

D.R. NO. 90-25

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

In the Matter of

STATE OF NEW JERSEY,  
DEPARTMENT OF CORRECTIONS,

Public Employer,

-and-

Docket No. RO-90-36

N.J. SUPERIOR OFFICERS  
LAW ENFORCEMENT ASSOCIATION,

Petitioner.

SYNOPSIS

The Director of Representation directs an election among corrections captains employed by the State of New Jersey. The Director finds that corrections captains have a high level of supervisory responsibility, but do not have the requisite discretion to support finding them managerial executives.

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Appearances:

For the Public Employer  
Robert J. DelTufo, Attorney General  
(Michael L. Diller, DAG)

For the Petitioner  
Joseph Carmen, Esq.

DECISION AND DIRECTION OF ELECTION

On September 29, 1989, the New Jersey Superior Officers Law Enforcement Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission ("Commission"), seeking to add corrections captains ("captains") to an existing unit of corrections lieutenants employed by the State of New Jersey ("State"). The petition was supported by an adequate showing of interest.

On November 16, 1989, the Association amended the original petition seeking to create a separate unit of corrections captains, excluding corrections lieutenants, sergeants, and all other employees. The State objected to the petitioned-for unit, claiming

that the captains are managerial executives and therefore, not entitled to representation under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

Based upon our investigation<sup>1/</sup> and the entire record in this matter, these facts appear.<sup>2/</sup>

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1/ On March 13, 1990 we wrote a letter to the parties informing them that, in the absence of further evidence and argument to the contrary, we were inclined to find that the corrections captains are high-level supervisors, but not managerial executives. We also informed the parties that we were inclined to direct an election among the State corrections captains in the petitioned-for unit. On March 26, 1990, the State responded by requesting that our decision specify the requirement that the employee organization representing the captains' unit be separate and independent from those employee representative organizations representing other supervisors and rank-and-file officers.

On March 30, 1990, Captain Robert Balicki of the New Jersey Superior Officers Law Enforcement Association, Captains' Unit, submitted a certification stating that, "...if elected [the N.J.S.O.L.E.A. Captains' Unit] will comply with the requirements that it be and act as a separate organization from any other organization which represents or may represent non-supervisory employees or primary level or secondary level supervisory employees employed by the State of New Jersey." The certification also stated that the N.J.S.O.L.E.A., Captains' Unit, "rather than the majority representative of any non-supervisory organization or any organization representing primary level or secondary level supervisory employees, will control the negotiations agreements covering the petitioned-for supervisory employees [captains]."

2/ In the absence of a substantial and material factual dispute, a decision may be rendered without a hearing, based upon our administrative investigation. Rochelle Park Tp. and Rochelle Park Superior Officers Ass'n and Rochelle Park PBA Loc. #102, D.R. No. 89-22, 15 NJPER 195 (¶20082 1989), aff'd App. Div. Dkt. No. A-5273-88T1 (3/19/90) and Morris Cty. Bd. of Social Services and Morris Coun. No. 6, NJCSA and District 1199J, D.R. No. 89-27, 15 NJPER 237 (¶20097 1989) req. for rev. den. P.E.R.C. No. 89-124, 15 NJPER 331 (¶20147 1989) aff'd App. Div. Dkt. No. A-4931-88T5 (3/22/90).

There are 15 State correctional facilities employing 34 captains. The captains' job description provides:<sup>3/</sup>

Under the direction of a Director of Custody Operations or other Supervisory Officer, assists in the overall supervision of the custody workforce; responsible for insuring care, custody, and discipline of inmates; does related work as required.

Examples of work described in the job description include:

Organizes supervisory custodial work and develops effective work procedures.

Assists in the direction of the overall operations of the custodial staff and the briefing of shift lieutenants regarding the proper performance of essential institutional routines.

Oversees the preparation of schedules for staff including assignments for overtime and vacation scheduling.

Insures the observance of laws and regulations by inmates, correction officers, civilian employees and visitors.

Acts in the place of the Director of Custody Operations in his absence.

Assists the Director of Custody Operations in overseeing the hiring and processing of new employees for the custodial force.

Assists the Director of Custody Operations in the operation of the disciplinary committee and conducts disciplinary court in his absence.

Supervises the work operations and/or functional programs and has responsibility for employee evaluations and for effectively recommending the

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<sup>3/</sup> The most recent Department of Personnel job description for the title Correction Captain became effective on October 16, 1986.

hiring, firing, promoting, demoting and/or disciplining of employees.

Assists in overseeing the institutional training program, to include training in custody policy and procedures.

Work assignments set forth in the captains' Performance

Assessment Review ("PAR") include:

Reviews reports of subordinates and discusses important institutional issues with appropriate staff.

Obtains compliance and enforcement of departmental orders from all personnel under his/her immediate supervision.

Evaluates misconduct reports of custody employees; when necessary prepares disciplinary reports.

Prepares and presents completed cases as management's representative.

Rates assigned staff members utilizing the PAR system.

Reviews custody procedures and makes recommendations for revision to his/her supervisor.

Provides support for subordinates and related staff to accomplish goals and objectives of institution/department.

Captains report to and occasionally substitute for the directors of custody operations. According to the job description, the directors of custody operations directly supervise the corrections staff at each facility. The director of custody operations job description provides:

Directs the overall operation of the custody staff and insures the operation of the various work units.

Organizes assigned supervisory custodial work, developing and implementing effective work procedures.

Develops and implements the Department of Corrections standard for adequate staffing.

Assists the Superintendent in the development of policies and procedures relating to the custody care and control in the correctional setting.

Responsible for operating the custody department within its financial appropriations and is responsible for justifying cost overruns. Evaluates fiscal needs and submits budgetary requests to the Superintendent.

Conducts grievance hearings with labor organizations and/or individuals who have submitted contractual or non-contractual grievances.

Conducts investigations regarding violations of rules and regulations by custodial staff members, evaluates and recommends course of action to the Superintendent.

Oversees implementation of appropriate activities to hire new officers; interviews and selects candidates for supervisory custody positions.

Manages the work operations and/or functional programs and has responsibility for employee evaluations and for effectively recommending the hiring, firing, promoting, demoting and/or disciplining of employees.

Supervises the development of basic and advanced training programs for all custody personnel.

The departmental chain of command is delineated by the most recent table of organization for the Department of Corrections (effective October 27, 1989), job descriptions and the tables of organization from Annandale and Southern Institution. Authority flows from the Commissioner of Corrections to the deputy

commissioner to assistant commissioners and then deputy directors. At each facility, responsibility flows from the superintendent/administrator to the assistant superintendents to the director of custody operations. The director of custody operations supervises the captains. The chain of command continues from captains to lieutenants to sergeants. The captains fall seven levels under the Commissioner.

Administrative policy and procedure memos issued by facility superintendents routinely do not apply to captains. In most cases, these memos apply only to directors of custody operations and above. The superintendent's approval is needed for the creation or modification of all policies and procedures.

An administrative policy and procedure establishing the table of organization for the Youth Correctional Institution at Annandale lists the administrators reporting to the Superintendent as assistant superintendents, business manager and director of custody operations. The policy also provides that, "[n]o changes shall be made in the Administrative Policy and Procedure without the approval of the Superintendent."

According to a September 7, 1984 "Annual Review of Administrative Policy and Procedure Manual", at Annandale, only the Superintendent has the authority to approve policy changes. A memo from the Superintendent of the Southern State Correctional Facility states that he establishes all policies and procedures, but that all employees were encouraged to participate in the formation of policies and procedures.

Directors of custody operations at five facilities completed surveys of the captains' responsibilities.<sup>4/</sup> Only one director of custody indicated that captains create policy, but no examples were provided. When asked whether captains implement policy, all of the directors asserted that they did, but did not provide examples. Two directors indicated that captains "enforce" corrections policies and another indicated that all custody staff is expected to "carry out orders."

A November 17, 1987 post order to the captains signed by the administrator and the director of custody operations at Rahway State Prison provides:

The correction Captain will assist the Director of Custody Operations in the supervision of the custodial operations at Rahway State Prison enforcing all applicable rules, regulations, policies, procedures and standards. The correction Captain will report all major incidents and the corrective action taken to the Director of Custody Operations, and in his absence, to the Administrator, Associate Administrator or Assistant Superintendent. On weekends, holidays and the second shift, the correction Captain will contact the on-call Administrator in the event of a major incident. The correction Captain will assume the duties of the Director of Custody Operations when he is on leave. Under the direction of the Director of Custody Operations, be responsible for the security of Rahway State Prison, Satellite Units, ground and the safety, protection and control of all staff and inmates within the correction Captain's jurisdiction.

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<sup>4/</sup> In December 1989, the State conducted a survey of job duties and responsibilities for captains. Five directors of custody operations completed the survey forms describing the captains' duties at their facility. The survey was not circulated to captains.



That order also lists the captains' duties as follows:

Organizes supervisory custodial work, reviews and develops work procedures.

Gives instruction to the custodial force and supervises them in the performance of their duties.

Assists in the preparation of schedules for custody staff and in the assignment of officers to stations and shifts.

Obtains and distributes needed equipment and materials to the custody staff.

Assists the Director of Custody Operations in hiring, firing, promoting and/or disciplining custody staff and the necessary processing.

Assists in the observance of laws, rules, regulations, policies, procedures and standards by custody and civilian employees, visitors and inmates and recommends remedial measures.

Assists in supervising the behavior of inmates and helps direct and maintain order.

Serves as a member or alternate member of the Classification Committee, the Fact Sheet Committee, the Marriage Committee and the Volunteer Screening Committee insuring compliance with all applicable custodial rules, regulations, policies, procedures and standards.

Captains at Rahway State Prison are also responsible for noting suspicious people, reporting and correcting hazards, cooperating with the treatment staff in developing and maintaining rehabilitative programs and participating in training programs. Captains' area commands dated March 1989 list duties and

responsibilities similar to those enumerated for captains at Rahway State Prison.<sup>5/</sup>

A May 15, 1989 memo to all custody personnel from Director of Custody Operations Frederick Zimmer lists captains' responsibilities as including monitoring the institution for security, responding to emergencies, handling problems between staff sections, reviewing post orders and meeting with shift supervisors.<sup>6/</sup>

A July 1989 memo addresses the captains' responsibilities at New Jersey State Prison. The memo notes:

Specific direction cannot be given to cover every contingency, therefore Captains will be expected to make command decisions when the occasion(s) presents itself - decisions not ordinarily reserved to them.

The nature of those decisions is not clear. However, such command decisions are inherent in a para-military organization. At New Jersey State Prison, the administrative captain has the day-to-day responsibility of insuring adequate supervisory staffing, resolving immediate operational concerns, reviewing and resolving discrepancies in pay sheets and hiring rosters and coordinating disciplinary actions for custody staff. He reviews all formal disciplinary actions to ensure that they follow rules and regulations, and schedules and presents major disciplinary

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<sup>5/</sup> One area command applies to the Ancora unit. The others do not specify to which facilities they apply.

<sup>6/</sup> The memo does not indicate which facility it covers.

hearings. The administrative captain also schedules work assignments and grants leave requests for other captains. Finally, the administrative captain at New Jersey State Prison is responsible for both of the prison's satellite units. He reviews their daily schedules and reports and tours each unit weekly. He reviews their standard operating procedures, resolves problems and processes disciplinary actions.

Other captains at New Jersey State Prison have similar responsibilities. They maintain discipline for custody staff under their command, investigate possible disciplinary violations and take appropriate action. Captains forward investigations which result in formal discipline to the administrative captain. The other captains substitute for the administrative captain in his absence.

An April 1988 document labeled "correction captain work assignment" states that captains review custody procedures and make recommendations for revision to their supervisor.<sup>1/</sup> The performance standard for this category provides that captains review custody procedures at least once a year and that their recommendations should reflect the current institutional needs and correctional theory. Other work assignments include: reviewing reports; discussing important institutional issues with staff; touring the facility; enforcing departmental orders; evaluating

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<sup>1/</sup> The document listed nine work assignments and performance standards for those tasks. The document does not identify which institutions it covers.

misconduct reports and evaluating staff; preparing disciplinary reports; preparing and presenting disciplinary cases; assigning investigations and attending meetings.

An April 18, 1988 memo concerning discipline of lieutenants provided that captains may investigate disciplinary matters and recommend penalties. It also provided that:

only individuals with the rank of Director of Custody or above (e.g. Assistant Superintendent, Superintendent) may sign the disciplinary forms;

only individuals with the rank of Director of Custody or above may determine the appropriate penalty to be entered on the disciplinary forms;  
and

only individuals with the rank of Director of Custody or above may present management's case at disciplinary hearings.

Captains have no authority to make significant purchases, pledge the employer's credit, or invest the State's money. They play little role in the preparation of institutional budgets. At Bayside, captains submit requests for items to be included in the budget. The director of custody operations, however, has primary responsibility for institutional budgets at all of the facilities. Captains do not participate or assist in collective bargaining.

Captains substitute for directors of custody during vacation, sick leaves and holidays. According to their job descriptions and PARs, captains supervise corrections officers,

sergeants and lieutenants. They can recommend discipline and promotions under the PAR evaluation system for lieutenants.<sup>8/</sup>

The captains did not independently create the evaluation process for their subordinates. The Corrections Department uses the State's PAR system. There is no evidence that captains determined which factors are included in the PARs of employees whom they supervise.

Captains regularly approve scheduling of vacations, holidays and overtime. It appears that they also effectively recommend hiring and promotions, sign leave requests, administer some provisions of labor contracts and initiate discipline at Trenton State Prison.<sup>9/</sup>

When captains act for the director of custody operations in the latter's absence, it appears that they insure compliance with rules and regulations. At New Jersey State Prison, the administrative captain acts as director of custody operations unless

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<sup>8/</sup> The Association claimed that sometimes lieutenants have more supervisory authority than captains, but did not submit evidence in support of this assertion. Captains, however, recommend discipline of lieutenants. See April 18, 1988 memo.

<sup>9/</sup> The Association contends that captains cannot effectively recommend hiring of employees. According to the job description, captains assist the director of custody operations in overseeing the hiring process. Surveys completed by Directors of Custody Operations at five facilities indicate that captains are actively involved in the recruiting process and that some effectively recommend hiring. In the absence of evidence to the contrary, it appears that captains have made effective hiring recommendations.

instructed otherwise. The administrative captain working under the command of director of custody operations Zimmer is responsible for custody operations when Zimmer is absent for a "single day absence ."

The State claims that captains are involved in contract administration, consult with Labor Relations Office staff and ensure contract compliance. It did not provide or a specific description of these responsibilities, any documentation specifically indicating that these functions are part of their duties or examples of their involvement in these activities. The surveys completed by directors of custody operations indicate that captains generally represent management at grievance hearings but do not determine grievances.<sup>10/</sup> The collective negotiations agreement covering corrections lieutenants provides that they may orally present and discuss complaints with their immediate supervisors.<sup>11/</sup> When asked whether captains are involved at any step of the grievance procedure, directors of custody operations gave varied answers including:

Captains...represent management at Department level hearings.

They represent management on custody related and attendance grievances.

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<sup>10/</sup> At Bayside, the director of custody operations indicated that captains may hear grievances and render decisions on them, but did not identify which steps of the grievance procedure they participate in or for which employees they sit as a step in grievance procedure.

<sup>11/</sup> The parties did not submit the collective negotiations agreements covering sergeants and corrections officers.

First or second step depending who submitted grievance.

After a "Step One" hearing with the DOCO, a Captain acts as the custody department representative at each subsequent hearing.

#### ANALYSIS

At issue is whether the correction captains are "managerial executives" within the meaning of the Act. If so, the petition must be dismissed since managerial executives do not have the right to form, join or assist an employee organization. N.J.S.A. 34:13A-5.3.

N.J.S.A. 34:13A-3(f) provides:

Managerial executives of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

This definition was applied initially in Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977). There, a lifeguard captain was found not to be a managerial executive although he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary system, authorized changes in the workweek, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough's and Mayor's policies, trained and scheduled all guards, managed the beach and supervised guards on a day-to-day basis. The Commission stated:

[T]he term "managerial executive" shall be narrowly construed, and...the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by [the lifeguard captain] is needed. [He] was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives --excluded from coverage-- from supervisors--eligible to be represented in appropriate units.  
Id. at 374. Emphasis added.

In Borough of Montvale, P.E.R.C. No. 81-52, 6 NJPER 507, 508-09 (¶11259 1980), the Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises.  
Id. at 509. Emphasis added.

In Bergen Pines Cty. Hosp. and Council No. 5, NJCSA, D.R. No. 83-8, 8 NJPER 525 (¶13245 1982), the three titles in question were found not to be managerial although they were in the fourth step of the chain of command. There, the positions only had department-wide, not hospital-wide authority. Here, the Department of Corrections is headed by the Commissioner and captains are seven



levels beneath him. The captains' authority is not department-wide but is limited to a single facility. At each facility, they are fourth in the chain of command.

The evidence indicates that rules and policies are devised by the superintendents and their departmental superiors.<sup>12/</sup> Directors of custody may assist the superintendent in policy development. Captains do not. Captains enforce the policies. Accordingly, I find that captains do not formulate policy.

Captains insure compliance with rules and regulations, but have no authority to change them. The directors of custody operations generally develop and implement work procedures and staffing standards.<sup>13/</sup> As higher level supervisors, captains have discretion in responding to emergencies. Captains were not referred to in a memo instructing how to review policies and procedures. At New Jersey State Prison, the administrative captain has day-to-day responsibility for the administrative duties concerned with enforcement of institutional policies and procedures. This captain does not determine how policies will be implemented, but rather ensures that standard operating procedures are followed. Directors

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<sup>12/</sup> The director of custody operations at the Bayside facility indicated that captains have input into policy determinations, but did not provide examples.

<sup>13/</sup> At Rahway State Prison, captains duties include developing work procedures, but no examples were provided. Without specific examples, I cannot determine whether they exercise managerial-level discretion when developing work procedures or whether they are simply following an established regimen.

of custody operations determine how institutional policies will be implemented and captains enforce the policies.

In Tp. of Montville, P.E.R.C. No. 87-140, 13 NJPER 333 (¶18138 1987), captains were found not to be managerial because their responsibilities when substituting for higher-level employees were limited to enforcing already formulated policies. Here, captains do not have plenary authority when substituting for the director of custody operations. Instead, they handle day-to-day operations as directed by existing policies and procedures. In the event of a "major incident," a captain acting for the director of custody operations must contact the on-call administrator.<sup>14/</sup> Captains act as caretakers in the absence of the directors of custody operations.

The captains' duties involve primarily administrative and supervisory responsibilities. Their supervisory responsibilities include evaluating lieutenants, approving employee leave time and scheduling and making promotional recommendations. While captains may recommend discipline of lieutenants, only the director of custody operations can sign the disciplinary form which sets the penalty. Captains did not create the evaluation system for their subordinate employees or decide how to apply it.

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<sup>14/</sup> At one facility, the administrative captain is in charge of custody operations only when the director of custody operations is absent for a single day.

Captains may resolve lieutenants' grievances informally and may resolve first or second step grievances for certain other corrections employees.<sup>15/</sup> Captains also represent management at some grievance hearings -- sometimes, up to the departmental level.<sup>16/</sup>

Captains do not directly assist in preparation for or conduct of collective negotiations. The captains' non-involvement in collective negotiations and in the preparation for collective negotiations further support finding them not to be managerial executives. Tp. of Kearny, P.E.R.C. No. 89-55, 15 NJPER 10 (¶20002 1988); Borough of Madison, P.E.R.C. No. 85-76, 11 NJPER 61 (¶16032 1985).

The captains do not make purchases or spend money on behalf of the State. Captains also do not prepare the budget, although they offer suggestions for the budget at the Bayside facility. Their lack of involvement in budget preparation and their lack of authority to make purchases are further support for concluding that captains are not managerial. Kearny.

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<sup>15/</sup> Two directors of custody operations indicated that captains may determine grievances at the first or second step of the grievance procedure.

<sup>16/</sup> Contracts for the sergeants and corrections officers were not submitted; without them, I am unable to determine the extent of captains' authority to resolve grievances or at which step(s) they represent the Department. Based upon the available evidence, I cannot conclude that the captains' discretion in handling grievances rises to the level of a managerial employee.

Captains do have a high level of supervisory responsibilities. However, despite this high level of supervisory responsibility, they do not have the requisite level of discretion to support a determination of managerial status. The captains are not managerial executives and are entitled to representation in an appropriate unit.

Accordingly, I find that the petitioned-for unit<sup>17/</sup> is appropriate and direct that an election be conducted among employees in the following unit:

Included: All corrections captains employed by the State of New Jersey.

Excluded: All corrections lieutenants, corrections sergeants, corrections officers, non-supervisory employees, non-police employees, managerial executives, confidential employees,

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17/ In Camden Police Department, P.E.R.C. No. 82-89, 8 NJPER 226 (¶13094 1982), the Commission set forth requirements which unions that represent rank-and-file employees must fulfill when seeking to represent units of supervisors. Camden requires the petitioning union to certify that: (1) it is a separate organization from any other organization representing non-supervisors; (2) if elected, it, rather than any employee organization representing non-supervisors, will control the negotiations and administration of contracts covering supervisors; and (3) as it currently exists, it has no non-supervisory members. In Camden, the Commission concluded that: "[t]his certification creates a presumption that the [union] is qualified to represent the unit of superior officers." Camden also applies to a union already representing supervisory employees which seeks to represent a unit of higher level supervisory employees. Here, the captains' unit has complied with the requirements of Camden by separating itself from any other organization representing sergeants or lieutenants or rank-and-file officers.

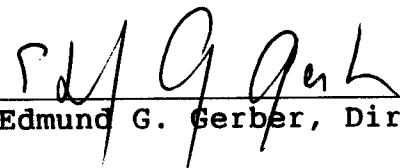
craft employees, professional employees, firefighters and all other employees employed by the State of New Jersey.

The election shall be conducted no later than thirty (30) days from the date of this decision. Those eligible to vote must have been employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, on vacation or temporarily laid off, including those in the military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to N.J.A.C. 19:11-9.6, the public employer is directed to file with us an eligibility list consisting of an alphabetical listing of the names of all eligible voters in the unit, together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by us no later than ten (10) days prior to the date of the election. A copy of the eligibility list shall be simultaneously provided to the employee organization with a statement of service filed with us. I shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

The exclusive representative, if any, shall be determined by a majority of the valid votes cast in the election. The election shall be conducted in accordance with the Commission's rules.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
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Edmund G. Gerber, Director

DATED: April 6, 1990  
Trenton, New Jersey