

In the Matter of County Police Officers, Essex County Sheriff's Office
DOP Docket No. 2007-1525
(Merit System Board, decided April 11, 2007)

The Managing Director, State and Local Government Operations (SLGO), Department of Personnel (DOP), requests that the provisions of *N.J.A.C. 4A:4-7.6* be relaxed in order to effectuate the lateral title change, with retention of seniority, for employees in the County Police Officer title series to the Sheriff's Officer title series.

By way of background, in 1990 the Criminal Justice Committee of the Essex County Transition Team (Transition Committee) performed a study of the Essex County Police Department. The results of the study found that the existing structure "encourages duplication of work, stimulates excess overtime, condones unnecessary specialization, and impedes the goals of good government." The Transition Committee also reported at length on the overlap of duties between the Office of the Sheriff and the County Police Department. In pertinent part, it was noted that they were "duplicating much of the work which ... should be done within the County Sheriff's Department." The Transition Committee concluded that there should be a consolidation of operations between the County Police and the Sheriff's Department and that this consolidation should be placed under the Sheriff. Subsequently, under its authority to authorize the restructuring and transfer of governmental functions between county offices, divisions, and agencies, the Essex County Board of Chosen Freeholders adopted an ordinance on April 24, 1997 transferring the Division of Essex County Police, Essex Department of Public Safety, to the jurisdiction and authority of the Sheriff, Essex County. This resulted in the establishment of the Division of County Police as part of the organizational structure of the Sheriff's Department. Subsequently, in June 2006, the Essex County Sheriff (Sheriff) promulgated an order to consolidate the functions of the County Police with the Sheriff's Office. In pertinent part, the Division of County Police was to be restructured as a newly established Patrol Division within the Sheriff's Department that would perform similar duties as those performed by County Police Officers. Specifically, the Sheriff indicated that the underlying purpose of the consolidation was to provide the best and most effective service to the County at the least cost to taxpayers and to ensure that no incumbent in the County Police Officer title series would lose his or her job as a result of the consolidation. The Sheriff also noted that this action was consistent with and in furtherance of State-wide efforts with regard to consolidation of government services.

The former Division of Human Resource Management (now SLGO) worked through a number of issues surrounding the proposed consolidation of the County Police with the Sheriff's Office. For example, a number of incumbents in the County Police Officer title were on the promotional list for County Police Sergeant (PC2502G), which has an expiration date of January 11, 2009. Thus, since these County Police Officers were not able to compete in the last promotional examination for Sheriff's Officer Sergeant (PC2662F), closing December 21, 2004, they were provided an opportunity to compete in a make-up examination for Sheriff's Officer Sergeant in January 2007. In this regard, it noted that eight County Police Officers competed in that make-up examination. Similarly, the one County Police Officer Sergeant, who would have been eligible for the promotional examination for Sheriff's Officer Lieutenant (PC2672G), closing November 21, 2005, was provided an opportunity to compete in a make-up for that promotional examination in January 2007. The County Police Officers who passed their respective make-up examinations were added to the existing employment rosters in accordance with *N.J.A.C. 4A:4-2.9(h)*.

It is noted that the Essex County Sheriff's Officers P.B.A. Local 183 (Local 183) and Essex County Police P.B.A. Local 54 (Local 54) submitted letters to SLGO expressing their opposition to the consolidation. In pertinent part, Local 183, represented by Chris Tyminski, President, expressed its concern on the effect of the consolidation on existing promotional and entry level employment lists. Local 54, represented by Merick H. Limsky, Esq., expressed its concern over "civil service titles [and] civil service examinations." It is also noted that both bargaining units noted concerns relative to their collective bargaining agreements. Additionally, the Essex County Superior Sheriff's Officers F.O.P. Local 138 (FOP), represented by David J. DeFillippo, Esq., submitted a letter expressing its opposition to the merger, stating that it would have an impact on the terms and condition of employment for all FOP members as well as an impact on existing promotional lists and require Sheriff's Officers to perform duties outside of their job descriptions.

In support of the instant request, the Managing Director, SLGO, presents that the consolidation of the Essex County Police and the Essex County Sheriff's Office will eliminate the use of the County Police Officer titles series and change the County Police Officer positions to the corresponding rank in the Sheriff's Officer title series. The Managing Director explains that the order implementing this consolidation indicated that it was designed to achieve the most efficient and effective use of personnel, facilities, and equipment. Moreover, the Essex County Sheriff's Office indicated that the consolidation is being implemented in order to avoid layoffs of permanent County Police Officers. In this case, although the

Sheriff's Officer and County Police Officer title series are in the same occupational group and some of their duties overlap, the titles are not interchangeable. Therefore, based on the circumstances surrounding this matter and in order to avoid any hardship to employees serving in the County Police Officer title series, SLGO requests that the provisions of *N.J.A.C. 4A:4-7.6* be relaxed in order to effectuate lateral title changes, with retention of seniority, for those employees in the County Police Officer title series to the corresponding rank in the Sheriff's Officer title series.

The parties involved in the matter were provided an opportunity to supplement the record prior to the Board's review of this matter. The FOP expressed its opposition to the request, stating that it is without a legal basis and must be denied. Additionally, it notes that prior to the fall of 2006, Essex County maintained its own Police Department, which had its own chain of command, and, more importantly, its own statutorily-defined responsibilities. Moreover, the FOP contends that a rule relaxation is impermissible as the merger of the County Police into the Sheriff's Office was done unilaterally and without the consent of the FOP. It also argues that it is inconceivable that officers who spent their entire career working in the County Police, performing separate and distinct statutorily-defined duties, could now be rendered eligible to receive a promotion within the Sheriff's Office, instead of other individuals who spent their entire career in the Sheriff's Office. Further, the FOP states that it is inconsistent to permit the former County Police Officers to retain whatever duties, benefits, and other emoluments they had under the prior collective bargaining agreement, which are not currently afforded to the FOP's membership, while at the same time, provide them with equal seniority. Thus, the FOP opposes the subject request.

The Essex County Sheriff, represented by Brian W. Kronick, Esq., presents that in the spring of 1991, Essex County, in lieu of abandoning the County Police Department in its entirety, laid off and subsequently assigned or reassigned 88 of its approximately 148 County Police Officers and Superior Officers represented by Local 54 without negotiating with that bargaining unit. Local 54 subsequently filed an unfair labor practice charge with the New Jersey Public Employment Relations Commission (PERC) and good faith layoff appeals with the Department of Personnel. With respect to the unfair labor practice charge, in *County of Essex*, 18 *NJPER* 23124 (1992), the PERC hearing examiner determined that Essex County did not violate the New Jersey Employer-Employee Relations Act when it unilaterally reassigned or assigned 88 of its Police Officers to the Essex County Sheriff without first negotiating with Local 54.¹ Moreover, the Sheriff underscores

¹ The Board acknowledged a settlement between the parties, with modifications, in *In the Matter of Police Officer and Superior Officers, Essex County (1991 Layoffs)* (MSB, decided December 6, 1995).

that the Essex County Board of Chosen Freeholders adopted County Ordinance No. 0-97-0006 removing the County Police from the Essex County Department of Public Safety and adding the County Police as a Division of the Office of the Sheriff. As a result of this ordinance, the County Police were placed under the exclusive authority and control of the Sheriff's Office as a division thereof. Subsequently, in April 2001, the Sheriff amended its general orders and established the County Police as a functioning Bureau within the Sheriff's Office. Additionally, under the authority of the collective bargaining agreement with Local 54, it became the practice to utilize both County Police and Sheriff's Officers when police work became available, to cover assignments, and to utilize cross-assignments. In this regard, the Sheriff notes that his cross-utilization of employees, in both a supervisory and rank and file capacity, was employed during emergencies and in pre-determined instances such as holidays.

The Sheriff also notes that the successor to the contract for 2002 through 2005 with Local 54 was voluntarily settled to include a term that provided for salary parity between Sheriff's Officers and County Police Officers, and discussed the contemplated merger. Thereafter, in March 2006, the Sheriff issued an amended general order reorganizing the Essex County Sheriff's Office due to the acquisition of additional responsibilities of the County Police Division, the Office of Emergency Management, Homeland Security, and the County Security Bureau. In order to achieve the most efficient use of personnel, facilities and equipment, the County Police Division was designated as a component of the Field Operations Operational Division. This resulted in certain duties formerly performed by County Police being performed by Sheriff's Officers. Likewise, duties traditionally performed by Sheriff's Officers were being performed by County Police Officers. In June 2006, for the purpose of economy and efficiency, the Sheriff directed the formal and complete merger of the County Police with the Sheriff's Office. This was to effect administrative, equipment, and personnel advantages. Additionally, since October 2, 2006, all former County Police Officers have been sworn in as Sheriff's Officers and have worn Sheriff's Officers' uniforms, and all former County Police vehicles have been modified to mirror Sheriff's Officers' vehicles.

The Sheriff emphasizes that the decision to merge the County Police Officers and Sheriff's Officers is a non-negotiable, managerial prerogative to reorganize the way it delivers governmental services. Further, with limited exceptions, decisions concerning transfers and reassignments fall exclusively within the sphere of managerial prerogatives. Thus, the Sheriff states that his decision to consolidate is in the realm of a governmental policy determination and within his managerial prerogative to determine policy. The Sheriff presents that this situation is analogous to circumstances that

occurred in Hudson County in the 1990's when that County passed a resolution effectively abolishing the Hudson County Police Department and the work of that department was unilaterally transferred to the Hudson County Sheriff's Department and local police departments. Finally, the Sheriff maintains that *N.J.S.A. 40:37-11.6*, which provides certain rights to displaced County Park Police Officers, is analogous to the instant situation and thus, it is appropriate for County Police Officers to receive lateral title changes to the corresponding Sheriff's Officer title and retain permanent status and seniority.

In response, the FOP maintains that it has not been provided ample opportunity to respond to all of the issues involved in this complex matter. Nevertheless, it reiterates its position that the duties and responsibilities of the County Police Officers have always been separate and distinct from those duties performed by members of the Sheriff's Department. The FOP also maintains that the merger of the County Police into the Sheriff's Office was done unilaterally without the consent or participation of the FOP and that all former County Police Officers were permitted to take "make-up" promotional examinations for titles within the Sheriff's Office, over the objections of the FOP. Finally, the FOP reiterates that it is inconsistent to permit the former County Police Officers to retain whatever duties, benefits and other emoluments they had under their prior collective bargaining agreement.

In its response, Local 183, represented by Merick H. Limsky, Esq.,² notes that Essex County fails to mention that it has a pending unfair labor practice matter pending before PERC that will directly impact the subject merger. As such, until such time as the underlying unfair practice charge has been resolved, Local 183 maintains that the subject matter should not be forwarded for review.

In response to the FOP and Local 183, the Sheriff presents that the FOP's concerns regarding the propriety of promotional opportunities for the newly appointed Sheriff's Officers are misplaced. In this regard, he notes that in accordance with *State v. State Supervisory Employees Ass'n.*, 78 *N.J.* 54, 90 (1978), promotional procedures utilized by a public employer are non-negotiable. Regardless, the Sheriff underscores that subsequent to the consolidation, FOP members, *not* former County Police Officers, have been promoted. Thus, none of the FOP's members have been adversely affected by the administration of the make-up examinations. With respect to the FOP's argument that it is inconsistent and inequitable to permit former County Police Officers to retain benefits under their prior collective bargaining agreement, the Sheriff maintains that he has continued to abide by the negotiable terms and conditions of employment under that collective

² It is noted that Mr. Limsky now represents Local 183.

bargaining agreement. Further, he notes that the County and the FOP are currently involved in interest arbitration in connection with the parties' successor agreement. Nonetheless, until such time as this matter is resolved, the law requires the County to maintain the *status quo* with respect to recognizing the terms negotiated with the County Police Officers.

In response to Local 183, the Sheriff states that the crux of the unfair labor practice charge is not the propriety of the merger, but that the County Police Officers being appointed to Sheriff's Officers would have different benefits than other rank and file Sheriff's Officers under the various collective bargaining agreements. Thus, the union sought to prevent the merger until all negotiability issues were addressed. However, until the issues are addressed in the interest arbitration, the County is required to maintain the *status quo*. As such, the Sheriff maintains that no practical grounds exist to warrant delay of the rule relaxation for the lateral title change.

N.J.A.C. 4A:4-7.6(a) provides that a lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. *N.J.A.C.* 4A:4-7.6(b) provides that if the nature of the work, education, and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status. *N.J.A.C.* 4A:4-7.6(c) states that if the nature of the work, education and experience requirements of both titles are dissimilar, then the employee shall be appointed pending examination, subject to satisfactory completion of a working test period. If the employee fails the examination or is released at the end of the working test period, he or she shall be restored to his or her permanent title.

N.J.A.C. 4A:1-1.2(c) provides that the Merit System Board may relax a rule for good cause, in a particular circumstance, in order to effectuate the purposes of Title 11A of the New Jersey Statutes Annotated.

CONCLUSION

Initially, the FOP and Local 183 maintain that they were not provided enough time to respond to all of the issues involved in this matter and to the Sheriff's submissions to the Board. The Board disagrees. The parties filed their initial opposition to the consolidation with SLGO by letters in June and July 2006. Each of these initial submissions referred to the Sheriff's Special Order and General Order pertaining to the proposed consolidation and the County Ordinance. On March 6, 2007, all interested parties were provided an opportunity to submit their comments to the Board by March 14, 2007. In response to requests from the FOP and Local 183, the parties were afforded

the opportunity to provide responses up to March 23, 2007. While the parties make reference to the Sheriff's voluminous submissions to the Board as a basis for extended time, it must be emphasized that the majority of those submissions were copies of the Special Order, General Order and letters that have been at issue since the consolidation was proposed in June 2006. As such, the parties have been provided ample time to supplement the record in this matter.

According to the job specification for County Police Officer, an incumbent, during an assigned tour of duty, on foot, or in an automobile, patrols a designated area to provide assistance and protection for persons, safeguards property, ensures observance of the law, and apprehends lawbreakers. Conversely, the job specification for Sheriff's Officer indicates that incumbents perform one or more functions in the following areas: maintaining order and security in the courtroom, serving court processes, criminal identification, ballistics and investigations, and apprehension of violators of the law. The County Police Officer and Sheriff's Officer title series are classified in the "Service Occupations" category in the occupational group "Occupations in Protective Services."³ The "Occupations in Protective Services" group includes occupations concerned with protecting the public against crime, fire, and accidents, guarding persons, property and public lands from illegal entry, fire and theft, ensuring security and safety of agencies, institutions, or buildings, and the custody and discipline of prisoners, and those technical occupations that review, store, and analyze evidence or information to be used in criminal prosecution. Thus, while both title series are in the same occupational group and some of the duties between the two series overlap, the County Police Officer and Sheriff's Officer title series are not interchangeable. Nonetheless, *N.J.S.A. 2A:154-3* does empower Sheriff's Officers to act as officers in the detection, apprehension, arrest and conviction of offenders against the law and to have full power of arrest for any crime committed in their presence within the territorial limits of the State of New Jersey. Thus, the assignment of these types of duties to a Sheriff's Officer is proper and would be substantially similar to those of a County Police Officer.

The Sheriff notes that *N.J.S.A. 40:37-11.6*, which permitted the transfer of Park Police Officers to the corresponding rank in a Sheriff's Office if a County elected to abolish its County Park Police Force, is analogous to the instant matter. While the incumbents in the instant matter are in the County Police Officer, *not* Park Police Officer title series, it is evident that the Legislature sought to lessen the impact on Park Police Officers whose positions would be abolished due to the dismantling of a County Park Police

³ Department of Personnel, Occupational Code Dictionary.

Force. The same legislation also transferred authority to the County Sheriff to perform the security duties of county parks that were formally assigned to the Park Police Officers if the County Park Police Force was dissolved.

Similarly, in *In the Matter of Sheriff's Officer, Hudson County* (MSB, decided December 16, 1997), as an alternative to layoff, the Board permitted the voluntary transfer of incumbents in the County Police Officer title series to the Sheriff's Officer title series as an alternative to layoff. Unlike the present matter, in *Hudson County*, the County Police Department was eliminated due to budgetary constraints. The employees serving in the Sheriff's Officer titles argued that the transfer action and lateral title changes were unfair, as they infringed on existing promotional opportunities, permitted County Police Officers to retain their seniority, possibility to the detriment of many Sheriff's Officers, and that the title series were not substantially similar. The Board in *Hudson County* upheld the lateral transfers, finding that these transfers were done as an alternative to layoff, that it had permitted lateral title changes with retention of title seniority between functionally dissimilar titles in order to implement a layoff avoidance in the past (*See In the Matter of Layoff Avoidance Plan, Department of Human Services* (MSB, decided June 23, 1992)), and that the County Police Officer and Sheriff's Officer titles were in the same occupational group.

Although the instant consolidation is not a direct result of the elimination of the patrol function due to budgetary constraints, which was the basis for the layoff avoidance plan in *Hudson County*, the Essex County Sheriff's Office has indicated that it is being implemented in order to avoid layoffs of permanent County Police Officers and for reasons of economy and efficiency. It is also evident that the Sheriff's assumption of the County Police function stemmed from a determination in early 1991 to assign or reassign County Police Officers in lieu of being laid off, a situation similar to *Hudson County* where the requested relief was provided. How the County Police function was absorbed into the Sheriff's Office over the years is essentially of no moment in this situation. The Board agrees that issues of assignment and reassignment are within the sphere of managerial prerogative, with limited exceptions. Indeed, in State service, the Board has consistently explained that administrative agencies have wide discretion in selecting the means to fulfill the duties the Legislature has delegated to them. Further, deference is normally given to an agency's choice in organizing its functions, considering its expertise, so long as the selection is responsive to the purpose and function of the agency. *See In the Matter of Gloria Iachio*, Docket No. A-3216-89T3 (App. Div., Jan. 10, 1992). Finally, the pending PERC matter appears to be ancillary to the issue of implementing the employees' lateral title changes. As such, the Board finds

no reason to delay this request until such time that the unfair labor practice charge is resolved with PERC. The Board's determination with regard to the current request is based on the provisions of Merit System law and rules.

Moreover, incumbents in the County Police Officer titles who would have been eligible to compete in the corresponding promotional examination for the Sheriff's Officer title series have already been provided the opportunity to compete in a make-up examination for the corresponding Sheriff's Officer title and their names have been added to those employment rosters. In compliance with *N.J.A.C. 4A:4-2.9(h)*, the addition of these names will not cause the displacement of any other eligible who was already appointed from those lists. Moreover, it is noted that individuals whose names merely appear on a list do not have a vested right to appointment. See *In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. See *Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

Under these circumstances, it is appropriate to relax the provisions of *N.J.A.C. 4A:4-7.6* to allow the lateral title change of those employees serving in the County Police Officer title series to the corresponding rank in the Sheriff's Officer title series with the retention of title seniority, and without the need for examination or completion of a working test period.

ORDER

Therefore, it is ordered that this request be granted. Additionally, since the County Police operations have been consolidated into the Sheriff's Office, it is ordered that the current promotional lists for County Police Sergeant (PS2502G) and County Police Captain (PC3537H) be inactivated.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.