

D.R. NO. 82-2

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

In the Matter of

BERGEN COUNTY CETA INCORPORATED,

Employer,

-and-

DOCKET NO. RO-81-173

COMMUNICATION WORKERS OF AMERICA,  
AFL-CIO,

Petitioner.

Appearances:

For the Employer  
Leon B. Savetsky, Esq.

For the Petitioner  
Ronald Smith, CWA Representative

DECISION

On January 21, 1981, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Communications Workers of America (the "CWA") seeking to represent certain employees employed by Bergen County CETA, Inc., (the "Employer" or the "Corporation"). The Employer claims that it is not a "public employer" within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"), and is therefore

not subject to the jurisdiction of the Commission. <sup>1/</sup>

The undersigned, on January 22, 1981, directed that an administrative investigation be conducted herein to determine the facts. Thereafter, a meeting was conducted on February 24, 1981 at which time, the parties agreed to exchange certain information with respect to the Petition. Subsequently, however, the parties were unable to agree upon the facts and could not agree upon a mutual resolution of the matter.

Pursuant to a Notice of Hearing dated April 9, 1981, the undersigned assigned this matter to a Commission Hearing Officer to conduct a hearing to determine the facts. A prehearing conference was held on May 13, 1981, at which time the parties informed the Hearing Officer that they were prepared to stipulate the facts and waive a hearing and submit the matter directly to the undersigned for a decision. The stipulations of fact were signed on May 19, 1981, and the Employer submitted a brief herein which was received by May 20, 1981. The CWA did not file a brief.

<sup>1/</sup> The Act defines public employers at N.J.S.A. 34:13A-3(c):  
The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

Based upon the entire record herein, which includes the Petition and Notice of Hearing, the stipulated facts and the attachments, and the Employer's brief, <sup>2/</sup> the undersigned finds and determines as follows:

1. The Bergen County CETA, Inc., is the employer of the employees sought to be represented by the CWA.
2. CWA is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") and is subject to the provisions thereof.
3. CWA has filed a Petition for Certification of Public Employee Representative with respect to a proposed unit consisting of certain employees of the Corporation.
4. The Employer asserts that it is not a public employer within the meaning of the Act and therefore the Commission lacks jurisdiction in this matter. CWA asserts that the Employer is a public employer because it receives public funds for its operation. Since a petition raising a question concerning representation has been filed, and since a dispute exists between the parties, the matter is properly before the undersigned for determination.
5. Pursuant to N.J.A.C. 19:11-6.7, the parties have waived a hearing and a hearing officer's report and recommendations with respect to the jurisdictional issue and have agreed to submit this

<sup>2/</sup> The Employer's brief received on May 20, 1981 specifically incorporates its brief and statement of position dated March 6, 1981.

matter directly to the undersigned for determination based upon the petition, the stipulations of fact and the attachments, and the briefs and those attachments. The stipulations, which are summarized infra, are attached hereto in their entirety and are made a part hereof.

6. The Employer was incorporated as a non-profit corporation on September 22, 1980, pursuant to the Corporations and Associations Not For Profit Act, N.J.S.A. 15:1-1 et seq., for the purpose of operating and administering the Comprehensive Employment and Training Act in Bergen County. The original corporate Board of Trustees, as well as any changes in the membership of the Board, are appointed by Resolution of the County Freeholders. However, none of the Employer's trustees are employees of Bergen County and none are County Freeholders. <sup>3/</sup>

7. The Board of Trustees, without control or consent of the County, hires the Executive Director of the Corporation who in turn hires the other corporate employees.

8. The Corporation, through the Executive Director, controls the labor relations of the Employer including hiring, evaluation, supervision, discipline, promotions, and discharge of employees without any input from Bergen County.

9. The Employer is funded exclusively through Federal funds from the U.S. Department of Labor. The Employer formulates

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<sup>3/</sup> The Freeholder Director of Bergen County does serve as an ex-officio member of the Employer's Board of Trustees.

and controls its own operating budget without County participation or approval and it maintains a checking account in its own name through which the employees are paid.

10. The Employer pays rent out of its own funds to the private owner of the building it occupies.

11. The Employer has its own personnel and records department separate from the County, and it creates its own job titles and duties without County assistance. Unlike the County, the Employer is not subject to the rules and policies of the N.J. Department of Civil Service.

12. The Employer, and not the County, fixes the salaries of the employees and sets the work hours and benefits of its employees without County participation. Clerical and supervisory employees of the Employer work a 40-hour week while County clerical and supervisory employees work a 32 1/2 hour week.

13. County employees are part of the State Public Employee Retirement System whereas the corporate employees are not members of any pension plan. The Employer offers a less comprehensive medical and hospital insurance plan for its employees than the one provided for County employees. In addition, the Employer provides less life insurance than the County, and unlike the County, provides no dental plan for its employees. Finally, the Employer offers fewer vacation days to its employees as compared to County employees.

14. There is no interchange of supervision and no transferability of employees between the County and the Employer.

The Commission's jurisdiction is limited by the Act to matters of public employment. 4/ Accordingly, Petitions and Unfair Practice Charges have been dismissed for want of jurisdiction where the employer was not a public employer within the meaning of the Act. 5/ Those matters were dismissed even though the employer received some or all of its funds through public sources, because funding alone does not determine public employer status.

The undersigned has considered all of the instant facts and concludes that the Employer is not a public employer within the meaning of the Act. Neither Bergen County nor any other public entity has any control over the operation or labor relations of the Employer. The County has no authority over the Employer's budget, cannot hire, fire, discipline or supervise corporate employees, and lacks control over corporate operations. Further, the Employer is a private, non-profit corporation chartered under the Corporations and Associations Not For Profit Act.

Accordingly, for the reasons stated above, the undersigned

4/ See In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977).

5/ In re Bonnie Brae, D.U.P. No. 80-7, 5 NJPER 457 (¶ 10231 1979); In re Newark Housing Development and Rehab. Corp., D.R. No. 80-2, 5 NJPER 328 (¶ 10175 1979); In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977); In re ARA Services, Inc., E.D. No. 75-13, 2 NJPER 112 (1976).

determines that Bergen County CETA, Inc., is not a public employer within the meaning of N.J.S.A. 34:13A-3(c), and the instant Petition is hereby dismissed.

BY ORDER OF THE DIRECTOR  
OF REPRESENTATION

  
Carl Kurtzman, Director

DATED: July 10, 1981  
Trenton, New Jersey

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

-----X

IN THE MATTER OF	:	
BERGEN COUNTY CETA, INC.,	:	
Employer,	:	Docket No. RO-81-173
-and-	:	
COMMUNICATIONS WORKERS OF	:	
AMERICA, AFL-CIO,	:	
Petitioner.	:	<u>STIPULATION</u>

-----X

The Employer, Bergen County CETA, Inc., and the Petitioner, Communications Workers of America, AFL-CIO, hereby stipulate and agree as follows:

1. The Communications Workers of America, AFL-CIO (hereinafter referred to as the "Union"), is an employee representative within the meaning of the New Jersey Employer-Employee Relations Act (N.J.S.A. 34:13A-1 et seq).
2. Bergen County CETA, Inc. (hereinafter referred to as the "Corporation") is the employer of the employees with respect to whom a Petition has been filed by the Union, as hereinafter set forth.
3. On January 21, 1981, the Union filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission of the State of New Jersey (hereinafter referred to as "PERC"), Docket No. RO-81-173.



4. The Corporation has submitted to PERC a Statement of Position wherein it contends that it is not a "public employer" within the meaning of the New Jersey Employer-Employee Relations Act and that it is therefore not properly subject to the jurisdiction of PERC.

5. The Union maintains that the Corporation is a "public employer" within the meaning of the New Jersey Public Employer-Employee Relations Act.

6. The parties agree that there are no disputed issues of fact in this proceeding. Pursuant to N.J.A.C. 19:11-6.7, the parties agree to waive a hearing and the hearing officer's report and recommendations and to submit this matter directly to the Director of Representation for a decision based upon the stipulation of facts, which is herein set forth, and any briefs or memoranda which the parties may submit therewith.

7. On September 22, 1980, the Corporation filed a Certificate of Incorporation with the Secretary of State of New Jersey as a private, non-profit corporation organized under N.J.S.A. 15:1-1, et seq. A copy of the said Certificate of Incorporation is annexed hereto as Exhibit A.

8(a). The original Board of Trustees of the Corporation consisting of eight persons, was appointed by Resolution of the Board of Chosen Freeholders of the County of Bergen in October, 1980. The names, addresses and occupations of the said persons originally appointed as members of the Board of Trustees of the

Corporation are set forth in Exhibit B annexed hereto. In addition to the said Trustees, Harry F. Gerecke, the Freeholder Director of Bergen County, serves as an ex-officio member of the Corporation's Board of Trustees.

(b) The names, addresses and occupations of the current Board of Trustees, as it is presently constituted, are set forth in Exhibit C which is annexed hereto.

(c) Other than the Freeholder Director who is an ex-officio member, none of the members of the Board of Trustees are Bergen County employees.

(d) All members of the Board of Trustees of the Corporation are appointed by resolution of the Board of Chosen Freeholders.

9. The Corporation is funded exclusively by federal funds which are transmitted to it by the County of Bergen, which receives such funds from the United States Department of Labor.

10. The Corporation formulates and controls its own operating budget which is approved by its own Board of Trustees. It does not submit a budget to the County, nor is its budget approved or required to be approved by the County.

11. The Corporation maintains its own checking account in its own name, from which it pays all of its operating expenses, including the salaries of its employees. Employees' salaries are paid by the Corporation's checks. The Corporation maintains its own Fiscal Department (headed by its own Fiscal Coordinator), which has no connection with the office of the County Treasurer or

or any other fiscal department of the County.

12. The Corporation pays rent for the use of all buildings and facilities which it occupies. For premises which it occupies exclusively, including its main offices at 90 Main Street Hackensack, New Jersey, it pays rent directly to the private owner of the said premises. For buildings which it shares with other non-CETA agencies, the Corporation pays a proportionate share of the rent based upon the space which it occupies. All rent payments made by the Corporation are made by Corporation check through its own checking account.

13. The Corporation hires its own management staff, including its Executive Director, without the consent, supervision or control of the County. Interviews for all positions within the Corporation's staff are conducted exclusively within the Corporate structure. The Executive Director was interviewed by a committee of the Board of Trustees and hired by approval of the Board of Trustees. Persons below department head level are interviewed by department heads and hired by the Executive Director. Applicants for positions at department head levels are interviewed by the Executive Director who makes recommendations to the Board of Trustees.

14. The Corporation exercises exclusive control in the hiring of employees, their evaluation, supervision, work flow, discipline, firing and promotion, without any control, supervision, consent or input from the County of Bergen.

15. The Corporation exclusively fixes the salaries of its employees, sets their hours of work, prescribes work rules, fringe benefits and personnel policies without the consent, supervision, control or input of the County of Bergen. Clerical and supervisory employees of the Corporation work a 40-hour week. Clerical and supervisory employees of the County work a 32½-hour week.

16. Employees of the County of Bergen are members of the Public Employee Retirement System, the State employees' pension system, which membership is required by State law of all state, county and municipal employees. The Corporation's employees are not members of any pension plan.

17. The Corporation creates all of its own job titles, job descriptions and job requirements without any control, consent, supervision or input by the County of Bergen. The job titles and job specifications of employees of the County of Bergen are created and controlled by the Department of Civil Service of the State of New Jersey.

18. The Corporation has substantially different personnel policies and fringe benefits than those of the County of Bergen, as follows:

(a) The Corporation's employees do not have any pension plan at all, while County employees are members of the P.E.R.S., as hereinabove set forth.

(b) The Corporation's employees do not receive any terminal leave payment, while County employees receive substantial terminal leave payment based upon accrued and unused sick time up to a maximum of \$12,000.00, with a related estate benefit in the event of death.

(c) The Corporation's employees receive one day per month sick leave, while the County's employees receive 15 days per year.

(d) Both the Corporation's employees and the County's employees receive one personal day per year.

(e) Both the Corporation's employees and the County's employees receive 14 paid holidays per year.

(f) On vacation, the Corporation's employees receive one day's vacation for each month (12 days per year) during the first 12 months of employment; 1 1/4 days per month (15 days per year) commencing in the 13th month of employment; 1 3/4 days per month (21 days per year) commencing in the 49th month of employment. The County's employees receive 15 days per year of vacation during the first five years of employment, and 20 days per year commencing in the sixth year of employment.

(g) The Corporation's employees have a much less comprehensive medical and hospital insurance plan (Prudential) than the County's employees who are covered by the New Jersey Health Benefits Plan (Blue Cross/Blue Shield, Major Medical). The Corporation pays the premium only for its employees and not for depen-

dents. If the Corporation's employees desire to have their dependents covered, they pay the additional premium from their own earnings. The County's medical benefits covers employees and all eligible dependents, which premiums are completely paid for by the County.

(h) The Corporation's employees have no dental insurance plan at all, while the County employees do have a comprehensive dental insurance program (New Jersey Dental Service Plan).

(i) The Corporation's employees have a completely different and much less comprehensive life insurance plan than the life insurance benefits afforded to the County's employees.

(j) The Corporation's employees remain at a fixed salary in their respective job titles and such salary only changes upon promotion. The County's employees have a salary step system which provides for built-in increments as of January 1 of each year within each grade.

19. The personnel office of the Corporation keeps and maintains all of the personnel records of the Corporation's employees under its own Personnel Director, and no personnel records of the Corporation's employees are maintained by the County's personnel department.

The Corporation interviews and hires all of its own employees as hereinabove stated, and the County does not interview, recommend or hire any employees for the Corporation.

The Corporation determines its own level of staffing within the limitations of its own budget without any control or

supervision by the County.

20. There is no transferability of employees between the Corporation and the County, nor is there any interchange of supervision between the Corporation and the County.

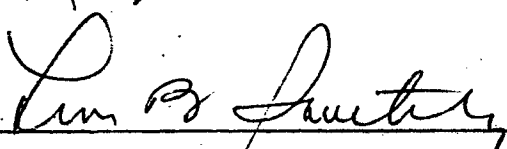
21. There is no other group of employees of the Corporation which have been organized under a collective bargaining or a collective negotiating unit.

Dated: May 19, 1981

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

By: 

RONALD SMITH

  
LEON B. SAVETSKY  
Attorney for Bergen County CETA, Inc.

SUBJECT  
SEP 22 1980

COMPREHENSIVE EMPLOYMENT AND TRAINING  
PROGRAM OF BERGEN COUNTY, INC.

SEP 22 1980  
BERGEN COUNTY CLERK  
TILKOTHY S. OK N. 1

THIS IS TO CERTIFY THAT we, ARTHUR CARMANO; SULLIVAN; SCOTT WEINER; LORETTA WEINBERG and TERRI XANTHOS, do hereby associate ourselves into a corporation under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey, entitled, "The Corporations and Associations Not For Profit Act" (Title 15 of the Revised Statutes of 1937, N.J.S.A. Title 15, and the amendments thereof and supplements thereto for a lawful purpose other than pecuniary profit as hereinafter stated and to that end we do by this instrument certify that:

FIRST: The name by which this corporation shall be known in law shall be the Comprehensive Employment and Training Program of Bergen County, Inc.

SECOND: The corporation is a corporation not for profit.

THIRD: The corporation is to have a perpetual existence.

FOURTH: The purposes for which this nonprofit, nonpolitical corporation is formed shall be as follows:

1. To operate, manage, implement, administer and maintain the Comprehensive Employment and Training Act USCA, as same may be amended from time to time, for which the County of Bergen has been designated the prime sponsor. To this end, the corporation may plan, develop and engage in social services, educational, recreational and employment programs for residents of Bergen County and to acquire, own, hold and dispose of property real or personal in connection therewith

This corporation is dedicated to and operated exclusively for the nonprofit purposes named above and for which a corporation may be formed under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled, "The Corporations and Associations Not For Profit Act", N.J.S.A. 15:1-1 et seq and the amendment thereof and supplements thereto and not for pecuniary profit or financial gain and no part of the assets or income of the corporation shall be distributed to, or incur to the benefit of any of the corporations trustees, officers or members or any other individual.

FILED

SEP 22 1980



FIFTH: The corporation shall have all of the powers of corporations not for pecuniary profit as set forth in the above named statute, authorizing the creation of said corporation. Notwithstanding anything herein to the contrary, the corporation shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in Section 501(c) of the Internal Revenue Code of 1954 and the Regulations thereunder as the same now exist or as they may be hereafter amended from time to time.

SIXTH: The number of incorporators of this corporation are five (5) and the name and post office address of the same are as follows:

ARTHUR CARMANO  
19 Anne Avenue  
Ramsey, New Jersey

TIMOTHY J. SULLIVAN  
11 Ellen Court  
Hillsdale, New Jersey

SCOTT WEINER  
1323 Anderson Avenue  
Fort Lee, New Jersey

LORETTA WEINBERG  
866 Queen Anne Road  
Teaneck, New Jersey

TERRI XANTHOS  
264 Roff Avenue  
Palisades Park, New Jersey

SEVENTH: The name and post office address of the registered agent of the said corporation, upon whom process against the corporation may be served is Scott A. Weiner, Esq., 1323 Anderson Avenue, Fort Lee, New Jersey, 07024.

EIGHTH: The corporation shall be located and its activities shall be conducted at 90 Main Street, Hackensack, New Jersey.

NINTH: The number of trustees selected for the first year of the existence of the corporation shall be six except to the extent that said number may be enlarged by the trustees as may be set forth in the By-Laws adopted by said trustees. The names and post office addresses of the trustees to serve for the first year of the corporation's existence are:

EDWARD R. TRACY  
171 Manchester Road  
River Edge, N.J. 07661

ROBERT H. FRANKLIN  
34 Cambridge Place  
Glen Rock, N.J. 07452

FRANK T. TARTARO  
57 Mt. Cedar Avenue  
Wallington, N.J. 07057

FACDA ROSENBLUM  
65 Merrison Street  
Teaneck, N.J. 07666

WILLIAM H. WHITE  
2365 Hudson Terrace  
Fort Lee, N.J. 07024

JOHN J. DUNICAN  
363 Johnson Avenue  
Teaneck, N.J. 07666

LOIS MARSHALL  
c/o Bergen Community College  
Paramus, N.J. 07652

TENTH: The corporation shall have no capital stock.

ELEVENTH: The private property of the incorporators, trustees and officers of the corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

TWELFTH: In the event of the liquidation, dissolution or winding up of the corporation, whether voluntary, involuntary or by operation of law, any disposition made of the assets of the corporation shall be such as is calculated exclusively to carry out the objects and purposes for which the corporation is formed and shall not be for pecuniary profit and shall be pursuant to the provisions of the Act of the Legislature of the State of New Jersey, entitled "The Corporations and Associations Not for Profit Act", N.J.S.A. 15:1-1 et seq and amendments thereof and supplements thereto.

THIRTEENTH: The qualifications for trustees and officers of the corporation, together with their terms of office, election, removal, change or number within the prescribed limits, filling of vacancies and newly created trusteeships, powers, duties and liabilities shall, except as may otherwise be provided for in their Certificate of Incorporation or by the laws of the State of New Jersey, be prescribed by the By-Laws.

Sworn and Subscribed to  
before me this 22 day  
of September, 1980

*Geraldine Tomello*

GERALDINE TOMELLO  
NOTARY PUBLIC STATE OF NEW JERSEY  
My Commission Expires December 12, 1982

*Arthur Carmano*  
Arthur Carmano

*Timothy Sullivan*  
Timothy Sullivan

*Scott Weiner*  
Scott Weiner

*Loretta Weinberg*  
Loretta Weinberg

*Terri Xanthos*  
Terri Xanthos

I, The Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of CERTIFICATE OF *Incorporation* and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the *22nd* day of *Sept*, A.D. *1980* and now remaining on file and of record therein.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this *22nd* day of *Sept*, *1980*, A.D.

SECRETARY OF STATE  
DONALD LAN

RECORDED  
INDEXED  
SEP 22 1980

ORIGINAL BOARD OF TRUSTEES OF

BERGEN COUNTY CETA, INC.

(Appointed October, 1980)

Lois Marshall  
31 Barnes Drive  
Ridgefield Park, NJ 07660  
447-1940  
Dean of Community Services,  
Bergen Community College

Edward R. Tracy  
171 Manchester Road  
River Edge, NJ 07661  
261-6468  
Retired—Financial Consultant part-  
time—Bergen Passaic Health Systems

William H. White  
2365 Hudson Terrace  
Fort Lee, NJ 07024  
212-273-7900  
Asst. Dir.—Staten Island Health  
Systems Agency

John J. Dunican  
363 Johnson Avenue  
Teaneck, NJ 07666  
646-3800  
Treasurer, Tenneco Chemicals, Inc.

Connie Giacomarro  
Bergen County Vocational School  
200 Hackensack Avenue  
Hackensack, NJ 07610  
343-6000  
Board Secretary

Frank T. Tartaro  
57 Mt. Cedar Avenue  
Wallington, NJ 07057  
212-566-3515  
Engineer-in-Charge, Private Drainage  
Review Section, DEP, New York City

Robert H. Franklin  
34 Cambridge Place  
Glen Rock, NJ 07452  
430-5925  
Gen. Manager, Urban Affairs & Area  
Dev.—PSE & G

Paula Rosenblum  
65 Merrison Street  
Teaneck, NJ 07666  
833-0720

CURRENT BOARD OF TRUSTEES OF  
BERGEN COUNTY CETA, INC.  
(as of May, 1981)

Lois Marshall  
31 Barnes Drive  
Ridgefield Park, NJ 07660  
447-1940  
Dean of Community Services,  
Bergen Community College

Edward R. Tracy  
171 Manchester Road  
River Edge, NJ 07661  
261-6468  
Retired-Financial Consultant part-  
time-Bergen Passaic Healty Systems

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Fort Lee, NJ 07024  
212-273-7900  
Asst. Dr.—Staten Island Health  
Systems Agency

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Teaneck, NJ 07666  
646-3800  
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Glen Rock, NJ 07452  
430-5925  
Gen. Manager, Urban Affairs & Area  
Dev.—PSE&G

Paula Rosenblum  
65 Merrison Street  
Teaneck, NJ 07666  
833-0720

Robert Burns  
103 Harrison Avenue  
Hasbrouck Heights, NJ  
288-4028  
Salesman

Philipp Reap  
0-1 Beech Street  
Elmwood Park, NJ 07407  
796-3846  
Accout Exec.—Money Brokers, Ltd.

John Macari  
1004 Ridge Court  
New Milford, NJ 07646  
Accountant

Archie W. Aitchison  
38-56 Van Duren Avenue  
Fair Lawn, NJ 07410  
796-0274  
Retired

Lawrence Pulzone  
158 16th Avenue  
Elmwood Park, NJ 07407  
881-0210  
Pres., Carbide Econometrics (Tooling)

Pamela Collins  
324 E. Central Boulevard  
Palisades Park, NJ 07650  
288-4100 Ext. 369  
Regional Dist. Mgr., AGFA Gevaert

George H. Ackerman  
316 Maitland Avenue  
Teaneck, NJ 07666  
488-4477  
Real Estate Salesman, Herold Realty Co.

Hon. Harry Gerecke  
Freeholder Director  
Administrative Building  
Hackensack, NJ 07601  
Ex-Officio member