

E.D. NO. 76-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGEN COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Public Employer,

-and-

Docket No. RO-618

BERGEN COUNTY COURT CLERKS'
ASSOCIATION,

Petitioner,

-and-

BERGEN COUNCIL #5, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Executive Director directs an election among court clerks, dismissing exceptions filed by the Public Employer to the Hearing Officer's Report and Recommendations. The Employer contends that the petition was not timely filed and that the unit sought is not appropriate for purposes of collective negotiations. The Executive Director upholds the findings and recommendations of the Hearing Officer that the petition was timely filed and that court clerks share a unique and identifiable community of interest separate and distinct from that of white-collar employees of the County.

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SERVICE ASSOCIATION,
Intervenor.

For the Public Employer, Edwin C. Eastwood, Jr.,
Esquire

For the Petitioner, Aronsohn, Kahn and Springstead,
Esquires (Richard F. Aronsohn, Esq.)

For the Intervenor, no appearance

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning representation of certain public employees employed by the Bergen County Board of Freeholders,^{1/} a hearing was held before Stephen B. Hunter, Hearing Officer of the Commission, at which all parties were given the opportunity to present evidence, to examine and cross examine witnesses, and to argue orally.^{2/}

1/ There is an issue as to who is the public employer of the employees involved in the instant petition. This will be discussed below.

2/ As noted by the Hearing Officer, the Intervenor chose not to participate in the hearing conducted in this matter.

The Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof, on March 10, 1975. Exceptions to that Report and Recommendations were timely filed by the Public Employer April 17, 1975 in accordance with an approved request for an extension of time within which to file exceptions. On May 6, 1975, timely cross-exceptions and a supporting memorandum of law were filed by the Petitioner with the approval of the undersigned.

The undersigned has carefully considered the record, the Hearing Officer's Report and Recommendations and the exceptions and cross-exceptions and, on the basis of the facts in this case, finds:

1. The Bergen County Board of Chosen Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and is subject to its provisions.^{3/}

2. The Bergen County Court Clerks' Association and Bergen Council #5, New Jersey Civil Service Association are employee representatives within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative has been filed by the Bergen County Court Clerks' Association, seeking to represent all court clerks assisting Judges in the Superior, General County and County District Courts of Bergen County. The Public Employer has declined to consent

^{3/} See footnote No. 1.

to an election in the unit sought by the Petitioner or to recognize the Petitioner in the unit sought, contending that the petition is untimely and that the unit sought is not appropriate. Therefore, there is a question concerning representation of public employees and the matter is properly before the undersigned for decision.

4. The Hearing Officer identified three main issues in this matter. First, was the petition timely filed? Second, is the Bergen County Board of Chosen Freeholders the Public Employer of the employees sought in the Petition? Third, is the unit sought an appropriate unit for purposes of collective negotiations? He found the answers to each of these questions to be affirmative.

The Public Employer excepted to the findings and recommendations of the Hearing Officer, contending that the petition was not timely filed, that the question of who is the public employer is not relevant as a separate issue but is part of the third issue, and that the unit sought is not an appropriate unit.

The undersigned agrees with the findings and recommendations of the Hearing Officer, essentially for the reasons cited by him in his detailed and lengthy report, attached hereto.

Treating these issues seriatum, the undersigned agrees that the petition was timely filed. Assuming without finding that the Public Employer posted the Notices to Public Employees as required by the Commission's Rules then in affect, it is

uncontroverted that the Public Employer failed to notify the Commission of the interest which the Court Clerks' Association had expressed in writing to the County in representing the court clerks in spite of the fact that the Commission specifically and in writing requested such information and that the Commission's Rules require the Public Employer to furnish information regarding "...all employee organizations which have within the preceding twelve (12) months claimed to represent any of the employees in the requested unit." (N.J.A.C. 19:11-1.10) The Public Employer stipulated that the Petitioner was an employee representative at the time of the hearing although that stipulation was limited to that point in time. However, the Public Employer offered no evidence that the Petitioner was not an employee representative when the Commission asked for information regarding interested employee organizations and nothing in the record suggests that the Court Clerks' Association was not then an employee organization. Therefore, the undersigned finds the instant petition to have been timely filed.

The second issue relates to the public employer of the court clerks. The parties stipulated that the Bergen County Board of Chosen Freeholders is the employer of the employees involved herein although the Petitioner contended, on the second day of hearing, that the public employer might more appropriately be found to reside in the judicial branch of government. This contention was not pursued in the Petitioner's post-hearing

brief and in that brief, the Petitioner cited the earlier stipulation that the Bergen County Board of Chosen Freeholders was the Public Employer of the employees in question.

The Hearing Officer found the Bergen County Board of Chosen Freeholders to be the public employer of the court clerks for the purposes of the New Jersey Employer-Employee Relations Act, as amended.

Although the undersigned adopts the finding of the Hearing Officer that the Bergen County Board of Chosen Freeholders is the public employer of the court clerks within the intendment of the New Jersey Employer-Employee Relations Act, it is acknowledged, as stated by the Hearing Officer, that many attributes of employment are in fact controlled by the judges within the judicial district. Therefore, it could be argued that the County and the judges within the district are joint employers of the court clerks. A resolution of this issue is not necessary for the disposition of this matter.

Third, the undersigned agrees with the finding of the Hearing Officer that the unit sought is an appropriate unit for the reasons cited by the Hearing Officer.

After carefully considering the entire record and the Employer's exceptions the undersigned is persuaded that the court clerks constitute a separate appropriate unit. They share a unique and identifiable community of interest separate and distinct from other County white-collar employees. The above discussion regarding the control exercised by the judiciary over

significant components of their employment strongly supports this conclusion. Furthermore, the factors cited by the Hearing Officer and relied upon herein are essentially unique to court clerks, thereby obviating the concern expressed by the Public Employer that this decision will lead to undue fragmentation and clash with the requirement that negotiations units be fashioned consistent with the "establishment and promotion of fair and harmonious employer-employee relations in the public service."^{4/}

Accordingly, the undersigned dismisses the exceptions of the Public Employer regarding the appropriateness of the unit sought.

5. Having found the petition to have been timely filed and the unit sought to be appropriate for purposes of collective negotiations, the undersigned shall direct an election in the following unit: "All court clerks assisting Judges in the Superior, General County and County District Courts of Bergen County and employed by the Bergen County Board of Chosen Freeholders, but excluding all other Bergen County employees, managerial executives, confidential employees, professional employees, craft employees, policemen and supervisors within the meaning of the Act."

6. The undersigned directs that a secret ballot election be conducted in the unit found appropriate. The

^{4/} Board of Education of West Orange v. Wilton, 57 N.J. 404, 416 (1971).

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 Bergen County Court Clerks' Association.

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 EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
November 12, 1975

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SERVICE ASSOCIATION,
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Appearances:

For the Public Employer
Edwin C. Eastwood, Jr., Esquire

For the Petitioner
Aronsohn, Kahn and Springstead, Esquires
By Richard F. Aronsohn, Esquire

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on March 7, 1973, by the Bergen County Clerk's Association (hereinafter the Petitioner) which sought to be certified as the exclusive representative for purposes of collective negotiations for all court clerks assisting Judges in the Superior, General County and County District Courts of Bergen County and employed by the Bergen County Board of Chosen Freeholders (hereinafter the Public Employer). Pursuant to a Notice of Hearing, hearings were held on December 21, 1973 and February 21, 1974, in Newark, New Jersey at which all parties were given an opportunity to examine witnesses, to present evidence, and to argue orally. Briefs subsequently were

submitted by the Public Employer and the Petitioner. Upon the entire record, the exhibits, and the briefs in this instant proceeding, the Hearing Officer finds:

1. The Bergen County Board of Chosen Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act and is subject to its provisions.^{1/}

2. The Bergen County Clerks' Association and Bergen Council #5, New Jersey Civil Service Association are employee representatives within the meaning of the New Jersey Employer-Employee Relations Act.

3. The Public Employer seeks dismissal of the instant petition on the basis that the unit sought by the Petitioner is not an appropriate unit for the purposes of collective negotiations "with due regard to the community of interest among the employees concerned". In addition, the Public Employer seeks dismissal of this petition on the basis that the petition was untimely filed pursuant to Section 19:11-1.15(b) of the Public Employment Relations Commission's Rules.

Therefore, as the apposite parties do not consent to a secret ballot election in a stipulated 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.^{2/}

1/ This particular finding will be discussed in considerable detail in a subsequent section of this report.

2/ The representatives of Bergen Council #5 concurred with the position of the Public Employer in its formal submission to the

(Continued)

BACKGROUND

Bergen Council #5, New Jersey Civil Service Association was certified by the Public Employment Relations Commission on December 11, 1973, as the exclusive representative for the purposes of collective negotiations for all white-collar workers employed by the Bergen County Board of Chosen Freeholders excluding all employees of the Bergen Pines County Hospital, Bergen County Park Commission and all other County workers, including blue-collar workers, craft employees, professional employees, police and supervisors within the meaning of the New Jersey Employer-Employee Relations Act.

The job classification at issue in this particular matter, specifically that of court clerk, was included within the list of white-collar titles submitted to the investigating hearing officer of the Commission by the Public Employer on September 19, 1972, in response to a Commission form letter dated September 14, 1972, requesting, in part, an alphabetized list of employees generally described in the Petition for Certification filed by Council #5 on September 7, 1972 /Docket No. R0-5077, with regard to the afore-

2/ (Continued)

Commission's designees (See Commission Exhibits C-4 and C-14). However, after requesting several postponements of scheduled hearings in the instant matter, Council #5 chose not to make an appearance at either of the two hearings. The attorney for the Petitioner did state at the hearing that it was his understanding that the attorney for Council #5 had indicated to the Commission, shortly before the first day of hearing, that Council #5 had no longer any objection to the petition filed by the Petitioner (Transcript, p. 25). However, neither the undersigned nor any other member of the Commission's professional staff received any message to this effect from any representative of Council #5.

mentioned county-wide white-collar unit. The job classification of court clerk was also specifically included within the eligibility list submitted to the Commission shortly after the execution of a consent election agreement between the Public Employer and Council #5.^{3/}

No employee organization sought to intervene within the ten-day intervention period provided for at that time within the then existing Section 19:11-13 of the Commission's Rules and Regulations, since amended^{4/} nor did the Public Employer inform the Commission agents assigned to this case that any other employee organization had expressed an interest in representing any of the white-collar employees petitioned for by Council #5 as requested to do so within the Commission form letter dated September 19, 1972.

A representation election was held on November 30, 1972, and out of approximately 506 eligible voters (including the 28 court clerks then employed), 287 voted for Bergen Council #5, N.J. C.S.A., and 127 voted against representation by the Petitioner. No objections were filed to the conduct of this election or conduct affecting the results of the election, and a Certification of Rep-

^{3/} The two lists cited above referred to three different court clerk classifications; specifically, court clerks, court clerk-typists and deputy court clerks. Both parties later stipulated that, in fact, all the employees at issue had the title of Court Clerk. (Transcript, p. 20-21)

^{4/} Section 19:11-13, in apposite part, set forth the following: "No employee organization may participate to any extent in any representation proceeding unless it has notified the Executive Director of its desire to intervene within ten (10) days after the posting of the notice of petition as provided in section 19:11-10, unless good cause is shown for extending the period."

representative was issued on December 11, 1973, to Bergen Council #5, New Jersey Civil Service Association.

MAIN ISSUES

1. Is the Petition a timely petition with specific reference to the certification bar provisions of the Public Employment Relations Commission's Rules and Regulations? N.J.A.C. 19:11-1.15(b)

2. Is the Public Employer of the petitioned-for unit in fact the Bergen County Board of Chosen Freeholders?

3. Is the unit sought an appropriate unit for the purposes of collective negotiations "with due regard for the community of interest among the employees concerned"? N.J.S.A. 34:13A-5.3(7)

CERTIFICATION BAR ISSUE - POSITION OF THE PUBLIC EMPLOYER

The Public Employer asserted that since a Certification of Representative was issued to Bergen Council #5 on December 11, 1972 covering, in part, all of the individuals petitioned-for by the Petitioner, the instant petition, filed on March 7, 1973, should have been dismissed forthwith because of the mandate of the Commission's certification bar rule set forth within Section 19:11-1.15(b) of the Public Employment Relations Commission's Rules.^{5/}

In addition, the Public Employer stated that since it had

^{5/} Section 19:11-1.15(b) of the Public Employment Relations Commission's Rules sets forth the following: "Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to Section 14 of the Subchapter."

signed a three year contract with Bergen Council #5 retroactive to January 1, 1973⁷ on April 12, 1973, covering all of the white-collar employees included in the aforementioned Certification of Representative issued on December 11, 1973 including the petitioned-for court clerks, no petition for certification filed by the Petitioner or any other employee organization concerning any of these white collar employees could be considered timely filed until September of 1975, in accordance with the Commission's apposite contract bar rule as set forth within Section 19:11-1.15(c) (2) of the Public Employment Relations Commission's Rules.^{6/}

CERTIFICATION BAR ISSUE - POSITION OF THE PETITIONER

The Petitioner argued that the Commission's certification bar rule should not be applied in this instant matter so as to mandate the dismissal of its petition for the following reasons:

1. The Petitioner asserted in submitting sworn affidavits from seven court clerks, that Commission-issued "Notices to Public Employees" that were forwarded to the representative of the Public Employer on October 17, 1972 with reference to the petition filed by Bergen Council #5 (Docket No. RO-507) were never posted in apposite areas within the Bergen County Courthouse complex so as to apprise any potential intervenor organization, such as the Petitioner,

^{6/} Section 19:11-1.15(c) (2) sets forth the following: (c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless: 2. In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement.

of the procedure to be followed if any employee organization had an interest in representing any of the petitioned-for white-collar employees^{7/} in violation of the Commission's rule then in existence concerning, in part, the requirement of the Public Employer to post Notices to Public Employees in apposite locations for a period of at least ten days. /Section 19:11-10^{8/} The Petitioner therefore

7/ The Notices to Public Employees, then utilized by the Commission, set forth the following:

NOTICE IS HEREBY GIVEN that any employee organization having an interest in representing the employees being sought MUST advise the Executive Director of the Public Employment Relations Commission in writing of their interest within ten (10) days from the date of the posting of this Notice. Such notification must conform with section 19:11-13 of the Commission's Rules and Regulations and Statement of Procedure.

This language was, of course, modified to conform with the new Commission rules on "interyention" /effective May 18, 1973/ now set forth in Section 19:11-1.13 of the Commission's Rules.

8/ Section 19:11-10 of the Commission's Rules, in effect until May 10, 1973, is reproduced below:

"Upon the request of the Executive Director, after the filing of a petition, the public employer shall post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Executive Director.

Such notices shall set forth: (1) the name of the petitioner, (2) the description of the unit involved, and (3) a statement that all interested parties are to advise the Executive Director in writing of their interest within ten (10) days from the date of posting of such notice.

The notice shall remain posted for a period of ten (10) days from the date of receipt by the public employer. The public employer shall certify to the Executive Director that the notice has been conspicuously posted for a period of ten (10) days where notices are normally posted and that the notice has not been covered by other material, altered or defaced. In addition, the public employer shall furnish the Executive Director with the names, addresses and telephone numbers of all employee organizations which have within the preceding twelve (12) months claimed to represent any of the employees in the requested unit."

concluded that the certification bar rule should not be applied in this instant matter since it was the failure of the Public Employer to comply with the Commission's rules that prevented it from intervening in a timely fashion with regard to the petition filed by Council #5.

2. In addition, the Petitioner emphasized that after the consent election agreement was executed between the Public Employer and Council #5, Commission issued election notices were not posted in all appropriate county facilities by the Public Employer and that the court clerks were unaware of their potential inclusion within the county-wide white-collar unit petitioned-for by Council #5 until shortly before the actual election.

The Petitioner also argued that the representatives of the Public Employer, in not appending a list of all included job classifications within the white-collar unit to the few election notices that were posted, effectively denied them the right to file a Petition for Certification during the period between the execution of the consent election agreement and the actual election date.^{9/} The Petitioner stated that none of the court clerks had been privy to the eligibility lists that the Public Employer asserted were

^{9/} Section 19:11-13, the relevant Commission rule then in effect, stated, in part, that "No employee organization may participate to any extent in any representation proceeding unless it has notified the Executive Director of its desire to intervene within ten (10) days after the posting of the notice of petition as provided in Section 19:11-10 unless good cause is shown for extending the period."

The Petitioner apparently advanced their second argument in support of its contention that through the misfeasance or malfeasance of the Public Employer, it was effectively denied an opportunity to discover that court clerks were included within the white-collar unit even after the consent agreement was signed and certain election notices posted. Therefore the Petitioner was not able to intervene before the election was actually held.

sent to all department heads throughout the County on November 22, 1973 (over a week before white-collar election was conducted).

The Petitioner thus concluded that the certification bar rule should not be applied in this instant matter so as to mandate the dismissal of their petition because they were completely prevented from finding out about the inclusion of the court clerks within the County-wide white-collar unit until the day of the election because of the failure of the Public Employer to comply with the Rules and Regulations of the Commission.

DISCUSSION OF THE CERTIFICATION BAR ISSUE

In the course of the Commission's investigation of the contentions raised by the Bergen County Clerks Association, the Public Employer forwarded to the Commission documentation that attempted to refute the allegations made by the Petitioner.

With reference to the Petitioner's first contention the Public Employer proffered an affidavit with supportive documentation, from the County Personnel Director, Walter Babcock, who stated that Notices to Public Employees were distributed to all department heads throughout the County along with a cover letter directing these department heads to post these notices for ten full days beginning Friday, October 20, 1972. Mr. Babcock also affirmed that he had personally witnessed that these notices were posted in various County departments.^{10/} The Public Employer thus asserted that they complied, in full, with the Commission's rules then in effect concerning the posting of Notices to Public Employees Section 19:11-10 in an effort to apprise any potential intervenor

organization of its statutory rights and obligations.

In response to the Petitioner's second contention, the Public Employer asserted that election notices were posted in all apposite locations on November 13, 1973, apprising all white-collar employees of the impending consent election.^{11/} In addition, the Public Employer emphasized that election eligibility lists including, in part, all the court clerks, were forwarded to all department heads on November 22, 1972, eight days before the white-collar election, in order to insure that all eligible voters would have an opportunity to arrange their schedules in order to vote in that election.

The Public Employer also forwarded to the Commission, during the investigation of this instant matter involving the court clerks, a letter, dated June 20, 1972, which informed a representative of the Petitioner, approximately five months before the white-collar election, that the narrow negotiating unit (of court clerks) proposed by the Petitioner in an earlier letter, dated June 13, 1972, was not recognized by the Board of Freeholders as an appropriate collective negotiating unit.^{12/} This June 20, 1972, letter significantly advised the Petitioner that the Public Employer would consider as appropriate negotiating units only large broad-based units of County employees, referring specifically to the unit of white-collar employees then being organized by Council #5.

^{11/} Victor Mangone, employed as a court clerk within the Bergen County Court system stated in an affidavit that he had seen a copy of the election notice posted by the elevator in the new wing of the Bergen County Court House on November 13, 1973 (Exhibit C-8).

^{12/} Exhibits C-3 and C-10.

The Public Employer thus concluded that the election notices (in addition to the Notices to Public Employees discussed hereinbefore) were posted in accordance with Commission procedures and that the Petitioner had sufficient information available to it to have realized that court clerks were clearly both petitioned for and included within the white-collar employee negotiating unit.

The undersigned finds, for the reasons to be set forth below, that even if all the arguments proffered by the Public Employer concerning their proper posting of both the Notices to Public Employees and election notices were sustained certain exhibits submitted to the Commission by the Public Employer mandate the conclusion that the petition in this instant matter is timely filed especially in light of Section 19:19-1.1 of the Commission's Rules.^{13/}

In a letter dated September 14, 1972 the Executive Director of the Commission requested that if the Public Employer had any information concerning other employee organizations having an interest in representing employees involved in the matter concerning the white-collar employees petitioned for by Council #5, then it should inform the Commission to this effect so that said organiza-

^{13/} (a) Whenever the Executive Director or the Commission finds that unusual circumstances or good cause exist and that strict compliance with the terms of these rules and regulations will work an injustice or unfairness, it shall construe these rules and regulations liberally to prevent injustices and to effectuate the purposes of the law. (b) When an act is required or allowed to be done at or within a specified time the Executive Director or the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act.

tion(s) could be informed about the nature of the proceeding potentially affecting them. In addition, at that time, Section 19:11-10 of the Commission's Rules [now designated as Section 19:11-1.10] stated, in apposite part, that "the public employer shall furnish the Executive Director with the names, addresses and telephone numbers of all employee organizations which have within the preceding twelve (12) months claimed to represent any of the employees in the requested unit."

This particular background information must be analyzed in light of the fact that the Public Employer on two separate occasions submitted to the Commission a letter dated June 20, 1972 [that had been written to a representative of the Petitioner] in support of the Freeholders' contention that the Petitioner had knowledge of the inclusion of court clerks within the petitioned-for white-collar unit far in advance of the posting of any apposite information concerning the white-collar unit yet chose not to timely intervene. This letter, however, also established the actual knowledge of the designated representatives of the Public Employer of the interest the Bergen County Clerks Association had in representing certain of the white-collar employees petitioned for by Council #5 less than three months before Council #5 filed their Petition for Certification with regard to the white-collar unit.

Although the Public Employer had clearly been informed of their obligation to inform the Commission of any expressed representation interest of any organization such as the Clerks Association, no representative of the Public Employer related to either of the staff professionals assigned to the case that another employee

organization had recently claimed to represent certain specified employees within the unit requested by Council #5.^{14/}

The undersigned finds that it would be patently unfair to dismiss the Petitioner's petition on certification bar grounds for failure to comply with the Commission's timeliness Rules in light of the Public Employer's failure to comply with the Commission's Rules and Regulations in another particularly important respect. Had the Public Employer supplied the Commission with the necessary information concerning the Clerks Association's interest in representing certain of the petitioned for white-collar employees, the Commission would have been able to thoroughly inform the designated representatives of the Clerks Association of the outstanding proceeding affecting their representation interests and of their attendant rights and responsibilities.

If the Clerks Association had chosen to properly intervene after being contacted by the Commission, their unit contentions would have been thoroughly investigated and, if necessary, ruled upon before an election was conducted concerning the white-collar unit petitioned for by Council #5. If the Clerks Association had chosen not to intervene within the appropriate time period, after being so informed, a subsequently filed petition for certification by the Association would have had to have strictly complied with the Commission's timeliness rules and regulations.

The undersigned thus concludes that the petition in this instant matter should be considered as being timely filed.

^{14/} See Exhibits C-16 and C-17 for affidavits of Commission agents Carl Kurtzman and Edward Marth.

WHO IS THE PUBLIC EMPLOYER ISSUE -
POSITION OF THE PETITIONER

The Petitioner stipulated that the Bergen County Board of Chosen Freeholders was the public employer of the petitioned-for court clerks in its Petition for Certification on the first day of hearing.^{15/}

On the second day of hearing, the Petitioner referred to an Appellate Division decision, In Re John Brennan, 126 N. J. Super. 368 (1974), that had been decided on January 14, 1974, and the statutes cited therein in support of its new contention that the presiding judge of the Bergen County integrated court system, subject to the supervision of the assignment judge, the Administrative Director of the Courts and, where appropriate, the Chief Justice was more appropriately the public employer of the petitioned for court clerks within the intendment of the New Jersey Employer-Employee Relations Act.

The Brennan decision had held that the presiding judge of a county district court, subject to the supervision of the assignment judge and Chief Justice, was the "employer" of a county district court clerk within the statutory provision providing that an employee attaining 70 years of age may be continued in service on an annual basis on written notice to the retirement system by the head of the State department or the employer of the employee /Public Employees Retirement System (P.E.R.S.) Act, N.J.S.A. 43: 15A-47 (b)7.^{16/}

15/ Commission exhibit C-1 and Transcript pages 10-11.

16/ Transcript, pages 197-202.

The attorney for the Petitioner asserted that since the apposite members of the judiciary were both the appointing authorities of the court clerks and also responsible for the supervisory control over these individuals two indices often examined in determining whether an employer-employee relationship exists^{17/} they therefore were the public employers of these court clerks within the meaning of the New Jersey Employer-Employee Relations Act.^{17/}

The clear implication of these arguments was that if it was determined by the undersigned that the Bergen County Board of Chosen Freeholders was not the public employer of these court clerks then these individuals could not be included with County white-collar employees within one negotiating unit and were in fact entitled to separate representation subject to the approval of the appropriate judges.

In the Petitioner's post-hearing brief, however, no further mention was made of the argument that the Bergen County Board of Freeholders was not the public employer of the petitioned-for employees. The Petitioner in its brief only referred to its earlier statement made on the first day of hearing that the Bergen County Board of Freeholders was a public employer within the meaning of the New Jersey Employer-Employee Relations Act.

^{17/} 34:13A-3(d) states in apposite part that the term "employer" shall include "public employers" and "shall mean the State of New Jersey, or the 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."

WHO IS THE PUBLIC EMPLOYER ISSUE -
POSITION OF THE BERGEN COUNTY BOARD OF CHOSEN FREEHOLDERS

The attorney for the Board of Freeholders asserted that the Board was clearly the public employer of the petitioned-for county clerks. This attorney cited the aforementioned Brennan decision as being dispositive of only one narrow issue; specifically, whether the assignment judge or presiding judge of a county district court on the one hand, or the Board of Freeholders on the other, should be considered the "employer" of a clerk of a county district court for the purposes of N.J.S.A. 43:15A-47(b).

The representative of the Board pointed out that the Superior Court in the Brennan decision asserted that despite its decision on the specific merits of the matter before the court, it recognized that "the attributes of fiscal control as to an employee normally associated with being an employer reside in the Board and the latter may otherwise be considered as an "employer" under the P.E.R.S. Act [N.J.S.A. 43:15A-6 et seq.]^{18/} by reason thereof. It was thus advanced that the fiscal autonomy of the Board of Freeholders concerning, in part, the setting of the salaries of court clerks mandated the finding that the Board was the public employer of the court clerks as defined in the New Jersey Employer-Employee Relations Act. [N.J.S.A. 34:13A-1 et seq.]

WHO IS THE PUBLIC EMPLOYER - DISCUSSION

The undersigned Hearing Officer, for the reasons to be delineated hereinafter finds that the Bergen County Board of Chosen Freeholders is the public employer of the petitioned-for court clerks

18/ In re John Brennan, 126 N.J. Super. 369 at 371.

within the intendment of the New Jersey Employer-Employee Relations Act.

It is instructive to first carefully examine the New Jersey Supreme Court decision entitled In Re Salaries for Probation Officers of Bergen County, 58 N.J. 422 (1971) which, in part, confirmed the public employer status of the judges of the Bergen County Judicial District vis-a-vis county probation officers after analyzing the apposite statutes affecting the relationship between the judges and these particular employees.

In the Probation Officers matter the judges had entered an order fixing the salaries, fringe benefits and working conditions for county probation officers. The County Board of Freeholders which would have been required to supply the funds to meet these obligations took an appeal from this order, on several grounds, and the Supreme Court certified the case on its own motion.

The Supreme Court in the Probation Officers matter emphasized that the judges of the county court not only appointed probation officers N.J.S.A. 2A:168-5^{19/} but also were expressly authorized

19/ The judges of the County Court in each county, or a majority of them, acting jointly may appoint a chief probation officer, and, on application of the chief probation officer, such men and women probation officers as may be necessary. Before any order is made by such judge or judges of the County Court appointing any additional probation officers, a notice of the time and place, when and where such order shall be considered, shall be given to the board of chosen freeholders of the county and they shall be given an opportunity to be heard as to the necessity of such additional probation officers. All probation officers appointed subsequent to April twenty-second, one thousand nine hundred and twenty-nine, who are to receive salaries shall be appointed in accordance with the rules and regulations of the Civil Service Commission. Orders of appointment shall be in writing and be filed in the office of the county clerk.
N.J.S.A. 2A:168-5.

to fix the salaries of these probation officers and provide for any necessary and reasonable expenses, subject only to the condition that they give the Board of Freeholders an opportunity to make known and discuss any fiscal problems that certain additional expenditures could invite, before a final commitment was made by the Judges. N.J.S.A. 2A-168-8^{20/} The court found that as a result of their fiscal authorities vis-a-vis probation officers the judges could negotiate as the public employer of these employees with regard to even non-economic issues such as residency^{21/} requirements.

In contrast the Appellate Division in the Brennan decision while it affirmed that the appointing authority and direct supervisor

20/ 2A:168-8 - The judge or judges authorized to appoint a chief probation officer or probation officers shall fix, by order under the hand of such judge or judges, annual salaries to be paid such officers, and before any such order shall be made by such judge or judges, notice of the time and place, when and where such order shall be considered, shall be given to the board of chosen freeholders of the county and such board shall be given an opportunity to be heard upon the same and such order shall be filed in the office of the clerk of the County Court. The amounts so fixed shall be paid in equal semimonthly payments in the same manner as the salaries of other officers of the county.

The necessary and reasonable expenses of salaried probation officers incurred in the performance of their duties shall be paid out of the county treasury, after itemized statements of such expenses have been approved by the chief probation officer and one of the County Court judges and filed in the office of the county treasurer. On request of the chief probation officer, the necessary traveling and maintenance expenses in attending probation officers' meetings and conferences of social work shall be included, when previously authorized by the judge or judges authorized to appoint probation officers.

The salaries of employees appointed by the chief probation officer shall be fixed by the board of chosen freeholders in accordance with the schedules of the Civil Service Commission, and paid the same manner as the salaries of probation officers.
21/ In Re: Salaries for Probation Officers, 58 N.J. 422 at page 428.

of court clerks was, by statute, the presiding judge of the "judicial district" N.J.S.A. 2A-6-16 and R. 1:33-4 (2), 1:33-4 (3), and 1:34-2^{22/} declared that the attributes of fiscal control as to an employee normally associated with being an employer resided in the Board of Freeholders with the judges playing an apparently insignificant role with regard to the economic terms and conditions of employment of court clerks N.J.S.A. 2A6-26 and 2A:6-27^{23/}.

22/ 2A:6-16. Except in counties where the county clerk is the clerk of the court, the clerk and deputy clerks of each county district court shall be appointed, in accordance with Title 11, Civil Service, of the Revised Statutes, by the judge, and in courts having branch parts, by the presiding judge, of the county district court.

1:33-4. Each judge, or the presiding judge, if one has been designated, shall be responsible for the orderly administration of his court. His duties shall include the following:

- (1) The supervision of all the judges of the court of which he is the presiding judge.
- (2) The appointment of such personnel required to be made by the court of which he is the presiding judge.
- (3) The supervision of the clerk of the court and all other officers and employees of or serving the court.

1:34-2. The clerk of every court, except the Supreme Court and the Superior Court, shall be responsible to and under the supervision of the judge or presiding judge of the court of which he is the clerk, the Assignment Judge of the county, and the Administrative Director of the Courts. The clerks of the Supreme and Superior Courts shall be responsible to and under the supervision of the Administrative Director of the Courts and the Chief Justice. The clerk of the county court shall be the deputy clerk of the Superior Court with respect to Superior Court matters pending in his county and may issue writs out of the Superior Court. Deputy clerks in the juvenile and domestic relations courts and the county district courts and all other employees of such courts shall be responsible to and under the supervision of the clerk of the court.

23/ 2A:6-26 - The salary or compensation of the clerks, deputy clerks, clerical assistants, sergeants at arms, and other personnel, excepting district court judges, holding positions, office or employment, in the county district courts of this state, shall be fixed by the respective boards of chosen freeholders charged with the payment of such salary or compensation, but nothing in this section shall be deemed to authorize a decrease in compen-

(Continued)

The undersigned thus concludes that the judges' possession of general appointive and supervisory authorities concerning court clerks, absent any effective control over the terms and conditions of employment of an economic nature of these particular employees, does not establish the existence of a traditional employer-employee relationship between the judges and these court clerks.

A second factor considered by the undersigned in determining who the public employer of court clerks is for the purposes of the New Jersey Employer-Employee Relations Act is a stated purpose of this Act which is "to promote permanent public and private employer-employee peace."^{24/} In order to effectuate this purpose, public employers are required to negotiate and enter into written agreements concerning terms and conditions of employment with employee organizations representing their employees.

In this regard, it is important to consider that at no time in this instant proceeding was there ever any evidence introduced or even alluded to establish the readiness or intent of the apposite judges employed within the Bergen County judicial district to function as the public employer of those court clerks with regard

23/ (Continued)

sation of any such officers or employees heretofore granted by any board of chosen freeholders.

2A:6-27 - Upon recommendation of the judge, and in courts having branch parts, the presiding judge, of a county district court, the board of chosen freeholders may increase the salary or compensation of the clerk, deputy clerks, clerical assistants, sergeants at arms or other personnel, excepting district court judges, by such sum of money as it shall deem proper. Any such increase in salary may be granted retroactively, to any such officer or employee.

24/ See N.J.S.A. 34:13A-2.

to the negotiations process. Prior to the advent of Chapter 303, Laws of 1968, negotiations had taken place between the Board of Freeholders and the Bergen County Clerks Association without any apparent intervention from the judges.^{25/}

The undersigned concludes that the aforementioned primary purpose of the Act would not be effectuated if the judges within the Bergen County judicial district were burdened with the necessity of negotiating an employment contract with court clerks, absent any apparent desire on the judges' part to do so and absent any clear desire on the Petitioner's part to have these judges function as even part of a "management" negotiating team.^{26/}

The undersigned has also carefully considered two recent judicial decisions, Prosecutors, Detectives, Essex County v. Hudson Board of Freeholders, 130 N.J. Super. 30 (App. Div., 1974) cert. denied 66 N.J. 330 (1974) and Passaic County Probation Officers Association v. County of Passaic, et al. (Superior Court - Chancery Division - Passaic County, Docket No. C-1705-74, Decided on February 5, 1975) which appear to confirm the undersigned's findings that the Bergen County Board of Chosen Freeholders is the public employer of court clerks for the purposes of the New Jersey Employer-Employee Relations Act.

^{25/} Transcript, pages 53-54.

^{26/} As discussed previously, the Petitioner in its post-hearing brief chose not to advance its argument that the presiding judge was more appropriately the public employer of the court clerks and apparently conceded that the Bergen County Board of Chosen Freeholders was the public employer of these clerks within the meaning of the New Jersey Employer-Employee Relations Act.

The undersigned Hearing Officer would like to suggest that the designated representative of the Bergen County Board of Chosen Freeholders, prior to the opening of subsequent negotiations with the majority representative of these court clerks, consult with the judges of the Bergen County judicial district with regard to the judges' recommendations concerning, for example, the work, holiday and vacation schedules of these court clerks along with working rules and other essentially non-economic terms and conditions of employment. Although no specific evidence was proffered by the Petitioner to establish that a joint employer relationship existed between the judges of the Bergen County judicial district and the Board of Chosen Freeholders vis-a-vis these court clerks the undersigned believes that the purposes of the New Jersey Employer-Employee Relations Act would best be effectuated if the Board of Freeholders would actively seek the advice of judges, who are statutorily responsible for the day-to-day supervision and control of court clerks, concerning certain negotiations matters.

APPROPRIATENESS OF THE UNIT ISSUE -
POSITION OF THE PUBLIC EMPLOYER

It was the contention of the Public Employer that the unit petitioned for was clearly not an appropriate unit for the purposes of collective negotiations given the mandate of the New Jersey Employer-Employee Relations Act and apposite Commission and judicial decisions.

The Public Employer asserted that the position of court

clerk was of a general clerical and administrative nature, different from other administrative positions included within the County-wide white-collar unit only in that clerical duties were performed in a courtroom atmosphere. The Public Employer therefore concluded that the employees involved in the proposed negotiating unit possessed no separate identifiable community of interest that would entitle them to recognition and/or certification apart from the present white-collar negotiating unit.

The Public Employer also cautioned the Hearing Officer to consider the potential effects of a ruling in favor of the Petitioner in this matter. It was argued that if the court clerks were found to constitute an appropriate unit for collective negotiations purposes, then the door would be opened for any miniscule group of public employees to seek a similar bargaining unit, against the great weight of pertinent administrative and judicial decisions that have warned against excessive fragmentation of negotiating units in the public sector.

APPROPRIATENESS OF THE UNIT ISSUE -
POSITION OF THE PETITIONER

The Petitioner submitted that the professed legislative intent of the New Jersey Employer-Employee Relations Act would be contravened with a finding that the most appropriate negotiating unit in this instant matter encompassed court clerks along with all other administrative and clerical employees within an all-inclusive County-wide white-collar unit.

The Petitioner proffered evidence in support of its contention that court clerks possessed a separate identifiable community

of interest that could not and should not be merged with the interests of other white-collar employees employed by the Board of Freeholders. The Petitioner specifically referred to the distinctive duties and responsibilities of these court clerks and their many interrelationships with members of the state judiciary in support of its contentions that the unit petitioned for was an appropriate one within the intendment of the New Jersey Employer-Employee Relations Act.

DISCUSSION OF THE APPROPRIATENESS OF THE UNIT ISSUE

It is important to first examine N.J.S.A. 34:13A-5.3 which states in part that, "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned..."^{27/} In light of Commission and judicial decisions on the question of the appropriateness of particular petitioned-for collective negotiating units, the critical issue facing the undersigned is whether the petitioned-for court clerks possess a sufficient community of interest that will first be responsive to the legislative intent and statutory purpose of Chapter 123, Laws of 1974 New Jersey Employer-Employee Relations Act which is declared to be, among other things, the promotion of permanent employer-employee peace^{28/} or as the New Jersey Supreme Court

27/ It has been generally recognized that factors that are particularly relevant in determining whether a group of public employees possess said "community of interest" include the extent to which the employees involved have a similarity in training, skills and level of education; the scope of their job functions and responsibilities; their relative placement within the pertinent supervisory and organizational structure; the relevant negotiating history; and an examination of the economic and non-economic benefits accorded to members of this particular grouping.

28/ See N.J.S.A. 34:13A-2.

phrased it, ".../the/ establishment and promotion of fair and harmonious employer-employee relations in the public service,"^{29/} and yet also be reflective of the Commission's pronouncements and apposite judicial decisions that have found that negotiating units in the public sector should be organized generally along broad-based functional lines rather than by distinct occupational groupings and thus should be larger and less fragmented than "industrial units" have been in the private sector.^{30/}

Cogent reasons for this policy of non-fragmentation have been advanced by the Commission. The Commission has found that there is an "obligation implicit in the concept of Civil Service to insure equality of employment opportunity and uniformity of treatment once employed, and in consequence of that obligation, /to insure/ the basic consistency of terms and conditions of employment...for employees engaged in essentially like functions..."^{31/} Therefore, it has been reasoned that it would be impractical and disruptive to negotiate changes in otherwise essentially uniform conditions of employment on a piecemeal basis whereby a single public employer could be obligated to deal with a multiplicity of collective negotiating units of public employees composed of

^{29/} Board of Education of the Town of West Orange v. Elizabeth Wilton, et al, 57 N.J. 404 (1971).

^{30/} See, for example, State of New Jersey (Neuro-Psychiatric Institute), et al, P.E.R.C. No. 50 (1971), Board of Chosen Freeholders of the County of Burlington, P.E.R.C. No. 58 (1971), Bergen County Board of Chosen Freeholders, P.E.R.C. No. 69 (1972), and, especially State of New Jersey (Prof. Assoc. of New Jersey, Department of Education, et al), P.E.R.C. No. 68 (1972), affirmed in State of New Jersey v. Prof. Assoc. of New Jersey, Department of Education, 64 N.J. 231 (1974).

^{31/} State of New Jersey (Neuro-Psychiatric Institute, et al), P.E.R.C. No. 50 at page 10.

individuals who possess similar skills and training and who perform functionally related services.

A second important factor relied upon by the Commission in its rejection of separate collective negotiating units organized primarily along occupational lines concerns an essential objective of the New Jersey Employer-Employee Relations Act - discussed earlier - the promotion of employer-employee peace and the protection of the public interest.^{32/} The Commission has carefully reasoned that if unit parameters were dictated by the desires of certain employees to be represented along occupational lines rather than broad-based functional lines, the statute's objective would be jeopardized as a consequence of the multiplicity of units that would thus be organized. A large number of negotiating units within the public sector would unnecessarily encumber the entire negotiations process by encouraging wide-spread whipsawing; would mandate the hiring of additional management personnel to handle "simultaneous negotiations" with a myriad of employee organizations; and, in general, would force the taxpayer to bear the brunt of the spiraling costs involved.^{33/}

^{32/} N.J.S.A. 34:13A-2.

^{33/} Commentators in this field almost unanimously agree with the Commission's position on collective negotiating units in the public sector. See in this regard the following: Report of Task Force on State and Local Government Labor Relations, 1967 Executive Committee - National Governor's Conference (Library of Congress Catalog 67-31610); Shaw and Clark, "Determination of Appropriate Bargaining Units in the Public Sector: Legal and Practical Problems" 51 Oregon Law Review 151 (1971); Edwards, "The Developing Labor Relations Law in the Public Sector" 10 Duquesne Law Review 357 (1972); Sullivan, "Appropriate Unit Determinations in Public Employee Collective Bargaining,"

(Continued)

The undersigned is well aware of the persuasive arguments made in support of mandating the organization of broad-based, all-inclusive units in the public sector developed along functional lines. However, the undersigned Hearing Officer finds upon complete examination of the record and exhibits in this instant matter and pertinent administrative decisions that the unit sought by the Bergen County Clerks Association is an appropriate unit for purposes of collective negotiations for the reasons to be set forth in this report.

The undersigned first finds that there exists a potential for treatment of court clerks which differs considerably from that accorded to the other white-collar employees employed by the Board of Freeholders regarding certain important terms and conditions of employment. A recently decided court case illustrates this point.

33/ (Continued)

19 Mercer L. Review 402 (1968); Rock, "The Appropriate Unit Question in the Public Service: The Problem of Proliferation: 67 Michigan L. Review 1001 (1969); and Anderson, "Public Employee Collective Bargaining: the Changing of the Establishment", 7 Wake Forest L. Review 175 (1971).

Recent legislation and judicial decisions have sought to avoid the undue fragmentation of negotiating units in the public sector. See, for example, Executive Order 11491 Section 10(b), 5 U.S.C.A. Section 7301 (Supp. 1973); N.J. Civil Service Law Section 207 ("Taylor Law") (McKinney); Pa. Stat. Ann. Title 43 Section 1101.604(1) (ii) (Supp. 1973); Kansas Stat. Ann. Section 75-4327(e) (Supp. 1972); and Hawaii Rev. Laws Section 89-1 et seq., Section 89-6 (Supp. 1972).

Also see in this regard the landmark decision State of New Jersey v. Professional Association of New Jersey Department of Education, et al, 64 N.J. 231 (1974) and also Civil Service Employees Association v. Helsby 303 N.Y.S. 2d 690 (1969) affirming the opinion of the Appellate Division, 300 N.Y.S. 2d 424 (1969).

On December 14, 1971 a directive was issued by the Chief Justice of the New Jersey Supreme Court that all trial courts of this State, other than municipal courts, should sit from 9:00 A.M. to 12:30 P.M. and from 1:30 P.M. to 4:00 P.M., effective January 31, 1972. Pursuant thereto, on January 31, 1972, the assignment judge for Hudson County directed "all employees serving the Judiciary (including court clerks)" to report to work at 8:30 A.M. rather than the usual 9:00 A.M.. The Board of Freeholders in Hudson County refused at that time to compensate the affected employees for the half-hour of their basic work day.

Appeals were taken to the Civil Service Commission by the Superior and County Clerks Association of Hudson County (hereafter Hudson Court Clerks)^{34/} and two other employee organizations that were similarly affected by an order from the Essex County Prosecutor. Their cases were heard and decided together by the Civil Service Commission. This agency decided that the extended work day without additional compensation constituted a reduction without good cause, in violation of the Civil Service Law and specifically, N.J.S.A. 11:22-38. Accordingly, the Civil Service Commission directed the respective counties to compensate the affected employees on a prorated basis.

The Counties appealed to the Appellate Division and an order for consolidation was subsequently entered. The Appellate Division reversed the decision of the Civil Service Commission in

^{34/} The Hudson Court Clerks were certified as the exclusive representative of all court clerks employed by the Hudson County Board of Freeholders for purposes of collective negotiations by the Commission on August 4, 1972 (Exhibit P-8).

Pros., Det., Essex County et al, v. Hudson Board of Freeholders,
130 N.J. Super. 30 (1974), cert. denied 66 N.J. 330 (1974).

The court held that the Commission had erroneously concluded that the extension of the work day without additional compensation constituted reductions without good cause under N.J.S.A. 11:22-38. Therefore, the court concluded that the Civil Service Commission should not have ordered that additional compensation be paid therefore.

The Appellate Division found that the extension of hours was not motivated by an arbitrary decision by the appointing authorities but was required to further the interests of judicial efficiency as reflected by the Chief Justice's directive issued pursuant to his constitutional responsibility. The Court also determined that all the employee organizations involved in the matter before it had procedures available under the New Jersey Employer-Employee Relations Act wherein they could contest the failure of the Freeholders to give them an appropriate pay increase.

In the instant matter before the undersigned witnesses for the Petitioner testified that the assignment judge for Bergen County had also similarly directed that the work day of court clerks as well as other employees serving the judiciary be lengthened to accomodate the Chief Justice's directive. Although the record is somewhat unclear on this point, the court clerks apparently had their hours extended from 9:00 A.M. to 4:00 P.M. to 8:45 A.M. to 4:15 P.M. without receiving additional compensation. Other white-collar employees "serving the judiciary", such as clerical employees assigned to the county clerk's office, did not have their hours

specifically extended. These individuals thereafter worked on a staggered shift basis in order to accomplish the objectives of the Chief Justice's directive.^{35/}

The undersigned concludes that the relationship between the court clerks and the Bergen County Board of Chosen Freeholders in the matter before this Hearing Officer can only be positively enhanced by permitting the establishment of a separate negotiating unit of court clerks in recognition of the unique status of individuals whose work week, for example, may be appreciably lengthened, on a permanent basis, upon the express directive of a member of the State judiciary but whose recourse, if any, lies in negotiating the impact of said decision with an entirely different governmental entity. It is important in this regard to consider that during the course of the hearings held in this instant case no evidence was proffered that any other employees included within the white-collar unit represented by Council No. 5 were controlled by two separate "masters".^{36/}

In addition the record in this instant matter demonstrates that the Chief Justice of the New Jersey Supreme Court establishes a court calendar that governs when court clerks work and determines when their vacations can normally be taken. During court recesses

^{35/} Transcript, pages 49, 78, 94-95, and 147-148.

^{36/} Senate Bill No. 1237, introduced on June 13, 1974, would provide that the State would assume the salaries of various classifications of court employees including court clerks. Furthermore, this bill confirms that these specified employees will become State employees without the loss of any pension or civil service rights.

This bill has not been "reported out" by the Senate Judiciary Committee.

clerks are required to report to the county clerk's office to perform various duties there as required.^{37/} Pursuant to the statutory mandate discussed hereinbefore the assignment judge exercises broad authorities over court clerks concerning all transfers and reassignments, the granting of personal and emergency leaves and the scheduling of vacations.^{38/} The judge to whom a court clerk is assigned in effect individually sets the hours worked by his or her court clerk which in certain instances may far exceed the hours normally worked by other County white-collar employees.^{39/}

The frequent and necessary entanglements of the court clerks with members of the judiciary concerning their terms and conditions of employment does much to substantiate the contention of the Petitioner that court clerks do not share a true community of interest with other white-collar employees employed by the County.^{40/}

37/ Transcript, pages 60, 102 and 113.

38/ Transcript, pages 102-103 and 147.

39/ Transcript, pages 48 and 49.

40/ In the Commission matter, Bergen County Board of Chosen Freeholders v. Bergen County Detectives and Investigators' Association, P.E.R.C. No. 66 (1972), the Commission found that a County Prosecutor by statute could request of an assignment judge funds beyond those provided by the freeholders vis-a-vis the petitioned-for law enforcement personnel of the Prosecutor's office. The assignment judge was empowered to authorize additional expenditures for salaries. The Commission determined that this was a significant factor in its decision to find that a unit of law enforcement personnel in the County Prosecutor's office was an appropriate unit despite the County's contention that these individuals should be part of a County-wide law enforcement unit that would also include County police, Sheriff's Officers, Weights and Measures Officers, and Sergeants-at-Arms.

It is also relevant to consider the negotiating history between the Petitioner and the Board of Freeholders before Council #5 petitioned for a county-wide white-collar unit. A witness for the Petitioner stated that there had been contract negotiations between the Clerks Association and the County since the mid-1960's. There has thus been some recognition on the part of the Public Employer of the unique status of court clerks as opposed to other County white-collar employees.^{41/}

The record in this instant matter also establishes that there is little or no interchange of personnel involving court clerks and other County workers. There was no evidence introduced that other County white-collar employees had ever performed the duties of court clerks in their absence.^{42/} Meanwhile, court clerks only perform duties that parallel those of other County white-collar employees when they are temporarily assigned to the county clerk's office during court recesses.^{43/}

The reasons discussed earlier for the general Commission policy of non-fragmentation serve to substantiate the finding of the undersigned that the petitioned-for unit of court clerks is appropriate for purposes of collective negotiations.^{44/}

^{41/} Transcript, pages 52-53. Although the Public Employer questioned the relevancy of this information it did not dispute its veracity.

Another witness for the Petitioner testified that the Hudson County Board of Freeholders in an earlier matter before the Commission (Docket No. RO-446) had consented to an election that led to the certification of a separate court clerks' negotiating unit in apparent recognition of the dissimilarities between court clerks and other County white-collar employees. [Transcript pages 34-43]

^{42/} Transcript pages 64-65.

^{43/} Transcript, pages 60-63.

^{44/} See pages 25 and 26 of this Hearing Officer's report.

It has been determined by the undersigned that court clerks do not share essentially uniform conditions of employment with other County white-collar employees because of the exercise of the heretofore delineated appointive and supervisory authorities of the judiciary concerning these court clerks. The objectives of the Act would be furthered by permitting the Petitioner to negotiate an agreement with the County that is more reflective of their unique employment status "betwixt and between" the legislative and judicial branches of County government.

The undersigned believes that the fears of the Public Employer that a decision finding a unit of court clerks to be "appropriate" would lead to other attempts to fragment the white-collar unit are unwarranted.

At this time any other employee organization seeking to represent a part of the existing white-collar unit will have to file a severance petition in a timely manner. In severance matters the Commission has consistently determined that an established structure for negotiations should not be altered or upset except for clear and compelling reasons.^{45/}

On the basis of the entire record in this matter the undersigned finds that the unit sought is an appropriate unit for the purposes of collective negotiations" with due regard for the community

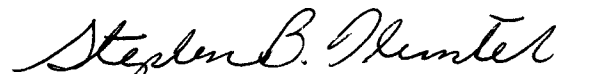
^{45/} See South Plainfield Board of Education, P.E.R.C. No. 46 (1970) and Jefferson Township Board of Education, P.E.R.C. No. 61 (1971). This instant matter involving court clerks has not been treated as a severance petition for the reasons set forth earlier in the section of this Hearing Officer's report on the "certification bar" issue.

of interest among the employees concerned."

RECOMMENDATIONS

Based upon the above findings it is hereby recommended that an election be directed among the employees in a unit described of all court clerks assisting Judges in the Superior, General County and County District Courts of Bergen County and employed by the Bergen County Board of Chosen Freeholders, but excluding all other Bergen County employees, managerial executives, professional, office clerical and craft employees, policemen, and supervisors within the meaning of the Act. The election is to determine whether these aforementioned employees wish to be represented by the Bergen County Clerks' Association for the purposes of collective negotiations and should be conducted in accordance with the Rules and Regulations of the Commission.

Respectfully submitted,



Stephen B. Hunter
Hearing Officer

DATED: March 10, 1975
Trenton, New Jersey