DePasquale issued his no parking reminder on January 14. Shortly after, Kloiber was asked to and did move his car. Kloiber felt he was being singled out, but that is very hard to prove. He was not sure if other officers parked there and while he did not know of others being asked to move, he could not be sure others were not. DePasquale testified that he had asked others to move. The PBA suggests, but did not prove, that the others were confronted after the charge was filed. Under all these circumstances, I find that the PBA did not prove that the Township violated the Act by having Kloiber move his car.

Scheduling of Meetings

Kloiber conceded the original allegation in the charge was unfounded because he was scheduled to work the day of the proposed meeting. Had Indiero responded to Kloiber's meeting request, that dispute might have been avoided. But Indiero never confirmed and Kloiber could not fairly assume the meeting was on. As for the dates in the amendment, the PBA failed to prove that those meetings were scheduled during Kloiber's time off to harass or discriminate. (1) Kloiber was not sure if Applegate scheduled a meeting for December 22, 1986. (2) Speidel's April 1, 1987 meeting had already been rescheduled at his request. DePasquale played hard ball and refused to reschedule to convenience Kloiber. In light of DePasquale's earlier grant of a postponement, I find that his refusal to postpone again did not violate the Act. (3) The PBA failed to prove Dewyea was interviewed between February 5 and March

9, 1987. Accordingly, I find that the PBA failed to prove any violation of the Act regarding the scheduling of meetings.

Sick Leave Verification

The sick leave verification phone call to Kloiber was made on August 19, 1986. Charges were filed on August 26, 1986. Both dates are outside the statute of limitations. N.J.S.A. 34:13A-5.4(c). This allegation cannot be the basis of an unfair practice.

Kloiber's Leave Slips

The PBA claims that Kloiber's leave of absence slips, although approved, were not returned to him as quickly as other employees'. In January 1986, PBA attorney Holzapfel complained that Kloiber's union-related leave slips were not being returned promptly. The Township claims that was due to a clause in the parties' predecessor agreement requiring union time to be reasonable. The Township further claims that the reasonableness requirement was removed in June 1986 and that any problem stopped. Kloiber testified the problem resurfaced. Sergeant Burns testified that Kloiber complained about the delayed return of slips. Captain Mulligan confirmed that Kloiber complained to him approximately six times in the year following June 1986. Because there is no record kept of when leave slips are returned, rather than approved, it was very difficult for the PBA to prove or the Township to defend against this allegation. This issue must be decided in large part based on Kloiber, Mulligan and Burns' credibility, the conceded

delay in early 1986, and the general atmosphere of hostility to Kloiber's activity in late 1986. Based on all those factors and no conflicting evidence about when the slips were actually returned, I find that the PBA proved, under Bridgewater, that the Township unduly delayed the return of his leave requests in retaliation for his protected activity.^{13/} Accordingly, I recommend the Commission find the Township violated subsection 5.4(a)(3) and, derivatively, (a)(1) through this conduct.

Monitoring of PBA Activities

The PBA claims that Indiero requested and directed employees to monitor the PBA and Kloiber's activities.

Dispatcher O'Connor credibly testified that Indiero called her at home and implied that she should report to him about conversations overheard in the radio room. Indiero accused her, as well as other witnesses, of testifying falsely. Had O'Connor been lying, she more likely would have testified that Indiero specifically asked her to monitor the PBA. She didn't. She also conceded that she did not know personally whether others were asked to report, or reported to Indiero about the PBA. Based on O'Connor's testimony, I find that Indiero was seeking to monitor his employees, but the PBA failed to prove his action was directed against the PBA or its leadership. I note also, that although O'Connor testified her conversation with Indiero took place in late

^{13/} The Township did not claim it had another motive for the delay, but simply denied there was any delay.

September or early October, it more likely took place earlier. Jamison applied for the relief dispatcher position on January 20, 1986. She testified she was telephoned by Indiero after her mother, but in the late spring or early summer. Thus, while both O'Connor and Jamison seemed sincere, both could not be accurate. Thus, even if the PBA proved anti-union animus regarding the O'Connor allegation it failed to prove it occurred within the six month statute of limitations.

Sergeant Burns testified that he inferred that DePasquale wanted Burns to watch Kloiber and report misconduct. Specifically, sometime around September 1986, DePasquale told Burns that Indiero had asked why Kloiber was in the radio room, and told DePasquale to tell Burns not to be intimidated by Kloiber. Burns also testified as to a general atmosphere where Kloiber was being watched more closely than other officers. Burns' testimony is consistent with other testimony describing Indiero and DePasquale's desire to know about and limit what the PBA was doing. The incident was not sufficiently proven to have occurred within the statute of limitations, however, and thus cannot form the basis for finding a violation.

Subsection 5.4(a)(2) Allegations

The PBA failed to prove that any of the Township's actions tended to dominate or interfere with the formation, existence or administration of the PBA.

Based on the above, I make the following:

RECOMMENDED ORDER

I recommend that the Township of Jackson:

A. Cease and desist from:

1. Interfering with, restraining or coercing police employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with PBA President Kloiber's representation of Officer Robert Farley at a December 18, 1986 disciplinary hearing; failing to provide PBA representation to Officer Clayton Dewyea after it became apparent an interview might reasonably result in discipline; issuing general orders that unduly restricted the right of PBA representatives to express opinions to the public and media, and failing to return PBA President Kloiber's leave of absence slips in a timely manner.

2. Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to return PBA President Kloiber's leave of absence slips in a timely manner.

B. Take the following affirmative action:

1. Rescind revised General Orders 86-71 and 86-65, issued February 18, 1987.

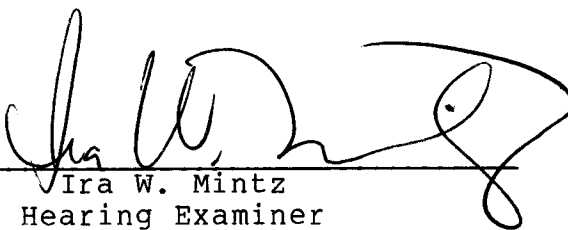
2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the

Commission shall be posted immediately upon receipt and, after being signed by the Respondent's authorized representative, shall be 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.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

I recommend that the remaining allegations in the Complaint be dismissed.



Ira W. Mintz
Hearing Examiner

DATED: April 8, 1988
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 interfering with PBA President Kloiber's representation of Officer Robert Farley at a December 18, 1986 disciplinary hearing, failing to provide PBA representation to Officer Clayton Dewyea after it became apparent an interview might reasonably result in discipline; issuing general orders that unduly restricted the right of PBA representatives to express opinions to the public and media, and failing to return PBA President Kloiber's leave of absence slips in a timely manner.

WE WILL cease and desist from discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by the Act, particularly by failing to return PBA President Kloiber's leave of absence slips in a timely manner.

WE WILL further rescind revised General Orders 86-71 and 86-65, issued February 18, 1987.

Docket No. CO-H-87-278JACKSON TOWNSHIP

(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.