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**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. THOMAS P. PHELAN,**

**Justice**

**TRIAL/IAS, PART 15  
NASSAU COUNTY**

ROBERT ARCIELLO, ROBERT BECKMANN,  
ALEXANDER BUSA, LOUIS CAFIERO, ANDREW  
CAPARELLI, SEAN COFFEY, LAURENCE  
COSTIGAN, MADELENE CUNNINGHAM,  
ROBERT DAUB, MAUREEN DERNER, DANIEL  
FEIOLA, CHRIS FERRARA, JEROME FITZPATRICK,  
JOHN FLANAGAN, JAMES HACKETT, MARK  
HAMMER, KEITH HELMKE, ANTHONY INGENITO,  
RICHARD KOWALSKI, WILLIAM LINN, DAVID  
MACKINTOSH, ROBERT MASTROPIERI, THOMAS  
MAUGHAN, TIMOTHY McKENNA, WILLIAM  
MIRITELLO, JOHN O'REILLY, VICTOR PATALANO,  
DAVID PATTON, KEITH SATHER, VINCENT  
SCALA, CHRIS SCHOLZ, LAWRENCE SCHNURR,  
THOMAS SELLITTO, MARK SIMON, RAYMOND  
SMARRELLI, WILLIAM STANLEY, GERALD  
SULLIVAN, RAYMOND TANZA, MICHAEL TAYLOR,  
THOMAS THWEATT, III, STEPHEN TRIANO, and  
RAYMOND ZIMINSKI,

Plaintiff(s),

-against-

THE COUNTY OF NASSAU, THE NASSAU  
COUNTY CIVIL SERVICE COMMISSION, and  
SHERIFF OFFICERS ASSOCIATION, INC.,

Defendant(s).

ORIGINAL RETURN DATE:02/01/02

SUBMISSION DATE: 03/21/02

INDEX No.: 3040/00

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MOTION SEQUENCE #2,3

The following papers read on this motion:

Notice of Motion.....	1
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By this action plaintiffs seek judgment, inter alia, declaring that only Deputy Sheriffs may transport inmates and enjoining defendant County from using Correction Officers to perform such duties as this constitutes a violation of Section 61(2) of the Civil Service Law which prohibits out-of-title work.

The individually named plaintiffs are Deputy Sheriffs employed in the Nassau County Sheriff's Department and members of the bargaining unit represented by plaintiff, Civil Service Employees Association, Inc., A.F.S.C.M.E., Local 1000 A.F.L.-C.I.O., Nassau Local 830 ("CSEA"). Defendant Sheriff Officers Association, Inc. (SOA) is alleged to be "an employee organization within the meaning of Article 14 of the Civil Service Law [representing] a unit of County employees holding Correction Officer titles in the Nassau County Sheriff's Department."

Defendant SOA, joined by defendant County, move for summary judgment dismissing plaintiffs' complaint on the grounds that Correction Officers are authorized by the Nassau County Charter and by the class specifications for the title Correction Officer to transport inmates. Plaintiffs cross-move for summary judgment in their favor.

Article XX, Section 2003 of the Nassau County Charter (Defendant SOA's Exhibit D), reads as follows:

**"§ 2003. Division of correction; powers and duties; officers and employees.** a. There shall be a division of correction within the department of sheriff, the head of which shall be the commissioner of correction who shall be appointed by the sheriff and shall be in the exempt part of the classified civil service. b. The commissioner of correction, subject to the supervision and control of the sheriff, shall have charge of, and be responsible for:

"1. The care, custody and transportation of felons, misdemeanants, violators of local laws and all others committed to its charge, or held within the county for any cause in criminal proceedings.  
[underlining added]

"2. Management of the county jail with regard to the care and custody of persons held therein and charged to the division.

"3. Such other and further duties as are necessary to the care and custody of persons under the division's control.

"4. Such further duties as may be provided by ordinance."

Moreover, the job specifications for the position of Correction Officer (Defendant SOA's Exhibit E), includes under "typical duties", the following: "escorts and supervises inmates to and from

cell blocks, recreational activities, infirmary, showers, visitors' area, work assignments, court, etc.."

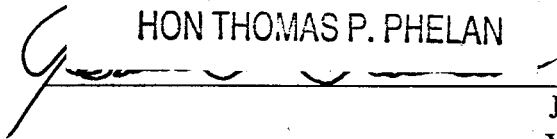
It is the rule that: "Out-of-title work, other than that performed on an emergency basis, is prohibited by Civil Service Law § 61 (2)" (*Woodward v Governor's Office of Emp. Rel.*, 279 AD2d 725, 726; *Civil Service Emp. Ass'n, Local 1000 v Angello*, 277 AD2d 576, 578). It is the job specifications for a title which determine those tasks which may be properly performed by a titled member (*Gavigan v McCoy*, 37 NY2d 548, 551). The job specifications here do not expressly include transportation of inmates. However, when reviewing out-of-title work grievances, courts must determine whether the duties being performed are "substantially similar" to those included in the specific job description (see *Woodward v Governor's Office of Emp. Rel.*, supra; *Civil Service Emp. Ass'n, Local 1000 v Angello*, supra). If the duties being performed by a person are substantially similar to those set forth in that person's job description, that person is not performing out-of-title work (*Id.*).

In this case, the Court holds that the transportation of inmates is substantially similar to escorting and supervising inmates "to and from cell blocks, recreational activities, infirmary, showers, visitors' area, work assignments, court, etc." Additionally relevant to this inquiry is the Nassau County Charter, which expressly vests the responsibility for transporting inmates in the Commissioner of Correction, "subject to the supervision and control of the sheriff." Since Section 2003 of the Nassau County Charter is a State Statute, it would take precedence over the job specifications if a conflict existed. Moreover, since Nassau County does not presently have a Commissioner of Correction, the responsibility for transporting inmates belongs to the Nassau County Sheriff, who can properly assign Correction Officers to the duty of transporting inmates. That there is an overlap of duties between the position of Deputy Sheriff and Correction Officer is not relevant to the inquiry as such overlaps are permitted (*Fitzpatrick v Ruffo*, 110 AD2d 1032, 1034, aff'd 66 NY2d 647).

Accordingly, defendants' motion is granted and they are awarded judgment declaring that the County of Nassau may assign Correction Officers to transport inmates and that such assignments do not violate Section 61 (2) of the Civil Service Law. Plaintiffs' cross-motion is denied.

This decision constitutes the order and judgment of the Court.

Dated: 5-6-02

HON THOMAS P. PHELAN  
  
J.S.C.  
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ENTERED

MAY 16 2002

NASSAU COUNTY  
COUNTY CLERK'S OFFICE