

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION PROCEEDINGS

In the Matter of

SOMERSET COUNTY GUIDANCE CENTER,

Public Employer,

-and-

Docket No. RO-76-78

PROFESSIONAL EMPLOYEES ASSOCIATION OF
SOMERSET COUNTY GUIDANCE CENTER;
affiliated with DISTRICT 1199 NATIONAL
UNION OF HOSPITAL AND HEALTH CARE
EMPLOYEES, RWDSU, AFL-CIO,

Petitioner.

SYNOPSIS

The Director of Representation Proceedings determines that the employees of the Somerset County Guidance Center holding the titles of Mental Health Aide, Part-Time Psychiatrist, Branch Office Supervisor, Unit Supervisor, Assistant Chief Psychologist, Coordinator of Consultation and Education, Coordinator of Emergency Services, and Partial Hospitalization Coordinator are includable in a unit of employees stipulated by the parties as consisting of all professional employees of the Center. The Director finds, under the facts developed at the hearing, that the Mental Health Aides are professional employees as defined in the Commission's Rules. He also finds that the Part-Time Psychiatrist has a regularity of employment and shares a sufficient community of interest with other professional employees to be included in the proposed unit. Further, he finds that the Branch Office Supervisor, Unit Supervisor, Assistant Chief Psychologist, Coordinator of Consultation and Education, Coordinator of Emergency Services, and Partial Hospitalization Coordinator are not supervisors as defined in the Employer-Employee Relations Act and their work responsibilities have not displayed the existence of, or have the potentiality for, substantial conflicts of interest which would warrant their exclusion from the proposed unit. The Director, however, accepts and adopts the Hearing Officer's recommendation, to which neither party excepted, that the Chief Psychologist is a supervisor within the meaning of the Act, and hence, is excluded from the proposed unit. The Director orders that a secret ballot election be conducted within 30 days among all employees in the proposed unit to determine whether the employees desire that the Professional Employees Association of Somerset County Guidance Center be certified as their exclusive negotiations representative.

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Appearances:

For the Public Employer,
Lannigan and O'Connell, Esqs.
(Mr. Daniel F. O'Connell, of Counsel)

For the Petitioner,
Greenberg and Margolis, Esqs.
(Mr. Philip Freedman, of Counsel)

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning representation of public employees, a hearing was held on February 18, March 4, 11, and 15, 1976, before Hearing Officer Don Horowitz, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses and to argue orally. Post hearing briefs were filed by both the Petitioner and the Public Employer.

Thereafter, on July 14, 1976, the Hearing Officer issued his Report and Recommendations (H.O. No. 77-1), a copy of which is attached hereto and made a part hereof. On August 8, 1976, the Public Employer, Somerset County

Guidance Center (the "Center"), filed exceptions to the Hearing Officer's Report and Recommendations. The Petitioner, Professional Employees Association of Somerset County Guidance Center, affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (the "Association"), has not filed an answering brief or any cross-exceptions. The undersigned has carefully considered the entire record in this proceeding including the Hearing Officer's Report and Recommendations, and the exceptions, and on the facts in this case finds and determines as follows:

1. The Somerset County Guidance Center is the employer of the employees involved herein, is a public employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, and is subject to its provisions.
2. The Professional Employees Association of the Somerset County Guidance Center, affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, is an employee representative within the meaning of the Act and is subject to its provisions.
3. A Petition for Certification of Public Employee Representative, supported by a valid showing of interest, was filed by the Association seeking certification as the exclusive negotiating representative of a unit consisting of all professional employees employed by the Center. There exists a dispute between the parties regarding the inclusion of certain employment titles of the Center in the proposed negotiating unit. Accordingly, there is a question concerning representation of public employees and the matter is properly before the undersigned for determination.
4. The parties stipulated that the appropriate unit for negotiations is defined as follows:

Included: All Professionals employed by the Somerset County Guidance Center.

Excluded: All other employees, Administrator, Medical Director, Clinical Coordinator, Chief Psychiatric Social Worker, Psychology

Interns, non-professional, clerical, craft and confidential employees, police, managerial executives and supervisors within the meaning of the Act.

The parties also agreed that there was no dispute concerning the inclusion of certain titles in the negotiating unit and therefore stipulated that the following titles would be included in the above-indicated unit: Psychologists; Psychiatrists; Psychiatric Social Workers; Graduate Psychiatric Nurses; Senior Psychiatric Social Worker; Occupational Therapist; Recreational Therapist.

The Hearing Officer found the stipulated unit and the inclusions therein to be appropriate. Based upon an examination of the record, the undersigned concurs with and adopts this finding.

5. The Hearing Officer identified three major issues for consideration in this matter. First, are the employees in the title of "Mental Health Aide" professional employees and thus includable in the above-indicated negotiating unit? Second, do the employees in the title "Part-Time Psychiatrist" share a community of interest with other full-time professionals employed by the Center so as to be includable in the above-indicated negotiating unit? Third, do the professional employees of the Center in the following titles possess supervisory status which makes them excludable from the above-indicated negotiating unit: Branch Office Supervisor; Unit Supervisor; Chief Psychologists; Assistant Chief Psychologist; Coordinator of Consultation and Education; Coordinator of Emergency Services; Partial Hospitalization Coordinator. In conjunction with this third issue, the Hearing Officer also considered claims related to whether there were existing or potential conflicts of interest which would warrant the exclusion of any personnel in the above titles from the unit.

The Hearing Officer recommended that all the titles identified above, with the exception of the Chief Psychologist, be included in the unit. The

Center excepts to all the recommendations which would result in the inclusion of titles in the unit.

The Somerset County Guidance Center is a county-operated mental health care agency engaged in providing a variety of both in-patient and out-patient services at various locations in Somerset County, including a main office, branch offices, and two other locations for partial hospitalization services and emergency hospital services. At the time of the hearing, the Center employed two mental health aides and one part-time psychiatrist. Each of the positions identified in issue #3 above is occupied by one individual.

Mental Health Aides

The two Mental Health Aides are employed in the Center's Partial Hospitalization Program. In reaching his conclusion that the Mental Health Aides were professional employees,^{1/} the Hearing Officer found that the position requires an educational and experiential background in the social sciences, and that the Aide conducts patient intake interviews, makes home visits and performs counseling on an independent regular basis without direct supervision. More particularly, he found that in connection with the initial intake interview, the Aide recommends whether a patient should enter the program and what type of treatment may prove beneficial.

1/ N.J.A.C. 19:10-1.1 defines "Professional Employee" as:

"Professional employee" means any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional personal person to qualify himself to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists.

Additionally, each Aide is assigned a caseload with counseling responsibilities, in a manner similar to that of other professional employees on the PH program staff. The Hearing Officer concluded that the Aides are performing work which is predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgment, and which requires knowledge of an advanced nature in the field of physical, biological or social sciences.

The Public Employer contends that the Hearing Officer made incorrect findings and accorded undue emphasis to several of the factors upon which his findings were based. In particular, the Public Employer contends that home visits were not "counseling" but were of a more routine and informal nature, that the Mental Health Aides conducted group therapy alone only during the period when the Partial Hospitalization Coordinator position had been vacant, that intake interviews are rarely performed by the Aides and are done by social workers, and that the Hearing Officer incorrectly construed the facts in the instant matter relative to the facts of a particular National Labor Relations Board case cited by the Hearing Officer in his report.

The undersigned has carefully reviewed the record and finds as follows. The record reveals that the Aides' performance of intake interviews and home visits involves the collection of information pertinent to treatment of the patient, assimilation of that information, and the subsequent formulation of recommendations concerning the patient's course of treatment. Such recommendations are subject to further scrutiny and acceptance by either the Partial Hospitalization Coordinator or the Medical Director. This review, however, cannot remove the intellectual and judgmental elements from the initial independent performance of these tasks. The record indicates that no re-interviewing of patients is done by the other staff members; thus decisions are made concerning patients whom Aides have interviewed based on information gleaned by the patient's contact with a Mental Health Aide.

While the Aides have not performed intake interviews and group therapy with great frequency, the record clearly indicates that from time to time, circumstances have arisen which called for the Aide's performance of these tasks. The Aides participate in group therapy sessions in collaboration with the Partial Hospitalization Coordinator. While there is contradictory testimony about the nature of their participation in such therapy, the undersigned is persuaded their role is more that of co-therapist than that of junior or assistant therapist. Thus, the Aides have conducted group therapy sessions themselves (in the presence of the Coordinator) and sometimes when the coordinator was absent, have conducted group therapy sessions alone.

Each Partial Hospitalization staff member, including the Aides, has been assigned a half-dozen patients for individual counseling. In this role, each Aide is responsible for setting therapy goals for each of their assigned six patients, conducting counseling sessions, and evaluating each patient's progress in the Partial Hospitalization Program.

The Partial Hospitalization program operates on a team-oriented basis. The Aides are integral members of the Partial Hospitalization staff and participate fully in the team-oriented operation of this program. Various written recommendations and evaluations are made by the staff based upon intake interviews, home visits, individual counseling, group therapy and other staff-patient interactions and are reported and discussed at "staffings" (Partial Hospitalization Staff Meetings). Decisions concerning patient treatment are usually made at these meetings by staff consensus and are predicated upon a staff member's written evaluation and the ensuing discussion.

Thus, while the recommendations of Aides are subject to this further staff scrutiny and to ultimate modification by the Partial Hospitalization Coordinator, the procedure is no different than the review accorded to the recommendations of the acknowledged professionals of the Partial Hospitalization staff.

The record supports the recommendation of the Hearing Officer regarding the professional status of the Mental Health Aides. The undersigned concludes, based upon the foregoing and upon examination of the record in its entirety, that the Mental Health Aides are professional employees within the Act and are therefore included in the unit petitioned for herein.

Part-Time Psychiatrist

The Center asserts that the Hearing Officer incorrectly interpreted the facts of In re State of New Jersey, E.D. No. 67, 1 NJPER 7 (1975) as it compares to the facts in the instant matter. In the above-cited case, the Executive Director found the title of part-time Consulting Physician not includable in a unit of all professional employees of the State of New Jersey. For the reasons set forth below, the undersigned concludes that the facts which support the exclusion of Consulting Physicians from the State professional unit are not analogous to the instant matter.

The Consulting Physicians described in In re State of New Jersey worked for the State on an "as needed" basis, working three hours one week, nine the next, zero the next, etc. Further, the hours during which they worked were not always the same, as their work schedules were subject to constraints imposed by the physicians' practice and the State's fluid needs for services. The Consulting Physicians each had their own private practice which was clearly their pre-eminent interest in terms of both time and money. The Executive Director felt compelled to conclude that the Consulting Physicians should be excluded from the negotiating unit, as he found that their services to the State were ancillary to their private practices and their employment relationship too ephemeral to carry with it the rights and obligations of the Act.

In the instant matter, the Part-Time Psychiatrist performs the same

kind of work as do the full-time psychiatrists. The Center's Part-Time Psychiatrist works 16 hours per week and has done so regularly since he started working for the Center in approximately May, 1975. The total number of hours worked per week, the regularity of hours kept during each week and the continuity of such employment combine to create a regularity of employment which is indicative of a far more substantial employment relationship than was present in In re State of New Jersey.

The record supports the findings of fact and conclusions of law of the Hearing Officer that the Part-Time Psychiatrist shares a community of interest with other Center professionals and displays a regularity of employment sufficient to entitle him to the rights and protections of the Act. He is properly includable in the above-indicated unit for negotiations. Therefore, based upon the foregoing and a careful examination of the record, the undersigned adopts the recommendations of the Hearing Officer that the Part-Time Psychiatrist be included in the unit petitioned for herein.

The remaining issues before the undersigned relate to allegations of supervisory status and/or conflicts of interest.

The Center's table of organization indicates that the lines of communication and responsibility run from its Administrator to the Medical Director, Clinical Coordinator and Chief Psychologist. Under the Chief Psychologist is the Assistant Chief Psychologist and Senior and Staff Psychologists. However, of the last two enumerated titles only the Staff Psychologists report to the Assistant Chief Psychologist. Under the Clinical Coordinator, and each having a direct line to the Clinical Coordinator, are the Coordinator of Consultation and Education, Unit Supervisor, Branch Office Supervisor, Partial Hospitalization

Coordinator, and Emergency Services Coordinator. Under each of these latter five titles are various professional and non-professional staff members.

The Hearing Officer found the Chief Psychologist to be a supervisor within the meaning of the Act. No exception to the above finding was taken and the undersigned adopts that finding substantially for the reasons cited by the Hearing Officer.

With regard to the other six employees -- who the employer contends are supervisors -- the Hearing Officer concluded that none of these employees were supervisors and that no conflict of interest existed which warranted their exclusion from the unit petitioned for herein.

N.J.S.A. 34:13A-6(d) provides that except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes both supervisors and non-supervisors. The Commission has defined a statutory supervisor, consistent with N.J.S.A. 34:13A-5.3, as one having the authority to hire, discharge, discipline or to effectively recommend the same. See In re Cherry Hill Township Department of Public Works, P.E.R.C. No. 30 (1970).

In this context it should be noted that the Commission has consistently held that the bare possession of supervisory authority without more is insufficient to sustain a claim of status as a supervisor within the meaning of the Act. In the absence of some indication in the record that the power claimed possessed is exercised with some regularity by the employees in question, the mere "possession" of the authority is a sterile attribute unable to sustain a claim of supervisory status.

However, although not supervisors within the meaning of the Act certain employees may nonetheless have conflicting loyalties due to their obligations to

their employer and their relationship with fellow employees. Such a conflict might warrant that these employees not be included in a unit with certain other employees. An actual or potential substantial conflict of interest will negate any community of interest that is shared among the employees. See West Orange Board of Education v. Wilton, 57 N.J. 404 (1971); and In re City of Camden, P.E.R.C. No. 52 (1971). In this regard, the Commission has stated in In re City of Elizabeth, P.E.R.C. No. 71, at p. 2 (1971):

Required is a complete examination of the nature of authority over subordinates, the nature of responsibilities to superiors, and the context in which they function. It is more a question of relationships and proximities within a given case than distinctions or comparisons with another case whose fact setting will inevitably be somewhat different.

Thus, the Hearing Officer appropriately identified "conflict of interest" as an issue to be analyzed in his report, and considered the facts in the record relevant to such issue.

Coordinator of Consultation and Education

The Public Employer first excepted to the Hearing Officer's failure to properly consider the analysis set forth in Malcolm X Center for Mental Health and State Council No. 76, AFSCME, 222 NLRB 147, 9 LRRM 1352 (1976), wherein the NLRB found that certain mental health clinicians who served as team leaders were statutory supervisors. The Public Employer notes that in support of its findings in Malcolm X, the Board cited the team leaders' direct responsibility for the daily functioning of their unit, their evaluations of team members which led to salary increases, and the fact that the leaders received additional compensation for performing in that position.

While the Commission sometimes uses private sector experience and adjud-

ications as a guide in the administration of this Act,^{2/} private sector precedents do not bind the Commission. The Commission has found that the Act defines supervisor as one having power to hire, discharge, or discipline or to effectively recommend same. The Commission does not adhere to the broader definition of supervisor utilized by the NLRB.

Thus the Public Employer's contention that the Hearing Officer failed to make proper use of the factors set forth in Malcolm X in determining whether or not the six employees in question were supervisors within the meaning of the Act is not dispositive.^{3/}

In excepting to the Hearing Officer's findings concerning the Coordinator of Consultation and Education, the Public Employer contended that the Hearing Officer failed to consider that the Coordinator is responsible for the overall operation of the Consultation and Education program, that the Coordinator is responsible for evaluating the performances of the personnel functioning in this program, and that the future development of the Center would require that the Coordinator participate in staff hiring and would result in conflicts of interest.

While the Coordinator is responsible for staffing the Consultation and Education program, there are no full-time personnel in the program and the Consultation and Education Coordinator has no authority to assign personnel to Consultation and Education functions. She can only request that they take a

^{2/} The similarity of language and construction of the statutes between the New Jersey Employer-Employee Relations Act and the National Labor Relations Act indicates an intention on the part of the Legislature to use the experience and adjudications of the private sector as a guide in the administration of this Act. Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970).

^{3/} The undersigned notes that while the factors cited by the Public Employer from Malcolm X may not be dispositive in determining status as a supervisor within the meaning of the Act, they may be utilized in an analysis of whether or not a Wilton-type conflict of interest exists.

particular assignment, and these requests have been refused.

Although the most recent job description for this position indicates that the Coordinator is responsible for making recommendations concerning selection, performance and termination of assigned staff members, the testimony of the Consultation and Education Coordinator showed that she had never made such recommendations and had never been informed until recently that her responsibilities encompassed these functions.

Testimony by the Center Administrator suggested that performance evaluations might affect salary considerations concerning the subject staff member. However, the record showed that such evaluations had never occurred. There is no clear indication in the record of what weight would be given to such evaluations or what the effects of such evaluations are likely to be. The record reveals that at least with respect to the Coordinator's past recommendations all were subject to independent investigation by the Clinical Coordinator or Administrator. It further appears quite unlikely that any evaluations done in the Consultation and Education context will independently produce adverse effects, as the average staff member's involvement in the Consultation and Education program constitutes a negligible portion of his overall job function.

The Center's concern that it might in the future expand the Consultation and Education program and thus place the Consultation and Education Coordinator in a position of conflict based upon her projected role in hiring staff for the expanded Consultation and Education program is well understood. However, the string of contingencies on which such a conflict is predicated is too far removed from the present situation to support the exclusion of the Coordinator of Consultation and Education from the petitioned-for unit.

As the Commission stated in In re West Paterson Bd. of Ed. and West Paterson Education Assn., P.E.R.C. No. 77, at p. 15-16 (1973):

"...we attach great weight to the history of the parties relationship and little weight to the possibility that at some future time an actual conflict of interest may develop."

The Commission went on to note:

"future contingencies are an acceptable and, in fact, generally controlling consideration in most determinations concerning supervisors because, in the absence of a history, there is only expectation and probability that the interests of supervisors and those supervised will clash, to the detriment of some right entitled to protection. But where past experience exists, such can obviously be a more accurate gauge of probabilities than mere speculation not benefited by hindsight."

The undersigned finds the conclusions of the Hearing Officer to be supported by the record. Based upon the foregoing and upon consideration of the entire record, the undersigned concludes that the Coordinator of Consultation and Education is not a supervisor within the meaning of the Act and that no conflict of interest exists which precludes her membership in the unit petitioned for herein.

Partial Hospitalization Coordinator

The Hearing Officer concluded from the record that the Partial Hospitalization Coordinator's prime responsibility was one of program supervision. The Center asserts that the facts establish the Coordinator as a supervisor of personnel.

A recently prepared job description for this position indicates that the Coordinator is charged with the responsibility for supervising the Partial Hospitalization staff and for participation in the staff selection, evaluation, and termination processes. However, the testimonial evidence does not support the job description as there is no indication therein of any instance where supervisory authorities were exercised. In fact, the record shows that when

the former Partial Hospitalization Coordinator attempted the exercise of modest administrative authority, her decision was subsequently overruled by a superior. The testimony indicates that the former Partial Hospitalization Coordinator made a decision to grant non-compensatory time off to a Partial Hospitalization staff member only to have her decision revoked by the Administrator.

The bare assertion that an employee possesses supervisory authority, in the absence of any supporting evidence that the employee has exercised such authority, is not sufficient to establish an employee as a supervisor within the meaning of the Act. Where the record contains no indication that the authorities claimed have ever been exercised, the employees in question will not be considered supervisors. In re Cherry Hill Township Department of Public Works, supra.

Further, the record does not support any claim that the Coordinator is the repository of authorities that are indicative of a Wilton-type conflict of interest or have potential for such.

Based upon the foregoing and upon an examination of the entire record, the undersigned agrees with the findings and recommendations of the Hearing Officer. The Center's exceptions are found to be without merit, and the Partial Hospitalization Coordinator shall be included in the unit.

Unit Supervisor

The Center claims that the Unit Supervisor, pursuant to her job description, participates in hiring, functions as a supervisor, and evaluates personnel. It further asserts that its claim of functional supervision is supported in the record, and that the Unit Supervisor's additional compensation above Senior Psychiatric Social Workers supports the conclusion of supervisory status.

The several descriptions of this position which are in evidence contain some substantially inconsistent provisions. The most recent of these de-

scriptions, which was supported in testimony by the agency Administrator, indicates that the Unit Supervisor participates in the selection, evaluation and termination processes concerning the Psychiatric Social Workers assigned to her. However, testimony by the Unit Supervisor showed that she had held her current position for 1 $\frac{1}{2}$ years and during that time did not perform the job as set forth in the most recent description -- particularly, she had never participated in the selection, evaluation, discipline and termination processes nor had she ever been made aware by her supervisors that her participation in these processes was expected.

While the Unit Supervisor acknowledged that she would initially talk to one of her assigned Psychiatric Social Workers to attempt resolution of any work-related problems that might arise, she further indicated that if the situation persisted, she would simply make the Clinical Coordinator aware of their existence and leave it for him to deal with. Moreover, in circumstances where effective participation in discipline matters by the Unit Supervisor had been possible, the record shows that she had in fact been by-passed and the situations had been handled directly by the Clinical Coordinator.

The record also indicates that the Unit Supervisor did not formulate or determine case assignments for Psychiatric Social Workers assigned to her. Rather, she merely passed along the assignments which had been determined by the Clinical Coordinator.

The Unit Supervisor has two Senior Psychiatric Social Workers assigned to her and has responsibilities for supervision of the Student Program. An examination of the record reveals that the nature of the Unit Supervisor's relationship with the Senior Psychiatric Social Workers is one of professional consultation, not supervision. The Senior Psychiatric Social Workers' daily activities are not closely monitored. Although at times they do confer with the Unit

Supervisor, they also confer with other agency professionals when it is deemed necessary in their judgment. The nature of the conferences is consultative -- exchanges of views between professionals on various aspects of a Senior Psychiatric Social Worker's cases, and advisory -- as the Senior Psychiatric Social Workers are not obliged to utilize the advice rendered by the Unit Supervisor.

The record supports the findings of fact and recommendations made by the Hearing Officer regarding the supervisory status and conflict of interest issues raised by the proposed inclusion of the Unit Supervisor in the petitioned-for unit. The Public Employer's exceptions concerning the Unit Supervisor have been found to be without merit. Accordingly, the undersigned finds that the Unit Supervisor is not a supervisor within the meaning of the Act and that no actual or potential conflict of interest would result from inclusion of the Unit Supervisor in the unit of professionals employed by the Center.

Branch Office Supervisor

In its exceptions to the Hearing Officer's recommendation regarding the status of the Branch Office Supervisor, the Center contends that the Branch Office Supervisor is responsible for evaluating Branch Office personnel, that such evaluations are utilized by the Center's administration in determining salary progressions and promotions, and that as a result thereof a Wilton conflict is precipitated.

The job descriptions submitted concerning the instant title were not entirely consistent with each other. The two most recently prepared descriptions, both prepared in January 1976, indicate that the Branch Office Supervisor is responsible for participation in the selection, evaluation and termination processes for assigned staff. However, the earlier job description, which was given

to the current Branch Office Supervisor when she was first assigned to the post in September, 1974, did not mention participation in decisions affecting hire, discipline or termination of staff members. Although three persons have been hired to fill Branch Office positions during her tenure, testimony of the Branch Office Supervisor indicates that she had never taken part in any decision affecting the hire, discipline or discharge of professionals employed by the Center, nor was she ever asked to do so.

The record indicates that the Branch Office Supervisor does not consult with, supervise, and evaluate all Branch Office personnel. The Psychologists and psychiatrists are not answerable in any way to the Branch Office Supervisor. Of the nine people who work in the Branch Offices, only four are assigned to the Branch Office Supervisor.

While it is established in the record that the Branch Office Supervisor has the responsibility for evaluating her assigned staff, she has never in fact evaluated anyone -- primarily because none of the personnel assigned to the Branch Office Supervisor have been with her for an entire year, the amount of time necessary before the Branch Office Supervisor could undertake an evaluation.

Moreover, while performance of an evaluation is the kind of function which could lead to the precipitation of a conflict of interest situation, the assertion that one employee has the responsibility to evaluate another employee, without more, will not establish the kind of conflict envisioned in Wilton. In the instant matter, evaluations by the Branch Office Supervisor could not have been used in the determination of raises and promotions, as the Center contends, as no evaluations had yet been performed by the Branch Office Supervisor.

Even assuming arguendo that the Branch Office Supervisor performs evaluations in the future, there is no indication in the record that the evaluations performed by the Branch Office Supervisor would not be subject to independent investigation by various of her superiors. Moreover, there is no indication in

the record of the relative weight which would be accorded to such evaluations. Thus, the undersigned cannot conclude that such an evaluation would be likely to have some discernible effect on the subject's employment relationship. The mere presence of a responsibility to evaluate is insufficient to create a conflict situation.

In the instant matter the conception held by the Branch Office Supervisor of her evaluation function is that it will be done to benefit the employee, to point out strengths and weaknesses so that emphasis for improvement could be focused most efficiently.

Further, the record indicates contrary to the Public Employer's contention that the Branch Office Supervisor is responsible for overall operation of the Branch Office, that the responsibilities of the Branch Office Supervisor do not encompass all clinical services performed at the branches. The record reveals that the Branch Office Supervisor's function is to see that the cases sent to the Branch Offices are "picked up" by the Branch Office personnel. The Branch Office Supervisor does not consult with all Branch Office staff. There is consultation only with the four assigned staff members. The instant title functions as an expediter -- to help work flow more evenly and efficiently.

In conclusion, the record supports the findings of fact and recommendations of the Hearing Officer. The Public Employer's exceptions have been found to be without merit. Based upon the foregoing and an examination of the entire record, the undersigned concludes that the Branch Office Supervisor is not a supervisor within the meaning of the Act and the inclusion of the Branch Office Supervisor in the petitioned-for unit would not give rise to an actual or potential substantial conflict of interest.

Assistant Chief Psychologist

The Center excepts to the Hearing Officer's conclusion that the Assistant Chief Psychologist is not a supervisor within the meaning of the Act and that inclusion of the Assistant Chief Psychologist in the petitioned-for unit raises no substantial conflict of interest.

While the recently revised job description indicates that the Assistant Chief Psychologist is responsible for the supervision of all psychologists, the Assistant Chief Psychologist testified that in fact he supervises only one Staff Psychologist, one volunteer, and occasionally supervises psychology interns.

The Public Employer contends that the Assistant Chief Psychologist possesses authority to hire, discharge, and discipline, and that he performs the functions of the Chief Psychologist in the latter's absence. However, the testimony shows that the Assistant Chief Psychologist has never participated in decisions regarding hiring or termination of professionals by the Center, despite there having been several psychologists hired during his term as Assistant Chief Psychologist. He was unaware these functions were within his responsibility until he was shown the revised job description. Additionally, there is no indication in the record of any instance wherein the Assistant Chief Psychologist had assumed the duties of the Chief Psychologist in the latter's absence. There is also no clear indicator as to what the nature of the Assistant Chief Psychologist's replacement role would be in such case, i.e. would he be merely a day-to-day caretaker or would he exercise the full range of powers of the Chief Psychologist position. In the absence of some greater indication in the record besides the claim that, "in the absence of the Chief Psychologist, the Assistant Chief Psychologist will be responsible for the functions of the Chief Psychologist," it cannot on that alone be assumed that the Assistant Chief Psychologist

would exercise all the rights and powers of the Chief Psychologist.

The Public Employer also excepts to the Hearing Officer's alleged disregard of a potential conflict of interest, whose existence the Hearing Officer acknowledged, based upon two incidents wherein the Assistant Chief took certain actions in response to unsatisfactory clinical performance of the Staff Psychologist assigned to him.

The first incident occurred in 1971. After the Assistant Chief made his superiors (Chief Psychologist, Medical Director and Administrator) aware of the existence of this situation, they indicated to the Assistant Chief Psychologist that he should formulate an evaluation and pass it along to them so that they could weigh the matter and make their decision about it. When the Assistant Chief Psychologist balked at such an involvement in the matter, he was given unequivocal assurances that the decision at hand was not his, and that his responsibility was only to get a written evaluation to them.

He indicated that he did not subsequently recommend discipline, but rather confined his recommendations to suggestions for altering his relationship with the Staff Psychologist. The record is unclear with regard to precisely what the effects of the written evaluation were.

With respect to the second instance, the Assistant Chief raised the possibility in conversation with the Staff Psychologist that his continued lackluster performance could result in the Center withholding his increment. The incident ended when the Assistant Chief Psychologist spoke with the Staff Psychologist and the latter increased his workload in accordance with that of the other Staff Psychologists employed at the Center.

It is clear from the record that the Assistant Chief Psychologist had no authority to impose discipline directly and that any recommendations which he

made were subject to independent scrutiny by his superiors before a final decision was made thereon.

In both instances the Assistant Chief Psychologist's action was taken at the suggestion of his superiors, the ones who would decide ultimately what disciplinary action would be taken. In each case, the Assistant Chief Psychologist went to the Administrator, Medical Director, and Chief Psychologist. The entire concern of the Assistant Chief Psychologist centers around the clinical, professional relationship which he has with the Staff Psychologist assigned to him. He perceived his role as being one of a more experienced professional advisor to his assigned Staff Psychologist, and in that role sometimes felt "very frustrated" about his inability to correct some clinical shortcomings perceived in his assigned Staff Psychologist.

While requests for time off and vacation went through the Assistant Chief Psychologist, he merely channeled it through to his superiors who made the determination upon the request. And requests for raises were made directly through the Chief Psychologist. This apparently limited administrative authority lends further support to the view that the Assistant Chief Psychologist was perceived more as a clinical resource than as a supervisor.

Based upon the foregoing and upon consideration of the entire record, the undersigned determines that the Assistant Chief Psychologist is not a supervisor within the meaning of the Act and that no conflict of interest exists which precludes his membership in the unit petitioned for herein.

Coordinator of Emergency Services

The Public Employer excepts to the Hearing Officer's finding that the Coordinator of Emergency Services is not a supervisor within the meaning of the Act and that no actual or potential substantial conflict of interest is raised

by his inclusion in the petitioned-for professional unit. The Public Employer's exceptions are centered around the Emergency Services Coordinator's role in the hiring of new employees.

The conversion of the Emergency Services program from a voluntary to a paid staff necessitated hiring to fill the staff positions created by this change. Prior to this time, and consistent with his previous job description, the Emergency Services Coordinator had never participated in the hiring process. With the program conversion, the Coordinator's role vis-a-vis the Emergency Services staff is to continue as before -- he is to act as a clinical consultant to the Emergency Services staff, to devise a work schedule, to arrange for coverage thereof, and to train staff members. However, for the first time the Emergency Services Coordinator has become a participant in the hiring process. Whether his participation in that process is effective is the pivotal question herein.

The record shows that Center's Administrator, Clinical Coordinator and Emergency Services Coordinator participated in the hiring of the new staff. A two-interview process was decided upon. The Emergency Services Coordinator first met with applicants in small groups to explain the nature of the job and the benefits. Thereafter, if the applicants were still interested, they would proceed to the individual interview phase of the hiring process.

The Clinical Coordinator decided to utilize a role-playing interview technique, to be performed by himself and the Emergency Services Coordinator. While the Clinical Coordinator and the Emergency Services Coordinator performed all the interviews together, the Administrator himself sat in on approximately one-third of all the interviews conducted. After each individual interview, both the Clinical Coordinator and the Emergency Services Coordinator did an independent evaluation of the applicant. After all interviews were completed, each of the interviewers then prepared a "priorities list," a ranking based upon an

appraisal of all the interviewees. Subsequently, the two interviewers "verbally compared" their lists, each expressing his opinions about certain applicants. The Emergency Services Coordinator's list was then changed to reflect the opinions which the Clinical Coordinator held about certain applicants. This final modified list then went to the Clinical Coordinator and then to the Administrator for his review.

The Administrator and Clinical Coordinator each told the Emergency Services Coordinator that he would be submitting his recommendations to the Administrator, through the Clinical Coordinator. However, the Emergency Services Coordinator testified that he was never told that his decision would control hiring. He also testified that there was no apparent reason for him to believe that his decision would control the hiring.^{4/}

Second, it is noted that the recommendation method utilized was a ranking system. In effect, this kept the hiring decision "open" until final selections were made by the ultimate hiring authority. The hiring authority did not receive a "trimmed list." The record indicates that the hiring authority received a complete list of all the applicants interviewed, ranked according to merit. Thus, at no step of the hiring process was any applicant dropped from the running, and the hiring authority could have selected applicants from the bottom of the ranking list if so desired.

Additionally, no applicant was considered solely on the basis of his contact with the Emergency Services Coordinator. Each interview was conducted by the Emergency Services Coordinator and Clinical Coordinator.

The record also reveals that the original recommendation submitted by

^{4/} It may be noted that under the volunteer-staff system, when the Emergency Services Coordinator attempted to prevent the Center's utilization of a particular volunteer he believed to be not suited for the role, his decision was overruled by the Administrator.

the Emergency Services Coordinator to the Clinical Coordinator -- the ranking list -- was modified after conferring with the Clinical Coordinator before reaching the Administrator, the final hiring authority.

Finally, while the Administrator claimed that the recommendations of the Emergency Services Coordinator were "accepted" and followed, it appears from the record that (1) the Administrator did not receive the original ranking list which the Emergency Services Coordinator had prepared; and (2) the Emergency Services Coordinator submitted his modified list to the Clinical Coordinator, who in turn submitted it to the Administrator. Parenthetically, it is noted that as the final hiring announcements had not been made by the time of the hearing, it is not certain from the record that the modified list was followed.

Thus, while the Emergency Services Coordinator participated in the hiring process, that participation was less than effective. Considering the evidence in its entirety, the undersigned concludes that there is an insufficient nexus between the Coordinator's participation in the hiring process and the actual hiring decision to warrant a determination that the Coordinator effectively hires personnel. Therefore, the undersigned finds that the Emergency Services Coordinator is not a supervisor within the meaning of the Act, and further finds upon careful scrutiny, that the record does not evidence an actual or potential substantial conflict of interest arising as a result of the inclusion of the Emergency Services Coordinator in the professional unit.

6. Based upon the above findings, the undersigned shall direct that a secret ballot election be conducted among the employees in the following unit:

Included: All professionals employed by Somerset County Guidance Center, including but not limited to, full and part-time Psychiatrists, Psychologists, Assistant Chief Psychologist, Psychiatric Social Workers, Graduate

Psychiatric Nurses, Senior Psychiatric Social Workers, Occupational Therapist, Recreational Therapist, Mental Health Aides, Coordinator of Consultation and Education, Partial Hospitalization Coordinator, Unit Supervisor, Branch Office Supervisor, Coordinator of Emergency Services.

Excluded: All other employees, Administrator, Medical Director, Clinical Coordinator, Chief Psychiatric Social Worker, Psychology Interns, Chief Psychologist, non-professional, clerical, craft and confidential employees, police, managerial executives and supervisors within the meaning of the Employer-Employee Relations Act.

7. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The election shall be conducted no later than thirty (30) days from the date set forth below.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

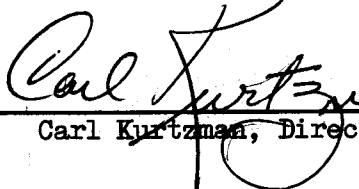
Pursuant to Rule Section 19:11-2.7 the Public Employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all parties to the

election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

Those eligible to vote shall vote on whether or not they desire to be represented for the purposes of collective negotiations by the Professional Employees Association of Somerset County Guidance Center; affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU.

The majority representative shall be determined by a majority of the valid ballots cast. The election directed herein shall be conducted in accordance with the provisions of the Commission's Rules and Regulations and Statement of Procedure.

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS



Carl Kurtzman, Director

DATED: Trenton, New Jersey
December 6, 1976

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY GUIDANCE CENTER,

Public Employer,

-and-

Docket No. RO-76-78

PROFESSIONAL EMPLOYEES ASSOCIATION OF
SOMERSET COUNTY GUIDANCE CENTER; affiliated
with DISTRICT 1199, NATIONAL UNION OF
HOSPITAL AND HEALTH CARE EMPLOYEES, RWDSU,
AFL-CIO,

Petitioner.

Appearances:

For the Petitioner

Messrs. Greenberg & Margolis
By: Philip Freedman, Esq.

For the Public Employer

Messrs. Lanigan & O'Connell
By: Daniel F. O'Connell, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed on November 14, 1975 with the Public Employment Relations Commission by the Professional Employees Association of Somerset County Guidance Center; affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO (hereinafter "Petitioner") ^{1/} which sought to be certified as the exclusive representative for purposes of collective negotiations for all professional employees employed by the Somerset County Guidance Center, (hereinafter "Public Employer" or "Center"). ^{2/}

^{1/} At the time the Petition was filed, Petitioner was known as "Professional Employees Association of Somerset County Guidance Center." Petitioner's Counsel moved to amend the Petition during the hearing to reflect the Petitioner's affiliation with District 1199. Said motion was granted by the Hearing Officer. Tr. 3/11/76 at 2, 54, 55.

^{2/} The name of the Public Employer was apparently changed after the close of the hearing to Somerset County Mental Health Center (Public Employer's brief at i.) Since all documents reflect the Public Employer's former name, and as no motion to amend has been made this report refers to the Public Employer as Somerset County Guidance Center.

The Petition was perfected on November 25, 1975 with the filing of a showing of interest by the Petitioner in accordance with N.J.A.C. 19:11-1.2 and N.J.A.C. 19:10-1.1.

Pursuant to a Notice of Hearing, a hearing was held in Somerville, New Jersey, before the undersigned Hearing Officer on the following dates: February 18, 1976; March 4, 11 and 15, 1976.^{3/}

During the hearing all parties were given an opportunity to examine witnesses, to present evidence and to argue orally. Both parties requested an opportunity to file briefs after the close of the hearing; and, following the grant by the Executive Director of an extension of time for filing briefs until April 16, 1976, briefs were received from the Petitioner and Public Employer on April 20, 1976 and April 21, 1976 respectively.

Upon the entire record, the exhibits admitted into evidence and the briefs in the instant proceeding the Hearing Officer finds:

1. The Somerset County Guidance Center, an agency of the Board of Chosen Freeholders, County of Somerset, State of New Jersey, is the employer of the employees involved herein, is a Public Employer within the meaning of the New Jersey ~~Employer-Employee~~ Relations Act (hereinafter "the Act") and is subject to its provisions.

2. The Professional Employees Association of Somerset County Guidance Center, affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO, is an employee organization within the meaning of the Act and is subject to its provisions.

^{3/} The Hearing was scheduled to be held in Trenton, New Jersey, but was moved to Somerville upon the mutual request of the parties and the consent of the Hearing Officer.

3. The appropriate unit for the purposes of collective negotiations, as agreed to by the parties ^{4/} is defined as follows:

Included: All Professionals employed by the Somerset County Guidance Center.

Excluded: All other employees, Administrator, Medical Director, Clinical Coordinator, Chief Psychiatric Social Worker, Psychology Interns, non-professional, clerical, craft and confidential employees, police, managerial executives and supervisors within the meaning of the Act.

4. The parties are not in agreement as to whether several categories of employees of the Public Employer are properly includable in the above-defined unit for collective negotiations.

Therefore, as the parties do not consent to a secret ballot election in an appropriate unit and the question is unresolved as to the disposition of the instant petition, a question concerning the representation of public employees exists and the matter is properly before the Commission.

BACKGROUND

The Public Employer is a mental health care agency which provides a variety of primarily out-patient services at various locations in Somerset County including Somerville (main office), Franklin Township and Bernardsville (branch offices); Somerset County College, North Branch (partial hospitalization) and Somerset Hospital, Somerville (Emergency Services). A third branch office was, at the time of the hearing, scheduled to open in North Plainfield in April 1976.

^{4/} Tr. 2/18/76 at 8. It should be noted that the Commission does not consider itself bound by parties' stipulations regarding unit definition. However, the Hearing Officer concurs that the above-defined unit is appropriate, especially in light of N.J.S.A. 34:13A-6(d) which provides:

"...except where dictated by established practice, prior agreement or special circumstances, no unit shall be appropriate which includes... both professional and non-professional employees unless a majority of such professional employees vote for inclusion in such unit..."

The Board of Chosen Freeholders of Somerset County acts as the governing board of the Center. The Center's Administrator functions as the manager of the Center. Lines of communication and responsibility run from the Administrator to the Medical Director, Clinical Coordinator and Chief Psychologist, according to the Center's Table of Organization.^{5/} Below these titles on the chart are the Assistant Chief Psychologist (reporting to the Chief Psychologist); Branch Office Supervisor, Unit Supervisor, Partial Hospitalization Coordinator, Coordinator of Emergency Services and Coordinator of Consultation and Education (all reporting to the Clinical Coordinator).

MAIN ISSUES

The parties stipulated that the scope of the hearing was limited to a consideration of the following issues:

"1. Whether employees in the following title are professional employees and are thus includable in the stipulated appropriate unit for collective negotiations: Mental Health Aids;

2. Whether employees in the title part-time Psychiatrist share a community of interest with other full-time professionals employed by the Public Employer and are thus includable in the stipulated appropriate unit for collective negotiations;

3. Whether the following professional employees of the Public Employer are supervisory within the meaning of the Employer-Employee Relations Act, and are, therefore, excludable from the stipulated appropriate unit for collective negotiations: Branch Office Supervisor; Unit Supervisor; Chief Psychologist; Assistant Chief Psychologist; Coordinator of Consultation and Education; Coordinator of Emergency Services; Coordinator of Partial Hospitalizations."^{6/}

^{5/} Exhibit E-17.

^{6/} Tr. 2/18/76 at 9 and 10. The title referred to in issue #1 above was incorrectly spelled. All references hereinafter will be to Mental Health Aides.

The parties also stipulated that no dispute existed as to the inclusion of the following titles in the previously defined unit: Psychologists; Psychiatrists; Psychiatric Social Workers; Graduate Psychiatric Nurses; Senior Psychiatric Social Worker; Occupational Therapist; Recreational Therapist.^{7/}

The undersigned hearing officer concurs that the seven titles mentioned above, are non-supervisory professional employees of the Public Employer and recommends their inclusion in the petitioned-for unit for collective negotiations.

The undersigned will now deal with the remaining issues in dispute in the order they appear in the record.

MENTAL HEALTH AIDES - POSITIONS OF THE PARTIES

The Center's Mental Health Aides (numbering 2 at the time of the hearing) work in the Partial Hospitalization (PH) program at Somerset County College in North Branch. Other employees assigned to the PH program are the PH Coordinator, Occupational Therapist and Psychiatric Nurse.

The Public Employer contends that the Aides are paraprofessional personnel, performing mostly clerical duties and are possessed of a lesser degree of education and training than professionals in the PH program.

The Petitioner urges that the Aides are professionals, based upon their education and training and their duties and responsibilities which the Petitioner contends, requires the exercise of independent judgment and discretion.

In the alternative, the Petitioner contends that even if the Aides are not determined to be professionals, they may properly be included in the unit for collective negotiations by affording the professionals a vote as to whether they wish to be included in a bargaining unit with the Aides (the so-called "professional option").

^{7/} Tr. 2/18/76 at 11.

MENTAL HEALTH AIDES - DISCUSSION

N.J.A.C. 19:10-1.1 defines "Professional Employee" to mean:

"...any employee whose work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and requires knowledge of an advanced nature in the field of physical, biological, or social sciences, or in the field of learning. The Commission will also consider whether the work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time. The term shall also include any employee who has acquired knowledge of an advanced nature in one of the fields described above, and who is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined herein. The term shall include, but not be limited to, attorneys, physicians, nurses, engineers, architects, teachers, and the various types of physical, chemical and biological scientists."

Testimony on the Mental Health Aide title was provided by the Administrator, Joseph Del Sordi and Richard Jaglowski, one of the Aides. Exhibit E-1 is a job description for the position.

The Aide position requires a Bachelors degree in Psychology or Social Work, a year of experience in the field, or the equivalent combination of education and experience.

Administrator Del Sordi testified that the knowledge required to perform the functions required of a Mental Health Aide came primarily from in-service training rather than the Aides educational background, but did say that in order to absorb the in-service training, the required background was essential.^{8/}

While the Mental Health Aide normally performs occupational and group therapy functions in conjunction with other personnel in the PH program, the job involves frequent one-on-one contact with the program's patients.^{9/}

^{8/} Tr. 2/18/76 at 40.

^{9/} Mr. Jaglowski testified that he had conducted group therapy by himself during a changeover in the position of PH Coordinator, Tr. 2/18/76 at 80.

In this regard, the Aide is called upon to conduct intake interviews of potential patients, make visits to patients' homes, is to assist patients in "readjusting to the norms of everyday living," as well as establishing a working relationship between clients (patients), the community and other agencies.

In relation to this last function, Administrator Del Sordi testified that he viewed the Aide as "...ombudsman, namely a patient advocate to the patient in the sense of having a good working relationship with the specific clients that are in the program and being able to assist them in any way possible that they may need." 10/

In connection with the intake interviews, which in part, involve assisting the patient with the completion of forms, the Aide takes a case history and submits a recommendation (made in writing and discussed at regular staff meetings) as to whether the patient should enter the program and what type of treatment may prove beneficial. 11/ The Aides' recommendations require acceptance or acquiescence by the PH Coordinator and/or Medical Director before they are implemented, but the interviews and recommendations are conducted and formulated independently by the Aide. Similarly, the Aide makes a recommendation following a home visit, based on his or her evaluation of the patient's progress and readjustment to life in the community. 12/

Mr. Jaglowski also testified that recently everyone in the PH program including the Aides, had been assigned a caseload of five or six patients with whom the staff member would hold individual counseling sessions. 13/

Although the Aides' recommendations may be countermanded, the same appears to be true for other personnel in the PH program, such as the therapist and nurse. 14/ Nonetheless the Aide conducts interviews, visits and counseling

10/ Tr. 2/18/76 at 42.

11/ Tr. 2/18/76 at 51-52.

12/ Tr. 2/18/76 at 59.

13/ Tr. 2/18/76 at 55.

14/ Tr. 2/18/76 at 78.

on an independent regular basis without direct supervision. Review comes after the evaluation is formulated and the recommendation is submitted.

The Commission's definition of "Professional Employee" closely tracks the language of Section 2(12) of the National Labor Relations Act. The National Labor Relations Board has recently passed upon the question of whether certain "Mental Health Clinicians fit within the NLRA's definition of "Professional Employees." ^{15/}

The parties to Malcolm X Center for Mental Health, 222 NLRB No. 147, 91 LRRM 1352 (February 19, 1976) had stipulated that certain employees of the Center, designated "Mental Health Clinicians" were professional employees within the meaning of the N.L.R.A.

"This category includes psychiatrists, psychologists, social workers, mental health nurses, an activity therapist, and certain employees designated as mental health workers. In this last category are included RN's, LPN's, employees with bachelor's degrees and associate of arts degrees, and certain employees with-out degrees." 91 LRRM at 1354 (emphasis added)

The Board, however, went behind the parties' stipulation and determined for itself that all the "clinicians" did fit the definition of "professional."

In reviewing the duties of the clinicians in Malcolm X, the Board cited functions performed by clinicians which are also performed by the Aides in the instant case, among them intake interviews and the evaluation and recommendations flowing from them. The Board found:

"...[G]enerally, all the Employer's clinicians are engaged in primary and secondary clinical services, and they all provide psychotherapy for the Employer's clients.

In sum, the mental health clinicians' work, dealing as it does with the various mental problems of the clients, involves the consistent exercise of discretion and judgment in the treatment of those clients, and is a clearly intellectual endeavor. We thus agree

^{15/} The similarity of language and construction of the statutes between the New Jersey Employer-Employee Relations Act and the National Labor Relations Act indicates an intention on the part of the Legislature to use the experience and adjudications of the private sector as a guide in the administration of this Act. Iullo v. International Association of Fire Fighters, 55 N.J. 409 (1970).

with the parties' stipulation that those employees classified as the Employer's mental health clinicians are professional employees." 91 LRRM at 1354

The undersigned similarly concludes that Mental Health Aides are professional employees, performing work which is predominantly intellectual and varied in character, involving the consistent exercise of discretion and judgement and which requires knowledge of an advanced nature in the field of physical, biological or social sciences.

PART-TIME PSYCHIATRIST - POSITIONS OF THE PARTIES

The Center employs one part-time psychiatrist, assigned to the Franklin Township branch office, who regularly works 16 hours per week providing direct services to patients. Two full-time psychiatrists, assigned to the main office in Somerville are also employed by the Center. The parties have agreed that the full-time psychiatrists are properly includable in the petitioned-for unit for collective negotiations.

The Public Employer argues that the part-time psychiatrist does not share a sufficient "community of interest" with the full-time psychiatrists and other non-supervisory professionals employed at the Center, to warrant the inclusion of the title in the unit. The Petitioner argues to the contrary. Testimony on the title was provided by Administrator Del Sordi, and to a limited extent by Dr. Robert Weiss, the Center's Chief Psychiatrist.

PART-TIME PSYCHIATRIST - DISCUSSION

In support of its argument, the Public Employer relies on an evaluation and comparison of the facts in the instant case to those present in State of New Jersey, E.D. No. 67, 1 NJPER 2 (1975), where the Executive Director found that part-time, consulting physicians, did not share a community of interest with other professionals (including full-time staff physicians) employed by the State.

In State of New Jersey, supra., the Executive Director found that consulting physicians performed different work than staff physicians; were compensated on an hourly rate, as opposed to yearly salary; did not receive the same fringe benefits; served on an "as needed" basis, with flexible hours designed to accomodate the demands of their private practices; did not perform "on-call" duties; and were subject to only minimal administrative control.

In making his determination, the Executive Director compared the facts in State of New Jersey, supra., with those of Albert Einstein Medical Center v. Pennsylvania Labor Relations Board 6 PPER 8, 88 LRRM 2280, 330 A. 2d. 264 (1975) where the Pennsylvania Commonwealth Court included part-time pharmacists, in a unit with full-time pharmacists where both categories of professionals were paid on the same basis, shared many common fringe benefits and did similar work.

As in State of New Jersey, supra., the part-time psychiatrist in the instant case, is paid an hourly rate as opposed to a yearly salary, does not receive the same fringe benefits as the full-time psychiatrist, is not "on-call" and has an outside practice.^{16/}

However, as in Einstein, supra., both the part-time and full-time psychiatrists perform the same work i.e. providing psychiatric treatment to the Center's patients. All of the Center's psychiatrists are under the supervision of the Medical Director.^{17/} The part-time psychiatrists in the instant case works regularly for 16 hours per week, rather than on an "as needed" basis as in State of New Jersey, supra.

In State of New Jersey, supra., the Executive Director did not fully explore the question as to whether the consulting physicians were Public Employees

^{16/} Tr. 2/18/76 at 95-97, 99, 101.

^{17/} Tr. 2/18/76 at 97. The part-time psychiatrists receive his cases from the Branch Office Supervisor, while the full-time psychiatrist take assignments from the Clinical Coordinator. However, the undersigned views this difference solely as a function of the different work sites for the part-time and full-time psychiatrists.

within the meaning of the Act, but rather found there was nothing in the record indicating they were not Public Employees, 1 NJPER at 7. A factor in the Executive Director's finding of no community of interest in State of New Jersey, supra., was also that the consulting physicians "...services to the State are ancillary to their private practices which are their primary means of livelihood. In sum, their employment relationship is too ephemeral to carry with it the rights and obligations of the Act." ^{18/}

However, in a subsequent decision, the Executive Director determined that part-time employees, who exhibited a sufficient "regularity of employment" with a public employer, were properly included in a bargaining unit with full-time employees, even where the part-time employees performed similar services for other public or private employers. ^{19/}

Because the part-time psychiatrist in the instant case performs the same work, under the same medical supervision as his full-time colleagues, and exhibits a sufficient "regularity of employment" to be considered a "Public Employee" within the meaning of the Act, ^{20/} the undersigned views the facts of the instant case to be distinguishable from those in State of New Jersey, supra., and thus finds the part-time psychiatrist to share a community of interest with other full-time professionals employed by the Public Employer.

It should be noted however, that the existence (or lack of existence) of a community of interest among the part-time psychiatrist and other professionals

^{18/} 1 NJPER at 8.

^{19/} Clearvies Regional District Board of Education, E.D. No. 76-24, 2 NJPER 63 (1976).

^{20/} N.J.S.A. 34:13A-3(d) defined employee to:

"...include public employee, i.e. any person holding a position by appointment or contract, or employment in the service of a public employer, except elected officials, heads and deputy heads of departments and agencies, and members of boards and commissions, provided that in any school district this shall exclude only the superintendent of schools or other chief administrator of the district."

is not the sole determinant of questions concerning bargaining unit definition and composition.

In deciding that nursing and education professionals, employed by the State of New Jersey should be part of a state-wide professional bargaining unit, rather than separate professional units, our Supreme Court determined that exclusive reliance on the concept of "community of interest" in public employment unit determinations was inappropriate.^{21/}

The Court determined that the Commission had the obligation of determining in each instance which unit of employees is appropriate for collective negotiations while giving "due regard for" community of interest.^{22/}

The undersigned finds that the part-time psychiatrist position exhibits a sufficient regularity of employment to be considered a Public Employee within the meaning of the Act entitled to representation, shares a community of interest with other professionals employed by the Public Employer and therefore ought to be included in the petitioned-for unit for collective negotiations.

SUPERVISORY TITLES - FRAMEWORK FOR ANALYSIS

The remaining issues in dispute involve the question as to whether seven employees of the Public Employer are supervisors within the meaning of the Act, and therefore ought to be excluded from the petitioned-for unit for collective negotiations.

N.J.S.A. 34:13A-6(d) provides, in relevant part, that "...except where dictated by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and nonsupervisors..."

N.J.S.A. 34:13A-5.3 clarifies what is meant by the term "supervisor", by mandating that no supervisor, "...having the power to hire, discharge, discipline or effectively recommend the same,..." shall, except where established practice, prior agreement or special circumstances dictates the contrary, be admitted to

^{21/} In the Matter of State of New Jersey and Professional Association of N.J. Department of Education 64 N.J. 231 (1974) (State Professional Case).

^{22/} 64 N.J. at 257.

membership in an employee organization having non-supervisors as members.^{23/}
(emphasis added)

In determining whether or not a particular employee is a supervisor, the Commission is guided by the approach to the issue set forth by our Supreme Court in Board of Education of West Orange, v. Wilton, 57 N.J. 404 (1971):

"If performance of the obligations or powers delegated by the employer to a supervisory employee whose membership in the unit is sought creates an actual or potential substantial conflict between the interests of a particular supervisor and the other included employees, the community of interest required for inclusion of such supervisor is not present." 57 N.J. at 425. (emphasis added)

In view of the statutory definition of supervisory, and the Supreme Court's analysis in Wilton, supra., the undersigned believes that in determining whether or not the employees involved herein are supervisors, the following two-tiered analysis should be utilized:

- (1) Does the employee have the direct or effective power to hire, discharge or discipline?
- (2) Do the employee's duties create an actual or potential substantial conflict of interest between the employee and the other members of the bargaining unit?

If (1) above is answered in the affirmative, the analysis need go no further; the employee is a supervisor. If the answer to (1) is negative, then the employee is a supervisor only if a substantial conflict of interest is found when applying (2).

COORDINATOR OF CONSULTATION AND EDUCATION

The Coordinator of Consultation and Education (C and E) is in charge of the Center's community education program. As described by Administrator Del Sordi, the purpose of the C and E program is:

"...to provide community education, in-service education to various

^{23/} As there is no existing bargaining relationship between the parties, and because the Center existed as a private, rather than public agency prior to the effective date of L. 1968, c. 303, the exceptions relating to "established practice" and "prior agreement" are inapplicable here. Also, no party has urged, nor does the undersigned find that "special circumstances" exist in relation to the supervisory issues.

health and social service and welfare agencies and interested community agencies within the county relevant to the area of mental health, and also provide program consultation to the staff of various agencies that request our assistance as a mental health agency."24/

There are no full-time staff assigned solely to the C and E program. Even the C and E Coordinator spends up to 30 percent of her time as Psychiatric Social Worker, handling a caseload. 25/

The program, in essence, operates as a speakers bureau. The C and E Coordinator, in response to a request by a group or agency, will contact a staff member (presumably one with expertise on the topic involved) and ask the employee to give the speech or conduct the training session.

The C and E Coordinator, Joan Weigand, testified that if the staff member asked to fill the request could not, or did not wish to attend, she would ask another staff member, fill the request herself, or inform the requesting party that no one was available. 26/

Two job descriptions of the position of C and E Coordinator were introduced into evidence. P-1 was a description prepared by Administrator Del Sordi during the period after he assumed his duties at the Center in October, 1975 and prior to January 15, 1976. Another description, E-2 was prepared subsequent to January 15, 1976 and prior to February 2, 1976. Ms. Weigand testified she had been running the C and E program since November 1974, without being informed of or aware of any job descriptions until P-1 and E-2 were formulated.

The change made by E-2 reflects Ms. Weigand's practice of requesting rather than assigning staff members to fill C and E requests. 27/

Both descriptions indicate that the C and E Coordinator is responsible for making recommendations to the Clinical Coordinator concerning selection, performance and termination of "assigned Mental Health staffing members." (E-2)

24/ Tr. 3/14/76 at 5.
25/ Tr. 3/4/75 at 26.
26/ Tr. 3/4/76 at 30.
27/ Tr. 3/4/76 at 34.

and "assigned Psychiatric Social Workers." (P-1) Ms. Weigand testified that she has never made any recommendations in this regard nor was aware, until the job descriptions were prepared, that she was expected to make recommendations.^{28/} Even assuming that the C and E Coordinator is now responsible for making recommendations concerning the selection, performance and termination of staff members participating in the C and E program, two reasons appear which dictate a finding that the C and E Coordinator does not have the direct or effective power to hire discharge or discipline.

First, Administrator Del Sordi's testimony indicated that the C and E Coordinator's recommendations would be subject to independent investigation by the Administrator and the Clinical Coordinator.^{29/}

Second, any evaluations or recommendations made of staff members by the C and E Coordinator are made relative to C and E functions, which involve usually only one or two hours of the employee's work week and are not in relation to the performance of clinical duties.^{30/}

The undersigned finds it unlikely that an unsatisfactory performance by an employee with regard to a C and E function would result in termination or discipline by the Center, if the person's clinical duties were otherwise acceptable.

The evidence relating to Ms. Weigand's relationship to the other staff since November, 1974 when she assumed the C and E duties reveals no actual or potential "conflict of interest" with regard to the second standard for review. This conclusion is buttressed by the fact that only a small fraction of each staff member's time is devoted to C and E because the C and E Coordinator has authority to request, rather than assign C and E duties.

^{27/} Tr. 3/4/76 at 34.

^{28/} Tr. 3/4/76 at 30, 32.

^{29/} Tr. 3/4/76 at 22-24.

^{30/} Tr. 3/4/76 at 35-36.

Accordingly, the undersigned finds the position of Coordinator of Consultation and Education includable in the unit as a non-supervisory professional title.

UNIT SUPERVISOR

The Unit Supervisor, like the Coordinator of Consultation and Education reports to the Clinical Coordinator in the Center's Administrative hierarchy.

The Unit Supervisor holds a Masters degree in Social Work, is assigned a clinical caseload, oversees a training program for students seeking masters degrees and is assigned psychiatric social workers with whom she consults and assigns work.

The Unit Supervisor's alleged supervisory relationship with the psychiatric social workers assigned to her is the issue at hand. The undersigned views her relationship as a supervisor to students in the training program to be irrelevant here, as the students are not employees of the Center.

Four job descriptions for the position were introduced into evidence. Two of these, E-6 and E-7 are of recent vintage, prepared respectively between January 15, 1976 and February 2, 1976 and a short while before January 15, 1976 by the Administrator. The other two descriptions, E-8 and P-3 were apparently on file when the Administrator began his job in October, 1975. E-8 and P-3 are similar in format but the contents of each bear significant differences. However, it was apparent from the testimony of the Unit Supervisor, Sybil Reid her past work in the position (which she has held since late 1974) and her current perception of her duties differed in various respects from each of the four descriptions. Accordingly, the undersigned gives little weight to all four descriptions as being indicative of the duties actually performed by the Unit Supervisor, and relies instead on the testimony of Ms. Reid and Administrator Del Sordi.^{31/}

^{31/} The testimony of both persons, however, clarified apparent inaccuracies or changes in each of the four descriptions.

One of the duties contained in E-6 (and not reflected in either P-3 or E-8) is that the Unit Supervisor is responsible for making recommendations concerning the selection, performance evaluation and termination of Psychiatric Social Workers assigned to her, to the Administrator and Clinical Coordinator. Ms. Reid testified that she has never participated in any way in the selection (hiring) nor termination of any of the Psychiatric Social Workers employed by the Center.^{32/} Her testimony on this point was uncontroverted. Ms. Reid further testified that she has not participated in disciplining any psychiatric social workers assigned to her. On two occasions when a psychiatric social worker, assigned to Ms. Reid, was not performing in a manner deemed appropriate by the Clinical Coordinator, the Clinical Coordinator bypassed Ms. Reid and took the matter up directly with the staff member involved.^{33/} Ms. Reid testified that if she observed unsatisfactory performance on the part of one of the staff assigned to her she would relay the facts and circumstances to the Clinical Coordinator and await his decision on how to proceed.^{34/}

It is undisputed that Ms. Reid does not have the direct power to hire, discharge or discipline and on these facts the undersigned concludes that any recommendations she may make in these areas either are, or would be subject to independent investigation; most likely by the Clinical Coordinator. Therefore, the Unit Supervisor does not have the effective power to hire, discharge or discipline.

With regard to "conflict of interest" factors, Ms. Reid testified that she relays, (rather than formulates) work assignments from the Clinical

^{32/} Tr. 3/4/76 at 116.

^{33/} Tr. 3/4/76 at 120.

^{34/} Tr. 3/4/76 at 122-123.

Coordinator to her psychiatric social workers and provides "clinical supervision" which she described as follows:

"When she (a psychiatric social worker) meets with me, she brings to my attention issues which are of concern to her, and I offer her the benefit of my suggestions and opinions and advice, which she is free to accept or discard, based on her clinical judgment." 35/

The psychiatric social workers assigned to the Unit Supervisor, in the main, perform their Clinical functions as professionals independently of the Unit Supervisor. The record shows that in the two instances during Ms. Reid's tenure, when corrective action was taken regarding her staff, the correction came from a level higher than hers on the administrative hierarchy. Nothing in the record indicates to the undersigned that the relationship between the Clinical Coordinator, Unit Supervisor and Psychiatric Social Workers assigned to her unit, in instances where corrective action may be needed, will change in the future.

The position of the Unit Supervisor in the instant case is distinguishable from the of "team leaders", found, in Malcolm X Center, supra., to be supervisors within the meaning of the NLRA.

There, the NLRB's finding was based upon the team leaders' possession of the following supervisory indicia: (1) significant input into hiring of team members; (2) they were not found to be mere conduits of information to and from management; (3) responsibility for team's daily activities; (4) processed grievances and granted requests for time off; (5) made evaluations leading to raises and (6) received additional compensation for their work as team leaders. 91 LRRM at 1355

The undersigned finds nothing in the record to indicate that the "unit" which Ms. Reid allegedly supervises at the Center, functions with the

same degree of autonomy as was present in the "teams" described in Malcolm X Center, supra. Nor does the position of Unit Supervisor possess the authority contained in reasons (1), (2), (4) and (5), listed above.

On these facts, the undersigned concludes that no actual or potential substantial conflict of interest exists among the Unit Supervisor, the Psychiatric Social Workers assigned to the position nor any other professionals employed by the Center. Thus the undersigned finds the position of Unit Supervisor to be a non-supervisory, professional title.

COORDINATOR OF EMERGENCY SERVICES

The Coordinator of Emergency Services oversees the Center's emergency psychiatric service program which is based at the Center's main office during normal working hours and at all other times at Somerset Hospital.

The program is "...a 24-hour, 7-day a week program, the primary purpose of which is to provide walk-in via a Guideline hotline telephone service crisis intervention, face-to-face contact, in terms of giving specific clinical assistance and counseling to people that are in need of care and treatment." 36/

The Coordinator of Emergency Services reports in the administrative hierarchy to the Clinical Coordinator.

At the time of the hearing, the Center was completing a hiring procedure for two full-time and 17 part-time employees who would take over functions currently performed by a list of volunteers and provide face-to-face counseling and other clinical services to emergency service clients. Under the volunteer set-up, services were deemed indirect because the volunteers had to contact an on-call professional or one of the Center's psychiatrists before the patient could receive counseling from a mental health professional. The new service will put patients in direct contact with a mental health professional without delay.

The Coordinator of Emergency Services will now coordinate the scheduling of the new employees and will continue to provide clinical services himself. Much of the testimony provided by Administrator Del Sordi and the Coordinator, Joseph Vaccaro, concerned the latter's participation in the interviewing and selection process.

"Role-playing" type interviews were conducted by Mr. Vaccaro and the Clinical Coordinator with the frequent presence of Administrator Del Sordi.

Mr. Vaccaro was instructed to prepare a priority ranking following the selection process, which he did, and then revised after meeting with the Clinical Coordinator who had prepared his own priority ranking of the applicants.

Testimony as to whether Mr. Vaccaro's priority ranking would control the decision to hire conflicted in the record. Administrator Del Sordi made it clear that Mr. Vaccaro's recommendations would be considered, but did not clearly state to Mr. Vaccaro that his priority ranking would control the process.^{37/} Mr. Vaccaro testified that his final priority ranking was arrived at after discussions with the Clinical Coordinator and that while it was his impression his recommendations would be considered, he believed the Administrator would have the final say.^{38/}

Testimony was also presented relative to Mr. Vaccaro's recommendation that one of the participants in the program be taken off the list of available volunteers. The recommendation proceeded through the Clinical Coordinator and Medical Director (who concurred with Mr. Vaccaro), but was ultimately overruled by the Administrator.^{39/}

^{37/} Tr. 3/4/76 at 74.

^{38/} Tr. 3/4/76 at 93-93. When testimony was presented, it was not known which individuals had been hired for the program.

^{39/} Tr. 3/4/76 at 85-86, 94.

Two job descriptions were also introduced into evidence; E-5, which was an existing description in the personnel file, and E-4, a description prepared by the Administrator which upgraded Mr. Vaccaro's title, reflected the expected change to a staff of employees from volunteers and added the following: "participates in the selection, performance evaluations and termination process of staff members, making the necessary recommendations to the Clinical Coordinator and Guidance Center Administrator."

Upon the evidence presented, the undersigned concludes that the Coordinator of Emergency Services does not have the direct or effective power to hire, discharge or discipline. The record establishes that Mr. Vaccaro's recommendations in this area are subject to independent review and investigation by his superiors.

Turning to conflict of interest considerations, the record shows no conflict between Mr. Vaccaro and the psychiatrists who participate in the emergency service program. The psychiatrists inform Mr. Vaccaro of their availability and he adjusts his schedule accordingly.^{40/} No conflict of interest as contemplated by Wilton, supra., existed regarding Mr. Vaccaro's relationship with the volunteers, since as non-employees they would not be included in the unit.

However, as of this writing, it is expected that full and part-time employees will have taken the place of the volunteers. While the status of these new employees was not explored at the hearing, Administrator Del Sordi did refer to them in testimony as "professionals."^{41/} If the individuals are professionals, eligible for inclusion in the unit, the Coordinator of Emergency Services then may be a supervisor in relation to these employees if an actual or potential substantial conflict of interest exists between them. As there is no record of experience on which to base a conflict of interest determination, the

^{40/} Tr. 3/4/76 at 96.

^{41/} Tr. 3/4/76 at 80.

undersigned finds that the Coordinator of Emergency Services may vote in an election for choice of employee representative among the professional employees, but that his ballot may be challenged by any party if it is believed that including the Coordinator of Emergency Services in a unit with the newly hired staff for the program would create an actual or potential substantial conflict of interest between them.^{42/}

PARTIAL HOSPITALIZATION COORDINATOR

The Center's Partial Hospitalization Coordinator oversees the Partial Hospitalization (PH) program, located at Somerset County College, which has been operating since July , 1975. The staff of the program includes the PH Coordinator, two Mental Health Aides, graduate nurse, recreational and occupational therapist and a secretary.

Evidence on the PH Coordinator position was presented in the form of two recently prepared job descriptions, E-11 and E-12, testimony from Administrator Del Sordi, and from Mental Health Aide Richard Jaglowski, as the status of the PH Coordinator was also covered in testimony concerning the Mental Health Aide position. As with the previously discussed supervisory titles, the record fails to establish that the PH Coordinator possesses the direct or effective power to hire, discharge or discipline.

Testimony on the Mental Health Aide title established that the PH Coordinator has the final work, among the staff of the PH program with regard to courses of treatment that the other professionals are recommending or pursuing with regard to their patients.^{43/} However, the undersigned does not view this type of consultation as indicative of the kind of conflict of interest envisioned by the Court in Wilton, supra.

^{42/} This procedure was utilized under similar circumstances in Jersey City Medical Center, Docket No. RO-503, October 26, 1973, an unpublished decision of the Executive Director (U.D. 37).

^{43/} Tr. 2/18/76 at 78.

The most recent job description for the position (E-11) indicates that the PH Coordinator is responsible to participate in the performance evaluation of PH staff members, making recommendations to the Clinical Coordinator and the Administrator. While this type of duty may be more in line with the type of conflict envisioned by Wilton, supra, ^{44/} the record is devoid of instances showing an actual conflict of interest in this regard between the PH Coordinator and the other PH staff. Moreover, in view of the testimony tending to show that the administrative authority of the position is rather limited, the undersigned concludes that any potential conflict of interest would not be substantial. ^{45/} The undersigned views the PH Coordinator's prime responsibility to be one of program supervision. Most, if not all, personnel decisions appear to be made at a higher level.

Accordingly, the undersigned finds the PH Coordinator to be a non-supervisory, professional employee of the Public Employer.

BRANCH OFFICE SUPERVISOR

The Branch Office Supervisor is assigned to coordinate the clinical services performed by the Center's staff at the offices in Bernardsville, Franklin Township and North Plainfield, which was expected to open in April, 1976.

The Branch Office Supervisor rotates, as does the staff among the branch offices during a particular workweek. Staff assigned to the branch offices consists of Senior Psychiatric Social Workers, Assistant Chief Psychologist, Unit Supervisor and part-time psychiatrist. The Branch Office

^{44/} In this regard see the Commission's decision in City of Camden, Department of Public Safety, Division of Fire PERC No. 52 (1971).

^{45/} Tr. 3/11/76 at 65; testimony concerning a request for a non-paid day off. As with the position of Unit Supervisor, the Ph Coordinator's limited authority distinguishes the facts in the instant case with those discussed in the supervisory section of Malcolm X Center, supra., discussed in this report, supra., at 18-19.

Supervisor relays work assignments to staff from the Clinical Coordinator, maintains a clinical caseload, reports on services rendered at the branches and attends clinical and administrative conferences. The Clinical Coordinator appears above the Branch Office Supervisor in the Administrative hierarchy of the Center.

Three job descriptions were introduced into evidence; E-9 and E-10, prepared by Administrator Del Sordi, and P-4, an existing job description.

The two recent descriptions contain the following: Supervises staff personnel; participates in the selection, performance evaluation and termination making the necessary recommendations to the Guidance Center Administrator and Clinical Coordinator."

As with the previously discussed titles, the record shows that position of Branch Office Supervisor does not have the direct or effective power to hire, discharge or discipline. Mary Lou Holland, who holds the position testified that she was not asked to participate in hiring during her 18-month tenure in the position although three professionals were hired to perform services in the branch offices in that period.^{46/} It is also clear that Ms. Holland, does not supervise or evaluate the work of the psychologist or the psychiatrist assigned to the branch office.^{47/} Her contact with these titles consists primarily of relaying case assignments.

Ms. Holland has the responsibility to provide annual evaluations of four social workers assigned to her for consultation.^{48/} No evaluation had been made at the time of the hearing, as the individuals assigned to Ms. Holland had not been working with her for a full 12 months. While this type of evaluation could raise a potential for conflict, the undersigned is not persuaded that conflict would be substantial.

^{46/} Tr. 3/11/76 at 30.

^{47/} Tr. 3/11/76 at 32.

^{48/} This duty is reflected in all job descriptions and in testimony, Tr. 3/11/76 at 35-36.

The position of the Branch Office Supervisor on the Administrative chain of command (below the Administrator and Clinical Coordinator), and testimony concerning personnel decisions in the Center establishes that effective personnel decisions are made at a level higher than the Branch Officer Supervisor.

Testimony also established that Ms. Holland does not exercise day-to-day supervision over the four personnel assigned to her. She testified that a problem regarding a social worker in the branch office would be referred to the Clinical Coordinator (who also performs the functions of Chief Psychiatric Social Worker). It is also apparent that the four social workers perform Clinical Services independently of Ms. Holland; consulting with her only when they experience problems or seek another opinion.

Upon this record, the undersigned is unable to conclude that the potential for conflict of interest raised by the annual evaluations is substantial. Thus the undersigned recommends the inclusion of the position of Branch Office Supervisor in the unit as a non-supervisory professional title.

ASSISTANT CHIEF PSYCHOLOGIST

The Assistant Chief Psychologist, Dr. Fred Hirschberg appears in the administrative hierarchy beneath the Chief Psychologist, whose lines of communication run to the Clinical Coordinator, Medical Director and Administrator. He maintains a clinical caseload and is responsible to review the clinical performance of any staff psychologists assigned to him.^{49/}

An existing job description, P-2 and one prepared in January, 1976, E-3 were introduced into evidence. The main difference between the documents is that E-3 adds participation, by making recommendations, in selection, performance evaluation and termination.^{50/} However, based upon the record, the undersigned finds that the Assistant Chief Psychologist possesses no direct or

^{49/} He also supervises psychology interns, who are an excluded title and thus not relevant to the determination at hand.

^{50/} Another difference is that E-3 purports to establish supervisory authority over all psychologists, while P-2 indicates such authority over only staff psychologists.

effective power to hire, discharge or discipline. The Petitioner introduced two job descriptions into evidence, P-7 and P-8 for the positions of Senior and Staff Psychologist, respectively. Both indicate that both positions are reportable to the Assistant Chief Psychologist.^{51/}

Testimony showed no conflict of interest between the Assistant Chief Psychologist and Senior Psychologists, and the undersigned concludes that the two titles would be compatible in a bargaining unit.

Dr. Hirschberg testified at length about two incidents concerning the unsatisfactory clinical performance of a Staff Psychologist assigned to him.^{52/} While it was clear from testimony that Dr. Hirschberg did not have direct or effective authority to impose discipline, the undersigned believes that the authority of the Assistant Chief Psychologist vis-a-vis staff psychologists raises a potential for conflict of interest. However, because the potential conflict involves only one title (and at the time of the hearing one person) included in the proposed unit and because the Assistant Chief Psychologist position shown by the record, carries no effective or direct power to make major personnel decisions, (such decisions being made at a level higher on the Center's organizational chart) the undersigned concludes that any conflict would not be substantial and the Assistant Chief Psychologist ought to be included in the unit as a non-supervisory, professional title.

CHIEF PSYCHOLOGIST

The Chief Psychologist, Dr. Robert Weiss is responsible for the operations of the Center's psychologists and psychology interns.^{53/} He maintains

^{51/} Both P-7 and P-8 were prepared by Administrator Del Sordi. The undersigned however gives little weight to P-7, P-8 and E-3, based upon their recent vintage, and testimony showing that past practice had been that the Senior Psychologists reported to the Chief Psychologist. Tr. 3/15/76 at 39.

^{52/} Tr. 3/4/76 at 54-60.

^{53/} As noted with the previously discussed title, the Chief Psychologists relationship with psychology interns is not of concern here.

a clinical caseload and is responsible for the clinical supervision of the Center's three Senior (Ph.D.) Psychologists, including Dr. Hirschberg, the Assistant Chief Psychologist. The position appears on the Center's Table of Organization above the Assistant Chief Psychologist with lines of communication running upward to the Clinical Coordinator, Medical Director and Administrator.

Testimony on the title was provided by Dr. Weiss and Administrator Del Sordi. Four job descriptions were received into evidence; E-13, an existing job description, E-14, prepared by Administrator Del Sordi; E-15 a revised description prepared shortly prior to February 2, 1975 and P-6, a description prepared prior to E-14 which was discarded after E-14 was finalized.

Testimony showed that Dr. Weiss has frequently participated in the selection process for psychologists hired by the Center. This participation has taken the form of preparing advertisements to be placed in psychology journals to attract prospective employees to the Center and conducting interviews to screen and evaluate the applicants. However, Dr. Weiss' work in the selection process has not risen to the level of giving him direct or effective power to hire.^{54/} Other testimony indicated that Dr. Weiss' participation in discipline, also has not shown him to possess direct or effective power in that area.^{55/} While Dr. Weiss testified that no one from the Psychology Department has been terminated for cause during his tenure, the undersigned doubts that his authority at the Center contains the direct or effective power to terminate.

Clinical services at the Center are provided by professionals in three main disciplines; psychology, psychiatry and social work. Dr. Weiss holds the highest position at the Center among the Psychologists. William Cullinan, the Clinical Coordinator, who also performs the functions of Chief Psychiatric Social

54/ Tr. 3/15/76 at 27-30, 42-46.

55/ Tr. 3/15/76 at 26, 46-47.

Worker, is in a similar position regarding the field of social work, as is the Medical Director vis-a-vis the psychiatrists.^{56/}

Dr. Weiss is responsible for the clinical supervision of three of the four psychiatrists in the departments and has been asked to make an evaluation of psychologists.^{57/} He was also asked to furnish to the Administrator salary requests from members of his departments.^{58/}

Based upon Dr. Weiss' position as head of the psychology department, his participation in the hiring process, and his responsibility for the clinical performances of the other psychologists employed by the Center, the undersigned concludes that a potential for substantial conflict of interest, as envisioned by the Court in Wilton, supra., exists among Dr. Weiss and the other psychologists employed by the Center.

Accordingly, the undersigned recommends that the position of Chief Psychologist be excluded from the petitioned-for unit for collective negotiations as a supervisory title.

SUMMARY OF SUPERVISORY FINDINGS

The undersigned, based upon an examination of all the evidence in regard to the seven alleged supervisory titles has found in each case that none of the positions contain the direct or effective power to hire, discharge or discipline.

Examination of the record with respect to the titles, Coordinator of Consultation and Education, Unit Supervisor, Partial Hospitalization Coordinator, Branch Office Supervisor, and Assistant Chief Psychologist reveals no actual or potential substantial conflict of interest among these respective titles and other professional employees sought to be included in the petitioned-for unit.

^{56/} See testimony of Mary Lou Holland, Tr. 3/11/76 at 52.

^{57/} Tr. 3/15/76 at 18.

^{58/} Tr. 3/15/76 at 34 and E. P-9.

With respect to the position of Coordinator of Emergency Services, the undersigned also finds no actual or potential substantial conflict of interest between this title and other professional employees at the Center.

However, as the Center was, at the time of the hearing, preparing to hire full and part-time employees for the Emergency Service program, the undersigned's recommended inclusion in the unit of the Emergency Service Coordinator could be modified if it is shown an actual or potential, substantial conflict of interest exists between the title and the new full and part-time employees, provided these employees are professionals, and are thus includable in the petitioned-for unit.^{59/} If any party believes such conflict exists, then the ballot of the Coordinator of Emergency Services may be challenged in an election.

The evidence with respect to the remaining position, Chief Psychologist, exhibits potential substantial conflict of interest between the position and other professionals in the unit. Therefore, under this Wilton mandated standard, the undersigned finds the Chief Psychologist position to be supervisory.

RECOMMENDATIONS

Based upon the findings it is hereby recommended that an election be directed among the employees in the following unit:

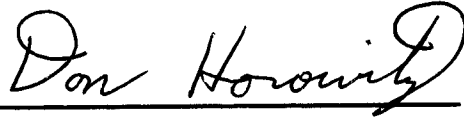
Included: All professionals employed by Somerset County Guidance Center,^{60/} including but not limited to; full and part-time Psychiatrists, Psychologists, Assistant Chief Psychologist, Psychiatric Social Workers, Graduate Psychiatric Nurses, Senior Psychiatric Social Workers, Occupational Therapist, Recreational Therapist, Mental Health Aides, Coordinator of Consultation and Education, Partial Hospitalization Coordinator, Unit Supervisor, Branch Office Supervisor, Coordinator of Emergency Services.

^{59/} In order to determine whether the new, part-time employees (assuming them to be professionals) can vote in the election, the parties' attention is directed to the "regularity of employment" standard enunciated in Clearview Regional District Board of Education, supra.

^{60/} Now apparently Somerset County Mental Health Center.

Excluded: All other employees, Administrator, Medical Director, Clinical Coordinator, Chief Psychiatric Social Worker, Psychology Interns, Chief Psychologist, non-professional, clerical, craft and confidential employees, police, managerial executives and supervisors within the meaning of the Employer-Employee Relations Act. The election is to determine whether or not these aforementioned employees wish to be represented for purposes of collective negotiations by Professional Employees Association of Somerset County Guidance Center; affiliated with District 1199, National Union of Hospital and Health Care Employees, RWDSU, AFL-CIO. The election should be conducted in accordance with the Rules and Regulations of the Commission.

RESPECTFULLY SUBMITTED



Don Horowitz
Hearing Officer

DATED: July 14, 1976
Trenton, New Jersey