

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of

ESSEX COUNTY COURT JUDGES

Public Employer

and

Docket No. CU-25

ESSEX COUNTY PROBATION OFFICERS ASSOCIATION

Petitioner

DECISION

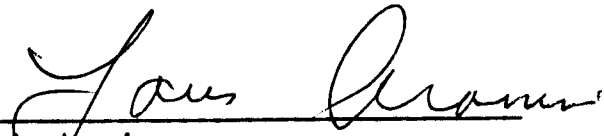
Pursuant to a Notice of Hearing to resolve the unit status of Principal Probation Officers, Grade I and Principal Probation Officers, Grade II (hereinafter Principal I and Principal II) of the Essex County Courts, a hearing was held on March 12, 1970 before Hearing Officer Ronald L. Tobia. All parties were given full opportunity to present evidence, examine and cross-examine witnesses, to argue orally and to file briefs. On September 9, 1970, the Hearing Officer issued his Report and Recommendations. Neither party filed exceptions to the Hearing Officer's Report and Recommendations.

The Executive Director has considered the record and the Hearing Officer's Report and Recommendations and, on the basis of the record in this case finds:

1. The Essex County Court Judges, hereinafter the Judges, are a public employer within the meaning of the Act and are subject to the provisions of the Act.
2. The Essex County Probation Officers Association, hereinafter the Association, is an employee representative within the meaning of the Act.

3. The Association seeks clarification of a unit of Probation Officers, Senior Probation Officers and Principal Probation Officers, Grades I and II employed by the Judges of Essex County. In contract negotiations the parties had agreed to the exclusion of Principal Probation Officers, without prejudice, pending a final determination of whether or not they should be included in the same unit as Probation Officers and Senior Probation Officers. Therefore, a question exists concerning the composition of the unit and the matter is appropriately before the Executive Director for determination.
4. In the absence of exceptions to the Report and Recommendations of the Hearing Officer, attached hereto and made a part hereof, the undersigned adopts the findings and recommendations of the Hearing Officer pro forma.
5. The undersigned finds, in agreement with the Hearing Officer, that Principal Probation Officers I and Principal Probation Officers II should be included in the same negotiating unit as all Essex County Probation Officers, including Probation Officers and Senior Probation Officers.
6. In accordance with the conclusion of the Hearing Officer, the undersigned finds that the appropriate collective negotiating unit is, "All Probation Officers, Senior Probation Officers, Principal Probation Officers I and Principal Probation Officers II, excluding all office clerical employees, professional employees, craft employees, managerial

executives, supervisors within the meaning of the Act, and
policemen."



Louis Aronin
Executive Director

DATED: October 7, 1970
 Trenton, New Jersey

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY COURT JUDGES 1/

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Docket No. CU-25

ESSEX COUNTY PROBATION OFFICERS ASSOCIATION

Petitioner

Appearances:

Fred D. Fant, Assistant Administrative Director
of the Courts, for public employer
(Edward B. McConnell, Administrative Director
of the Courts).

James R. Zazzali, Esq., for petitioner
(Messrs. Zazzali and Zazzali, attorneys).

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

A petition was duly filed with the Public Employment Relations Commission on March 12, 1970 by the Essex County Probation Officers Association requesting a clarification of an existing negotiating unit. Pursuant to a Notice of Hearing, dated April 27, 1970, and an Order Rescheduling Hearing, dated May 19, 1970, a hearing was held before the undersigned Hearing Officer on July 9, 1970 in Newark, New Jersey. All parties were given an opportunity at this hearing to call, examine, and cross-examine witnesses, to present evidence, and to argue orally.

1/ The original case caption was amended by stipulation at the hearing to correctly reflect the name of the public employer.

Upon a careful consideration of the entire record in this proceeding, the Hearing Officer finds:

1. The Essex County Court Judges, hereinafter the Judges, are a public employer within the meaning of the Act and are subject to the provisions of the Act. 2/
2. The Essex County Probation Officers Association, hereinafter the Association, is an employee representative within the meaning of the Act.
3. The existing negotiating unit as described in the petition is all Essex County Probation Officers, including Senior Probation Officers. 3/
4. The Judges and the Association executed a written agreement on February 9, 1970 in which the Association was recognized as the sole and exclusive negotiating representative of Probation Officers and Senior Probation Officers in Essex County. The following provision was included in Section One of the Agreement:

...The exclusion of Principal Probation Officers from the provisions of this agreement is without prejudice, pending a final determination of the question of whether such supervisory employees may be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership. 4/

In order to resolve this issue, the Association filed the instant petition with the Commission seeking clarification of the existing negotiating unit, described above. There is, therefore, a question

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- 2/ The Attorney General of New Jersey rendered an informal opinion on August 16, 1969 in which the Essex County Court Judges were found to be the public employer of Essex County Probation Officers.
 - 3/ The original petition was amended by stipulation at the hearing to correctly describe the existing negotiating unit.
 - 4/ Exhibit P-2.

concerning the representation of certain employees in order to clarify a negotiating unit as appropriate.

BACKGROUND

The Association was formed in 1964 and was incorporated on October 19, 1964. At that time its membership consisted of certain probation officers in Essex County and included Probation Officers, Senior Probation Officers, Principal Probation Officers and Assistant Chief Probation Officers. The Chief Probation Officer in Essex County at no time was a member of the Association. The purposes of the Association, recited in the Certificate of Incorporation, were as follows:

- (a) To cooperate with the Courts and Judges of Essex County, the Probation Association of New Jersey, the Essex County Employees Association and other Essex County Employees organizations so desired by the membership.
- (b) To further the professional status of Essex County Probation Officers.
- (c) To promote the advancement of the welfare of the individual probation officer as to salaries and conditions of employment.
- (d) To formulate and promulgate policies deemed beneficial to the members of this organization. 5/

The Essex County Probation Office is comprised of a central office in Newark and two branch offices at Grove Street, East Orange and at Johnson Avenue, Newark. The position of probation officer and both the composition and operations of a probation office in New Jersey is regulated by statute and court rule. New Jersey Court Rule 1:34-4 provides in part that "(p)robation officers shall be appointed in accordance with standards fixed by the Supreme Court." In addition, N.J.S.A. 2A:185-5 states in part that "(t)he 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."

5/ Exhibit P-1.

The hierarchy of the Essex County Probation Office begins with the Chief Probation Officer, hereinafter the Chief, who is the primary administrative officer. Four Assistant Chief Probation Officers, hereinafter Assistant Chiefs, are directly below the Chief and are assigned as follows: one in charge of administrative functions, such as clerical matters, purchasing, etc...; one in charge of the branch office at Grove Street; one in charge of the branch office at Johnson Avenue; and one in charge of the field activities at the central office.

In terms of hierarchy a Principal Probation Officer, Grade I, hereafter Principal I, is directly below an Assistant Chief and there are six in Essex County. Two Principals I are assigned to the branch offices at Grove Street and at Johnson Avenue to work directly under the Assistant Chief; four Principals I are assigned to various office sections, to wit: County Court section; Juvenile section; Domestic Relations section; Municipal Court section.

A Principal Probation Officer, Grade II, hereafter Principal II, is directly under a Principal I and there are eighteen Principals II in Essex County. The Principals II are assigned as follows: two to County Court section; two to Domestic Relations section; three to the Johnson Avenue Office; six to the Grove Street Office. There are five other Principals II but the record does not indicate where they are assigned.

A Senior Probation Officer, hereinafter Senior, is below a Principal II in the hierarchy and a Probation Officer is under a Senior. In Essex County there are approximately 121 probation officers in these positions.

The positions of Principals I and II were established as Civil Service job classifications in October, 1966. Prior thereto the position

was classified as Principal Probation Officer and the functions were identical.

Prior to April 1, 1969, the Association had a majority of signed designation forms to represent Probation Officers, Senior Probation Officers, and Principals I and II. At this time only one Assistant Chief Probation Officer was an Association member. Since the Assistant Chiefs subsequently refused to sign designation forms, the Association considered this as a voluntary withdrawal and does not petition to represent them. However, in the written agreement, executed February 9, 1970, the Judges recognized the Association as the sole and exclusive negotiating agent of Seniors and Probation Officers but excluded Principals I and II without prejudice. It was agreed that the Commission would be called upon to decide the issue by means of an appropriately filed petition.

The Judges take no position as to inclusion or exclusion of Principals I and II in order not to prejudge a matter which ultimately might be decided by a New Jersey Court. The Judges, however, seek a determination which goes beyond the petition for inclusion of Principals I and II in the existing negotiating unit. The position of the Judges is that the Chief Probation Officer is the only job classification that is a supervisor within the meaning of the Act. The Judges, therefore, seek a determination of whether Assistant Chiefs and Principals should be included in the present negotiating unit, but take no position on this issue.

The Association's position is that Principals I and II should be included in the existing negotiating unit because they are not supervisors within the meaning of the Act and there exists a community of interest

between the Principals, Seniors and Probation Officers. Alternatively, even if Principals I and II are found to be supervisors, established practice, prior agreement or special circumstances exist to warrant their inclusion under the Act in a unit with non-supervisory employees. The Association takes no position with regard to Assistant Chiefs and does not seek in their petition to include them in the proposed negotiating unit.

Therefore, it must be determined whether Principals I and II are supervisors as defined in the Act. If Principals I and II are not found to be supervisors, they must possess a community of interest with other employees to be included with them in an appropriate unit. But if Principals I and II are held to be supervisors, then it must be decided whether there is established practice, prior agreement or special circumstances to permit a combined unit of supervisors and non-supervisors.

SUPERVISORS

The first issue for consideration is whether or not Principals I and II are supervisors as defined in the Act. The Commission has decided that the term supervisor is defined in N.J.S.A. 34:13A-5.3 as having the power to hire, discharge, discipline, or to effectively recommend the same. 6/

Chief Lawrence C. Larsen on December 5, 1966 issued the following position description of the title Principal Probation Officer II:

SUMMARY: Under direction, serves as a line supervisor within a unit of the Probation Department and is responsible for the professional supervision of the Probation Officers assigned to the unit; may also serve in a specialized staff function.

DUTIES:

1. Orients newly assigned probation officers in his supervisory unit.

2. Provides consultation to probation officers on individual case problems.
3. Uses individual conferences with probation officers for in-service-training programs.
4. Evaluates the work of probation officers in his supervisory unit.
5. Prepares reports and makes recommendations to his superiors concerning programs and staff needs.
6. Reviews presentence, violation of probation, and other reports submitted by probation officers.
7. Reviews recommendations for termination and modification of probation.
8. Reviews supervisory record of probation officers.
9. Holds staff meetings with officers whom he is supervising for the purpose of assisting and guiding them in their work.
10. Assigns cases for investigation or supervision in accordance with departmental policy.
11. Confers with Judges and representatives of various public and private agencies.
12. Confers with Assistant Chief Probation Officer or Principal Probation Officer I in cases wherein a probationer should be placed in custody.
13. Substitute for Principal Probation Officer I during periods of vacation or illness.
14. Performs other duties as assigned.

The Commission gives little weight to job descriptions in the face of contrary evidence of actual responsibilities. However, when the job description coincides with the actual duties and responsibilities then greater weight must be given thereto.

A Principal II primarily functions as a line supervisor of probation casework of a group of approximately ten probation officers. Some of the actual job responsibilities of a Principal II include work assignment, training probation officers, work quality supervision, and work submission deadlines. The record indicates that Principals II have no right to hire or to discharge probation officers. With regard to disciplining or to effective recommendation of discipline, Principals II at their discretion could submit an oral or written report to a superior reciting the facts of a discipline problem. However, the record indicates that a Principal II does not recommend the type of disciplinary

action to a superior, but only reports the facts of the problem. In fact one witness testified that as a Principal II he knew of no authority in himself to hire, discharge or discipline other probation employees, nor effectively recommend the same.

On December 5, 1966, the following position description was issued concerning Principals I:

SUMMARY: Under direction, with wide latitude for independent judgement and initiative, supervises and is immediately responsible for the administrative and professional supervision and direction of a large group of probation officers.

DUTIES:

1. Plans and coordinates the work of the unit for which he is administratively responsible.
2. Supervises the establishment and maintenance of suitable records and files within his unit.
3. Confers with Judges and adjunct court personnel concerning the needs of the court and the services of the Probation Department.
4. Evaluates the work of Principal Probation Officers II and other immediate subordinates.
5. Prepares reports and makes recommendations concerning his unit to the Assistant Chief of his division, and to the Chief Probation Officer.
6. Plans and conducts unit staff meetings.
7. Holds regular meetings with the Principal Probation Officers II assigned to the unit.
8. Establishes procedures for assignment of cases for investigation or supervision in accordance with departmental policy.
9. Establishes guidelines to maintain an equitable distribution of work among subordinates.
10. Conducts or directs an orientation program for new staff members in his unit.
11. With the approval and cooperation of the Assistant Chief Probation Officer, adjusts minor violation of Probation cases in lieu of returning case directly to the court. (Subject to judicial approval).
12. Substitute for Assistant Chief Probation Officer during periods of vacation or illness.
13. Performs other duties as assigned.

The description of position must also be accorded weight since the actual duties of Principals I conform thereto. The record indicates that Principals I have no direct authority to hire, discharge or discipline other probation officers. The authority to recommend discipline for certain probation officers was assumed rather than explicitly communicated. Mr. William J. Hughes, a Principal I for three and one-half years, testified that there were three instances where he reported disciplinary problems. The first instance involved a probation officer's refusal to report to work during the Newark riots in 1967. Mr. Hughes submitted a report to the Chief indicating his efforts to get the individual to work and recommended some disciplinary action. However, the man resigned before any decision was reached. The second instance where Mr. Hughes reported a problem also resulted in the individual resigning before any action was taken. The third instance involved an individual in charge of a special program who was uncooperative and insubordinate. Mr. Hughes orally recommended to the Chief that some disciplinary action, other than discharge, be taken, but the Chief discharged the individual.

The testimony clearly demonstrates that Principals I do not recommend the specific disciplinary course of action; rather the procedure is one of reporting the facts of the incident to the Chief or Assistant Chief and advising them that some disciplinary action be taken. The record further reveals that the Chief in actual practice does the disciplining of probation officers. All misconduct or infractions of rules or policies of the probation office, other than those which are voluntarily resolved, are referred to the Chief. In addition, the Chief is the charging official with regard to all formal disciplinary actions and a probation officer who is charged with a disciplinary infraction can seek a hearing before the Chief or the Judges.

The exercise of certain authority, though supervisory in character, does not make one a supervisor as defined in the Act. Even though absence or tardiness is clerically recorded, Principals I can check attendance of probation officers. Although Principals I do rate employees for promotional considerations, promotions come from a Civil Service list compiled from test scores of probation officers. Also, a Principal I can ask employees to account for conduct or performance on casework. Often Principals I conduct staff meetings on casework matters such as new techniques in pre-sentence investigations or new narcotics rehabilitation programs. There are also staff meetings between Principals II and Seniors and Probation Officers wherein information is relayed from the Chief, Assistant Chiefs or Principals I. The information given at these meetings in no way involves hiring, discharging or disciplining in any manner.

The Hearing Officer finds that Principals I and II are concerned with the supervision of the casework of probation officers. Since they have more experience than other probation officers, Principals I and II police the quality-control of probation casework and provide assistance in complicated cases. The Hearing Officer finds that in all personnel actions the Chief, and the County Court Judges ultimately, have the final determination. 7/ Recommendations for hiring an individual would go directly to the Chief who personally considers them and accords the weight he will give thereto. Therefore, the Hearing Officer finds that Principals I

7/ This analysis is substantiated by New Jersey Court Rule 1:34-4 and N.J.S.A. 2A:168-7 which vests supervisory authority as defined in the Act with the Chief.

and II are not supervisors within the meaning of the Act. Principals I and II possess none of the statutory indicia of supervisory status since they neither hire, nor fire, nor discipline, nor effectively recommend the same. 8/ Principals I do supervise Principals II who supervise Seniors and Probation Officers. However, such supervision is casework related and not the supervision as contemplated by the Act.

In summary, the Hearing Officer respectfully finds that Principals I and II exercise other kinds of authority, however supervisory in character, but their duties do not constitute these individuals supervisors within the meaning of the Act.

COMMUNITY OF INTEREST

N.J.S.A. 34:13A-5.3 contains the following standard for inclusion in an appropriate unit: "The negotiating unit shall be defined with due regard for the community of interest among the employees concerned..." The issue is whether there exists a sufficient community of interest between Principals I and II, Seniors and Probation Officers to warrant the inclusion of the former in a unit with the latter. It must be noted that there are certain criteria which the Commission compares to define community of interest among certain employees, to wit: education, skills, type of work, place of work, compensation, fringe benefits, vacations, promotions, integration, interchange and prior history of negotiation.

The record reveals that Principals, Seniors and Probation Officers must meet the same educational standards and must possess the same basic

8/ The Commission has decided in P.E.R.C. No. 10 a similar issue of supervision in favor of inclusion wherein a "Supervisor of Casework" for the Middlesex County Welfare Board was found not to be a supervisor within the meaning of the Act.

probation skills. Principals I and II have more experience than other probation officers. The testimony was clear that the work of the Essex County Probation Office is casework that involves individuals placed on probation by the court. Although the character of the work of Principals relates to work supervision, the testimony demonstrates that their tasks are directly related to the work of other probation officers and often are the same duties.

The record indicates that all probation officers work out of either the central office or the two branch offices. Principals are given no special treatment with regard to size of office. The record reveals that Principals do receive a higher annual salary than Seniors and Probation Officers, but all probation officers get the fringe benefits accorded to all county employees, except Principals I and II get four weeks vacation, which is one week more than other probation officers. However, after twenty years all probation officers get four weeks vacation.

Frequently, there is interchange between Seniors and Principals I and II due to vacations or sick leave. At the time of the hearing the Principal II in charge of the Investigation Section was on a month's vacation and is being replaced by a Senior. The testimony reveals that interchange between Principals I and II and Seniors occurs during vacations or other short periods. In such case a Senior is capable of temporarily replacing a Principal. The promotional ladder of the Essex County Probation Office is linked to Civil Service examination but promotions to Principals are from other Seniors and Probation Officers.

The foregoing criteria are important in the determination of community of interest. However, a most important consideration is any

prior history of negotiations by the Association on behalf of Principals I and II.

HISTORY OF NEGOTIATIONS

The history of collective negotiations prior to and subsequent to the enactment of the Act may be relevant to unit definition with respect to a clarification issue. Any prior history of negotiations is a criteria to be used to define an appropriate unit. Negotiating history should not be confused with established practice, prior agreement or special circumstances since the latter must be strictly construed as a statutory exception to the exclusion of supervisors from a unit of non-supervisors.

The record is clear that Principals I and II were active members in the Association since its formation in 1964 until the contract was executed on February 9, 1970. All Principals I and 14 of 18 Principals II belonged to the Association during this period. During 1964 and 1965, the Association met with the Judges, specifically Judge Crane, to discuss matters relating to probation officers including the issue of promotional opportunities. In 1966 and 1967 the Association's President had meetings with the Chief. The Association initially proposed to the Chief an \$800 across-the-board salary increase for all probation officers including Principals I and II and Assistant Chiefs. The Chief requested more information then forwarded the salary increase request to the Judges. The end-result of these discussions was that an order was signed by the Judges granting a \$400 increase which the Association accepted. This salary increase applied to all Principals I and II and to all Assistant Chiefs, some of whom at that time were Association members.

Beginning in December, 1967, letters were exchanged between the Association and Judge Camarata, the County Court liason judge, seeking a meeting to discuss a salary increase of \$800 for all probation officers. The Association submitted a well-documented salary proposal to Judge Camarata on April 4, 1968. 9/ Principals were mentioned in Appendix X of the proposal as follows:

Estimated cost of \$800 salary adjustment for 122 probation officers, covering all officers up to and including Principal Probation Officer I, retro-active to January 1, 1968 is \$97,600.

Judge Camarata requested more salary information by letter dated April 30, 1968 to cover Principals I and II, Assistant Chiefs and the Chief. On May 20, 1968, a meeting with the Judges and the Chief and the Association's negotiating committee took place to discuss, elaborate and review the salary proposal. Thereafter letters were exchanged and four or five meetings were held with Judge Alcorn. The Association requested an \$800 salary increase; the Judges offered \$300 by letter dated October 25, 1968. The end result of these discussions and exchange of proposals was a court order signed by the Judges raising the annual salaries of all probation officers, effective January 1, 1969.

Since May 14, 1969, the Association has been the sole and exclusive bargaining agent for collective negotiations concerning terms and conditions of employment. The Association on three occasions met with the Assistant Administrative Director of the Courts, Mr. Fred D. Fant, who was designated by the Judges to negotiate an agreement with

9/ This salary package consisted of a five page cover letter and ten appendicies in which the salary demands were justified with relevant data from other probation offices both in New Jersey counties and thruout the United States.

the Association. At the third meeting Mr. Fant informed the Association that Principals I and II would not be covered by any agreement that might be reached concerning Seniors and Probation Officers.

Therefore, the Hearing Officer finds that there existed a sufficient history of prior collective negotiations to determine community of interest. Throughout the negotiations and discussions Principals I and II were never excluded until the written agreement was executed. Principals had received the two prior salary increases and had been mentioned specifically concerning wage negotiations.

In summary, the Hearing Officer finds that there exists the indicia of community of interest between Principals I and II and Seniors and Probation Officers. The record clearly demonstrates similar education, skills, work, compensation, fringe benefits, integration, interchange and sufficient prior history of negotiations.

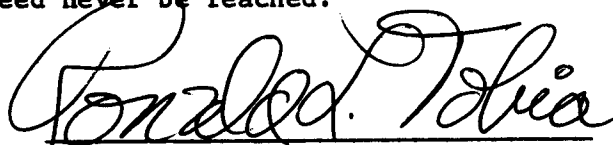
RECOMMENDATION

Based on all of the foregoing, the Hearing Officer respectfully recommends that Principal Probation Officers I and II be included in a unit of all Essex County Probation Officers, including Senior Probation Officers.

The Hearing Officer declined a suggestion that testimony be taken on the issue of whether Assistant Chiefs should be included in the negotiating unit. Inasmuch as the Association petitioned for unit clarification only with respect to Principals, it is respectfully recommended that the status of Assistant Chiefs in terms of the unit not be determined at this time.

Furthermore, it is respectfully recommended that the Association's request to have an alternative determination based on established practice,

prior agreement or special circumstance be rejected. These strict statutory exceptions are concerned only with inclusion of supervisors with non-supervisors in one unit. Since Principals I and II are not supervisors, the issues of established practice, prior agreement and special circumstances need never be reached.

A handwritten signature in cursive script, reading "Ronald L. Tobia". The signature is written in dark ink and is positioned above a horizontal line.

Ronald L. Tobia
Hearing Officer

DATED: September 9, 1970
Trenton, New Jersey