D.R. NO. 77-14

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

In the Matter of

ESSEX COUNTY BOARD OF CHOSEN FREEHOLDERS,

Public Employer,

-and-

Docket No. RO-76-42

SUPERIOR OFFICERS ASSOCIATION OF THE ESSEX COUNTY JAIL,

Petitioner.

SYNOPSIS

The Director of Representation Proceedings determines that a unit of superior officers at the Essex County Jail, consisting of sergeants, lieutenants, and captains, is an appropriate unit for collective negotiations and directs a secret ballot election among the superior officers to determine whether they desire that Petitioner represent them. Affirming the findings of a Hearing Officer, the Director finds that a substantial actual and potential conflict of interest exists between the superior officers and other correction officers which warrants that superior officers and correction officers no longer be included in one unit. The Director excludes the deputy wardens from the unit determined to be appropriate insofar as there is also a substantial actual and potential conflict of interest between the deputy wardens and the superior officers. In view of this finding, the Director does not consider the argument raised by the County that the deputy wardens are either confidential employees or managerial executives.

D.R. NO. 77-14

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

In the Matter of

ESSEX COUNTY BOARD OF CHOSEN FREEHOLDERS,

Public Employer,

-and-

Docket No. RO-76-42

SUPERIOR OFFICERS ASSOCIATION OF THE ESSEX COUNTY JAIL,

Petitioner.

Appearances:

For the Public Employer
Goldberger, Siegel & Finn, Esqs.
(Mr. Howard A. Goldberger, of Counsel)

For the Petitioner
Schwartz, Field & D'Alessio, Esqs.
(Mr. Michael D'Alessio, of Counsel)

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the Essex County Board of Chosen Freeholders, a hearing was held before J. Sheldon Cohen on April 6, 1976 and April 23, 1976 in Newark, New Jersey. At the hearing all parties were given an opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. No post-hearing briefs were submitted although Petitioner submitted a pre-hearing memorandum of law. Thereafter, the Hearing Officer issued his Report and Recommendations on August 12, 1976. A copy is annexed hereto and made a part hereof. No exceptions to the Hearing Officer's Report have been filed. The undersigned has considered the entire record and the Hearing Officer's Report and Recommendations and, on the facts in this case, finds:

1. The Essex County Board of Chosen Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), as amended, and is subject to its provisions.

2. The Superior Officers Association of the Essex County Jail is an employee representative within the meaning of the Act and is subject to its provisions.

3. The Public Employer having refused to recognize Petitioner as the exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the undersigned for determination.

4. Petitioner seeks to represent all County Correction Officers employed at the Essex County Jail in the titles of County Correction Sergeants, Lieutenants, Captains and Deputy Wardens, asserting that they are all supervisors and constitute an appropriate unit. Currently all correction officers, including the petitioned-for employees are represented as a unit by the Patrolmen's Benevolent Association, Local 153.

The Hearing Officer found that the superior officers (captains, lieutenants, and sergeants), though not supervisors within the meaning of the Act, have a substantial actual and potential conflict of interest with the remaining correction officers,thus barring their inclusion in the same unit. He further found that the deputy wardens have a conflict of interest with both the superior officers and other correction officers. The Hearing Officer recommended that an election be directed for a unit of superior officers to determine whether these employees desire to be represented for the purposes of collective negotiations by the Petitioner.

The undersigned, pursuant to an independent review of the record, and noting the absence of any exceptions to the Hearing Officer's

Report and Recommendations, adopts the Hearing Officer's findings and conclusions that the actual and potential conflict of interest reflected herein are of such substantial nature as to warrant that superior officers neither be included in a negotiations unit with non-superior personnel nor with deputy wardens.[1/] This conflict precludes continued representation of superior officers in a unit with non-superior officers notwithstanding their past negotiations history. See also In re Essex County Board of Freeholders (corrections center), D.R. No. 77-13 , 3 NJPER ___ (1977), issued this day.

5. Accordingly, the undersigned shall direct an election in the following unit: "All County Correction Captains, Lieutenants, and Sergeants employed by the Essex County Board of Chosen Freeholders at the Essex County Jail but excluding the Warden, Deputy Warden, County Correction Officers, non-police employees, managerial executives, confidential employees, professional employees, craft employees and all other employees."

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

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order

1/ Due to the determination that there is a conflict of interest between deputy wardens and superior officers, the undersigned deems it unnecessary to consider the Hearing Officer's conclusion that deputy wardens are not managerial executives or confidential employees.

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 eligibile voters together with their last known mailing addresses and job titles. Such list must be recieved 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 Superior Officers Association of the Essex County Jail.

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

BY ORDER OF THE DIRECTOR OF
REPRESENTATION PROCEEDINGS

Carl Kurtzman, Director
Representation Proceedings

DATED: March 16, 1977
Trenton, New Jersey

H.O. NO. 77-3

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ESSEX COUNTY BOARD OF CHOSEN FREEHOLDERS,

Public Employer,

- and -

Docket No. RO-76-42

SUPERIOR OFFICERS ASSOCIATION OF THE ESSEX COUNTY JAIL,

Petitioner.

Appearances:

For the Public Employer
Goldberger, Siegel & Finn, Esqs.
By: Howard A. Goldberger, Esq.

For the Petitioner
Schwartz, Field & D'Alessio, Esqs.
By: Michael D'Alessio, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

On September 29, 1975, a Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") by the Superior Officers Association of the Essex County Jail, (the "Petitioner"), Docket No. RO-76-42. The Petitioner seeks a unit of all County Correction Superior Officers employed by the Essex County Board of Chosen Freeholders (the "Public Employer") at the Essex County Jail. More specifically, the proposed unit would include County Correction Sergeants, Lieutenants, Captains, and Deputy Wardens.[1/]

1/ N.J.S.A. 2A-154-3 authorizes County Correction Officers to detect, apprehend, arrest, and aide in the conviction of offenders against the law. Based upon this grant of powers, County Correction Officers were held to be police within the meaning of the Act. See, County of Gloucester v. P.E.R.C., 107 N.J. Super. 150 (App. Div. 1969), affirmed 55 N.J. 332 (1970).

Simultaneously with the filing of the within Petition, Petitioner requested recognition as the exclusive negotiations representative for the employees in the requested unit and the Public Employer, on October 23, 1975, refused to grant such recognition.[2/]

Pursuant to the appropriate notice, hearings were held before the undersigned Hearing Officer on April 6, 1976 and April 23, 1976 in Newark, New Jersey, in which all parties were given an opportunity to present evidence, examine and cross-examine witnesses, and argue orally. The parties have not submitted briefs in support of their respective positions, although Petitioner submitted a memorandum of law in support of its allegations prior to the opening of hearings. During the course of the April 23, 1976 hearing, the parties entered into an agreement on the record regarding the submission of additional documentary evidence by the Petitioner after the close of hearing. Petitioner having submitted the agreed upon documentation and the Public Employer having consented to its submission, the undersigned caused the submission to be marked "P-2" and entered into the record.

Upon the entire record in these proceedings the Hearing Officer finds as follows:

1. The Essex County Board of Chosen Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act"), the employer of the employees in question, and is subject to the provisions of the Act.

2. The Superior Officers Association of the Essex County Jail is an employee representative within the meaning of the Act and is subject to its provisions.

2/ Transcript, April 6, 1976, pg. 6.

3. The Petitioner and the Public Employer have stipulated that there is no contract, election, certification or recognition bar to any election which may be conducted as the result of a decision issued by the Commission in this matter.3/

4. Petitioner seeks a unit of all County Correction Superior Officers employed at the Essex County Jail, defined as County Correction Sergeants, Lieutenants, Captains, and Deputy Wardens. The Public Employer has declined to recognize the Petitioner as the exclusive negotiations representative of the aforementioned employees, contending that the petitioned-for unit is inappropriate for purposes of collective negotiations. Therefore, there is a question concerning the representation of public employees and the matter is properly before the undersigned for a report and recommendations.

BACKGROUND

The Essex County Jail is located at 60 Nelson Place, Newark, New Jersey. It is a maximum security holding institution whose purpose it is to house defendants who are unable to post bond prior to the disposition of their cases at trial.

3/ The undersigned takes administrative notice of the following facts: 1. On March 23, 1976, the Commission's Executive Director certified Local No. 153 of the Patrolmen's Benevolent Association (the "P.B.A.") as the exclusive negotiations representative of all County Correction Officers employed at the Essex County Jail including the titles of County Correction Officer, Sergeant, Lieutenant, and Captain. Deputy Wardens voted subject to challenge by the Public Employer in the election held pursuant to the filing of the October 1, 1975,P.B.A. petition (Docket No. RO-76-47); 2. On March 22, 1976, by letter addressed to the undersigned, P.B.A. Local No. 153 waived objection to and participation in any hearing on the instant matter; 3. The current representation status of County Correction Officers employed at the Essex County Jail was a matter of public knowledge at the time Petitioner and Public Employer entered into the above stipulation. (See Transcript, Pg. 7 through 9, April 6, 1976); 4. The instant petition was filed on September 29, 1975, prior to the filing of RO-76-47 which resulted in the aforementioned certification.

Based upon the above facts and the stipulation of the parties, the under signed has determined, pursuant to N.J.A.C. 19:19-1.1, that it will effectuate the purposes of the Act to allow the parties to the instant matter to waive the existence of any possible recognition election, contract, or certification bar to these proceedings.

The institution is headed by a Warden, who reports to the Penal Committee of the Essex County Board of Chosen Freeholders. The Warden is responsible for the conduct of the facility; the care, custody and control of inmates and the supervision of all employees and operations of the Jail. 4/ Since October 2, 1975, a Deputy Warden from the Essex County Correction Center has been Acting Warden at the Essex County Jail (the "Jail"). 5/

The large institutional staff at the Jail is organized along para-military lines. The table of organization includes two Deputy Wardens, eight Captains, seven Lieutenants, one Provisional Lieutenant, approximately twenty-eight Sergeants, and approximately two hundred and twenty-five County Correction Officers. 6/ With the exception of the Warden and Deputy Warden, all Officers are uniformed. Superior Officers wear military-like insignias of rank. 7/

Lines of communication and responsibility run through a chain of command, direction issues from Superior Officers and is disseminated and implemented by the various subordinate ranks. 8/ Likewise, the various subordinate ranks channel information and reports up through the chain of command to their Superior Officers and when appropriate, the Warden. 9/

POSITION OF THE PARTIES

Position of the Petitioner

Petitioner alleges that the petitioned-for employees are supervisors within the meaning of the Act. It is further asserted that, owing to the para-military organization of the Jail, the responsibilities and interests

4/ Transcript, April 23, 1976, Pg. 4 and Pg. 9.

5/ Transcript, April 23, 1976, Pg. 4.

6/ Transcript, April 6, 1976, Pg. 8.

7/ Transcript, April 6, 1976, Pg. 16.

8/ Transcript, April 6, 1976, Pg. 24 through 26; See also Transcript, April 23, 1976, Pg. 12 through 17.

9/ Transcript, April 6, 1976, Pg. 24 through 26; See also Transcript, April 23, 1976, Pg. 34 through 36.

of the petitioned-for employees are in conflict with those of the rank and file County Correction Officers who constitute a majority of the present collective negotiations unit. Based upon these assertions, and in reliance upon N.J.S.A. 34:13A-5.3 and the doctrine of conflict of interest enunciated in Board of Education of West Orange v. Elizabeth Wilton, et al., 57 N.J. 404 (1974), the Association argues that the continuance of the present unit is repugnant to the policy and purposes of the Act.

An additional argument is raised by the Petitioner concerning the adequacy of representation given to the petitioned-for employees by the majority representative. It is alleged that these employees are without substantive voice in the decision making processes of the majority representative, owing to the fact that Superior Officers do not have full voting rights in the majority representatives' organization. This situation is said to result in something less than optimum representation of the interests of Superior Officers in collective negotiations.

Position of the Public Employer

The Public Employer takes the position that there is a fair, effective, collective negotiations relationship in existence between P.B.A. Local 153 and the Public Employer in the present unit composed of all ranks of County Correction Officers, including the employees who are the subject of the instant matter. It is further alleged that this collective negotiations relationship antedates the advent of the Act and that during this time the majority representative has recognized the needs of the Superior Officers and has fairly and consistently negotiated on behalf of the employees who now seek to a unit separate and apart from the existing unit.

Based upon the aforementioned allegations, the Public Employer urges that the Commission dismiss the within Petition absent proof of some unusal

and extenuating circumstances which would justify upsetting the long standing relationship. In addition, the Public Employer contends that, in order to sustain its petition, Petitioner must demonstrate that the interests of the petitioned-for employees are so unique from those of the overall unit as to negate both the community of interest among all corrections officers at the Jail and the history of negotiations which has existed since and prior to the passage of the Act.[10/]

A final issue is raised concerning the status of Deputy Wardens as Public Employees within the meaning of the Act. It is the contention of the Public Employer that the Deputy Wardens at the Jail are managerial executives and confidential employees as defined in the Act and, as such, should not be included in any collective negotiations unit.

LEGAL AND FACTUAL ISSUES

The undersigned, in reliance upon the positions of the parties, the testimony and evidence submitted at hearing, and applicable precedent, has determined that the following issues are presented in this matter:

1. Whether the petitioned for employees are supervisory employees within the meaning of the Act and/or do their duties and obligations to the Employer create a substantial actual or potential conflict of interest in relation to the interests of other unit members, which necessitates their separation from the present collective negotiating unit?

2. Assuming arguendo that the petitioned-for employees are supervisors within the meaning of the Act and/or that their duties and obligations to the Employer create a substantial actual or potential conflict of interest in relation

10/ In support of the mode of analysis which it urges be used by the Commission in evaluating the sufficiency of Petitioner's claims, the Public Employer cites as applicable precedent the following Commission and Executive Director decisions: In Re Bergen County, P.E.R.C. No. 45, 1 NJPER 9 (1973) In Re Jefferson Township Board of Education, P.E.R.C. No. 61, (1971), and In Re Board of Education of the Township of Cranford, 1 NJPER 23 (1975).

to the interests of other unit members, would a history of collective negotiations prior to and continuing after the passage of the Act, dictate the continuance of a unit composed of supervisors and non-supervisors or employees whose interests are actually or potentially in substantial conflict?

3. Whether the Deputy Wardens employed at the Jail are managerial executives and/or confidential employees within the meaning of the Act, and are therefore, denied inclusion in any collective negotiations unit?

FRAMEWORK FOR ANALYSIS

I. Supervisory Status and Conflict of Interest

N.J.S.A. 34:13A-6(d) provides in pertinent part, that "...except where dictated [emphasis added] by established practice, prior agreement, or special circumstances, no unit shall be appropriate which includes (1) both supervisors and non-supervisors..." 11/

N.J.S.A. 34:13A-5.3 clarifies the definition of the term "supervisor" by requiring that no supervisor, "...having the power to hire, discharge discipline or effectively recommend the same, ...shall, except where dictated to the contrary by established practice, prior agreement or special circumstances, be admitted to membership in an employee organization having non-supervisors as members." [emphasis added]

In determining whether or not a particular employee's interests are in substantial conflict with the interests of other employees under the Wilton doctrine (See supra at Note 11), the Commission is guided by the approach to the question set forth by the Supreme Court of this State in Board of Education of West Orange v. Elizabeth Wilton, et al, 57 N.J. 404 (1971):

11/ The Commission has delimited the application of the statutory exceptions of established practice and prior agreement to encompass only those practices and agreements in existence prior to the effective date of the Act in 1968. The Commission has also determined that the mere existence of one or both of these statutory exceptions does not automatically require the continuance of a unit composed of supervisors and non-supervisors. Rather, a determination is to be made as to whether these exceptional circumstances warrant, and indeed require, a deviation from the statute or norm. See, In re West Paterson Board of Education, P.E.R.C. No. 77, (1973) and In re West Paterson Board of Education, P.E.R.C. No. 79, (1973).

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

II. Effect of Established Practice and Prior Agrrement Upon a Finding of Supervisory Status or Conflict of Interest

As previously stated, a finding of established practice or prior agreement does not automatically necessitate the continuance of a unit composed of supervisory and non-supervisory employees (See supra at Note #11). Given this fact the analysis must move to a consideration of the impact of established practice or prior agreement upon a finding that the duties or responsibilities of certain employees are actually or potentially in substantial conflict with other employees in the proposed or existing unit. In the West Paterson cases (See supra at Note #11) the Commission dealt exhaustively with this question.

P.E.R.C. #77 enunciated the doctrine that where the Commission is called upon to define the composition of a unit where none had previously been in existence, evidence tending to show that the inclusion of certain employees in a proposed unit would create a substantial potential for conflict of interest would be sufficient to justify exclusion of those employees from the proposed unit. However, where a unit had been extant, the exclusion of certain employees on the basis of an alleged conflict of interest would require a showing of instances of substantial actual conflicts of interest which resulted in compromising the interests of any party to its detriment.

The Commission continued this analysis by stating that where the history of the negotiating relationship between an employer and a mixed unit demonstrated their ability to negotiate and successfully administer agreements,

while at the same time protecting the integrity of the interests of all parties, any potential for conflict had been eliminated from significance because the past experience of the parties had proved it to be unrealized. Thus, any alleged potential conflict would, in practice, have proved to have been insubstantial, or in the words of the Court in Wilton, de minimis, and therefore tolerable.

Conversely, Wilton considerations provide a frame of reference for identifying those situations where circumstances mitigate against, rather than dictate, the preservation of a mixed unit, i.e. where the past experience of the parties reveals compromise of interest or significant detriment to the rights or interest of any party. Under this approach upon a showing of significant detriment to any party's rights or interests, neither a finding of established practice nor prior agreement would justify a continuance of a mixed unit. The experience of the parties would dictate that these statutory exceptions not be applied to allow the continued existence of a mixed unit.12/

P.E.R.C. No. 79, a reconsideration of the Commission's decision in P.E.R.C. No. 77, reaffirmed the holding of that case, and expanded upon it by saying that the statutory exceptions of established practice and prior agreement were intended to apply solely to circumstances in existence prior to the arrival of Chapter 303, i.e. prior to 1968.

12/ It is noteworthy that where the Commission has found that the preservation of a unit comprised of supervisors or near-supervisors and non-supervisory titles is not to be sustained, it has applied only the aforementioned criterion to its analysis. Thus, it may be concluded that the standards for the severance of non-supervisory employees from a broad-based, rank and file unit enunciated in In re Jefferson Township Board of Education, P.E.R.C. No. 61, (1971), are not dispositive of the evaluation of a mixed unit. See e.g. In re Town of Kearny, P.E.R.C. No. 78, (1973) and In re Borough of Avalon E.D. No. 76-23 (1975).

III. Evaluation of a Claim of Established Practice or Prior Agreement

As it has been established that a finding of established practice or prior agreement may affect the continuance of supervisors in a unit which also includes "non-supervisory" employees or a unit which includes employees whose interests conflict with the interests of other unit members, there remains a question of outlining the requirements for a finding of established practice or prior agreement.

With respect to established practice the Commission has held that certain minimum prerequisite ingredients must be demonstrated:

> ...an organization regularly speaking on behalf of a reasonably well defined group of employees seeking improvement of employee conditions and resolution of differences through dialogue [now called negotiations] with an employer who engaged in the process with an intent to reach agreement. 13/

Under this formula, the consistent existence of the negotiations relationship, between the public employer and the employee organization, as well as the cohesiveness of the unit's composition are of primary importance. No less important is a demonstration that the dialogue between the public employer and public employee representative rose to the level of what has now come to be known as good-faith, bilateral, collective negotiations.14/ In order to substantiate this claim the record must demonstrate a consistent pattern of give and take negotiations at least on methods of payment, salary, fringe benefits and non-economic matters, prior to the effective date of the Act, with an employer who has come to the table with an intent to reach agreement. This is to be contrasted with a unilateral determination of terms and conditions of employment by a public employer following discussions with public employees and their representatives. Thus, proof that the parties did, in fact reach an agreement or series of agreements, is also relevant.

13/ See P.E.R.C. No. 77 at Pg. 10.

14/ See In re State of New Jersey, E.D. No. 79, (1975) for a discussion of the concepts of good-faith collective negotiations under N.J.S.A. 34:13A-5.4(a)(5).

Since it may be fairly assumed that the New Jersey Legislature intends that prior agreement not be synonomous with established practice, and since any practice established through negotiations must ordinarily have been based upon prior agreement, this statutory exception has been construed to refer to a written agreement, reached in the context of collectiven negotiations, executed by the parties prior to the effective date of the Act, and providing for the inclusion, in a single unit, of supervisors and non-supervisors.[15/] Here again, the agreement must have also incorporated certain minimal terms and conditions of employment, i.e. method of payment, salary, fringe benefits, and non-economic matters, e.g. a grievance procedure, in order to suffice the claimed exception.[16/]

IV. Managerial Executives

The Act as originally constituted, expressly provided that managerial executives would not have the right to form, join, and assist employee organizations. However, with the exception of the proviso that in a school district the term managerial executive shall mean the Superintendent of Schools or his equivalent, the Act contained no definition of the term "managerial executive". In order to effectuate the policy of the Act the Commission developed a working definition of the term "managerial executive" which closely paralleled the National Labor Relation Board's definition. [See, for example, In re Township of Hanover, E.D. No. 41,(1971); compare Retail Clerks v. NLRB, 62 LRRM 2837 (1966), Cert. Denied 62 LRRM 2059 (1967)]

The 1975 amendments to the Act included a definition of the term "Managerial Executive". N.J.S.A. 34:13A-3(f) provides in relevant part:

15/ In re Willingboro Board of Education, E.D. No. 3 (1970). As to the proviso of execution prior to the effective date of the Act, See In re Cumberland County College, E.D. No. 4 (1970) and In re West Paterson, P.E.R.C. No. 79, (1975).

16/ In re Township of Teaneck, E.D. No. 23, (1971).

> "Managerial executives" of a public employer means persons who formulate management policies and practices and persons who are charged with the responsibility of directing the effectuation of such management policies and practices...

The undersigned having examined the apposite Commission and Executive Director decisions, decided prior to the above-mentioned statutory definition, concludes that the findings which issued are not inconsistent with the present statutory definition. This fact is clearly illustrated by the numerous decisions which have rejected claims that Chiefs and Deputy Chiefs of para-military public service departments are managerial executives and thus excluded from the purview of the Act.17/

NYCSL § 200 et seq., a grant of authority similar to the Act and administered by the New York State Public Employment Relations Board, contains a definition of managerial employees at § 201.7.

> Employees may be designated as managerial only if they are persons (i) who formulate policy or (ii) who may reasonably be required on behalf of the public employer to assist directly in the preparation for and conduct of collective negotiations or to have a major role in the administration of agreements or in personnel administration provided that such role is not of a routine or clerical nature and requires the exercise of independent judgment. Employees may be designated as confidential only if they are persons who assist and act in a confidential capacity to managerial employees described in clause (ii).

While the statutes of sister jurisdictions are in no manner binding upon the Commission, there is a similarity of authority, function, and experience between the New Jersey and New York public sector labor relations agencies. Owing to this fact and in view of the analogous language in both statutes concerning the definition of managerial and confidential employees, it is clear that the criterion established by the New York Act may be of value in ascertaining

17/ See In re Township of Hanover, E.D. No. 41, (1970); In re City of Union City P.E.R.C. No. 70, (1971); and In re City of Elizabeth, P.E.R.C. No. 71 (1972).

managerial employees within the purview of the newly amended New Jersey Act. The undersigned has therefore employed the stated indicia as one factor in the evaluation of the Public Employer's claim that the Deputy Warden is a managerial executive within the meaning of the Act.

The undersigned notes that the National Labor Relations Board (the "NLRB") has developed a working definition of "managerial employee" which closely parallels the Act's definition of managerial executive. The similarity of language and construction of the statutes between the New Jersey Employer-Employee Relations Act and the National Labor Relations Act indicates an intention on the part of the Legislature to use the experience and adjudications of the private sector as a guide in the administration of this Act.[18/] The undersigned has therefore examined the applicable private sector cases in order to better evaluate the Public Employer's claim in this area.

In applying its definition, the NLRB has held that the exercise of judgment within the limits of established policy does not confer managerial status absent authority to influence the establishment of such policies.[19/] Additional NLRB decisions indicate that the performance of duties requiring the exercise of judgment is not, per se, indicative of managerial status, nor does the fact that professional employees are expected to make recommendations to management make them managerial.[20/] Likewise, a strictly limited authority to pledge the employer's credit or the authority to do so only routinely or within clear, previously defined employer policy, is not sufficient evidence to sustain a claim of managerial status.[21/]

In summary, an NLRB finding concerning managerial status depends upon the extent of the individuals discretion, and the extent to which established policy and regulations to aid in the exercise of such discretion.[22/] It must

18/ See, Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970).

19/ 119 NLRB 1715

20/ Respectively, 119 NLRB 817 and 122 NLRB 391.

21/ 140 NLRB 569

22/ 151 NLRB 42

be clearly shown that the functions and interests of such individuals are more clearly allied with those of management than with co-workers.[23] However, it should be understood that the definition of "supervisory" status is not to be equated with managerial status.[24]

V. Confidential Employees

N.J.S.A. 34:13A-3 (g) defines confidential employees as:

> ...those employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate unit incompatible with their official duties. [emphasis added]

Continuing in the same vein, N.J.S.A. 34:13A-5.3 provides:

> ...public employees shall have...the right... to form join, or assist any employee organization...provided, however, that this right shall not extend to...managerial executives and confidential employees.

Prior to the statutory enactments mentioned above, the Commission enacted a provision in its Rules concerning confidential employees. N.J.A.C. 19:10-1.1 defines confidential employees as:

> ...any employee for whom a principal duty is to assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the area of labor relations. "confidential employees" shall not be included in units of non-confidential employees. The term "confidential employee" shall be norrowly construed.

To the extent that it is inconsistent, N.J.A.C. 19:10-1.1, would appear to be superceded by N.J.S.A. 34:13A(g) and N.J.S.A. 34:13A-5.3, which, read together, now exclude confidential employees from any rights to employee organization membership or activity otherwise granted to public employees by the Act.

23/ 121 NLRB 950

24/ 121 NLRB 950

Various Commission and Executive Director decisions had applied a prohibition against the inclusion of confidential employees in negotiating units functioning under the auspices of the Act, even prior to the limitation contained in the Commission's Rules. The standards applied by these cases to evaluate the alleged confidential status of certain employees indicates that the definition of confidential employees contained in the Rules merely formalized a pre-existing Commission policy. Further, the manner in which the concept of confidentiality was applied by these cases demonstrates that the Commission, even before the definition now included in the Act, applied a substantially similar concept in its decisions and rules.25/

Based upon this analysis the undersigned concludes that past Commission and Executive Director decisions in this area are consistent with the present definition of confidential employee, at least in the following respects: (1) Where the disputed employee has only minimal or occasional functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process, this fact alone would not be sufficient to prove a claim of confidential status; (2) The assembly of and access to raw data, which the employer may consider confidential for a variety of reasons, and which may later become a factor in a policy decision, would not of itself disqualify an employee from the possibility of representation; and (3) Mere access to payroll data which only indirectly relates to negotiations as well as access to, as opposed to responsibility for, personnel files does not, alone, transform disputed employees into confidential employees.26/

25/ See Plainfield Board of Education and Educational Secretaries, E.D. No. 1 (5/4/70); Board of Education of West Milford and West Milford Education Association, Inc., P.E.R.C. No. 56 (7/8/71); Board of Education of Montgomery and Montgomery Education Association, P.E.R.C. No. 27 (12/17/69); Springfield Board of Education and Springfield Education Association, E.D. No. 52 and Woodbridge Fire Commissioners, District No. 1 and International Fire Fighters, P.E.R.C. No. 51.

26/ See, Respectively, In re Springfield Board of Education, E.D. No. 52 (1974), In re Plainfield Board of Education, E.D. No. 1, (1970); In re Board of Education of the Township of West Milford, P.E.R.C. No. 56, (1971); and In re Springfield Board of Education, E.D. No. 52 (1974).

DISCUSSION

I. Supervisory Status and Conflict of Interest

A. Supervisory Status

A careful review of the entire record in this matter has led the undersigned to conclude that the petitioned-for employees do not have the power to hire, discharge, or discipline or to effectively recommend any of these actions. Therefore, they may not be considered to be supervisors within the meaning of N.J.S.A. 34:13A-5.3 and may not be separated from the existing unit represented by P.B.A. Local No. 153 on the basis of N.J.S.A. 34:13A-6(d).

Treating the examination of the requirements for a finding of supervisory authority seriatum, the undersigned finds that hiring is accomplished under the auspicies of the New Jersey Civil Service Law. The testimony of Acting Warden Ennis, supported by the testimony of the other witnesses, bear witness to this conclusion. Both Captain Helbe and Sergeant Jones testified to their lack of authority concerning hire and discharge and gave no indication of any involvement in the procedures.[27/] Warden Ennis outlined the institution's hiring and promotion policy, stating that hiring and promotion are accomplished through the Civil Service Process. Applicants for the position of Correction Officer must take and pass the appropriate Civil Service Examination. Assuming that openings exist, applicants are interviewed by the County Personnel Department and the Warden may also conduct an interview. The Warden stated that it is his normal procedure to conduct a pre-employment interview on his own, although on occasion he will ask the Captain in charge of personnel matters to be present. Applicants are also subject to a background investigation, conducted by a Correction Officer (as opposed to a Superior Officer) temporarily

27/ Transcript, April 6, 1976, Pg. 54 and 72 respectively.

appointed by the Warden and referred to as an "Investigatory Officer". The available openings are then filled by applicants in order of their certification unless some strong objection is registered based upon the interviews or investiation.[28]

Qualification for promotion from a subordinate to superior rank follows a procedure similar to that outlined above. When a vacancy exists, the County Personnel Department requests that a Civil Service Examination be given. Applicants, who have passed the examination and have been certified are appointed in order of their eligibility. The Warden stated his intention to review the personnel records of applicants in considering appointments to Superior Officer positions. However, the Warden added that he has not had occasion to do so during his tenure at the institution and has no knowledge as to whether or not personnel records have been used in the past to assist in evaluating applicants for promotion.[29] In fact, the Warden testified that written work performance evaluations of subordinates by superiors are to be found in only some personnel files, and do not appear to have been submitted on a regular basis in the past. An examination of the 1972 and 1974 collective negotiations agreements executed between the County and P.B.A. Local No. 153 reveals no agreement in contradiction of the stated testimony; even though some mention is made of certain types of promotions and transfers in these agreements.[30]

An employee may be discharged due to a reduction in force or as the result of a disciplinary proceeding. In the former case, both the 1972 and 1974 collective negotiations agreement provide that layoffs shall be made on

28/ Transcript, April 6, 1976, Pg. 22-25.

29/ Transcript, April 23, 1976, Pg. 26-27.

30/ Exhibit J-1, B, D, and E.

the basis of seniority, with those employees having the last seniority being the first to be terminated. 31/ In the latter case, the discharge would be ordered by the Freeholders, or their designees upon the recommendation of the Warden. The Warden testified that such an action would be taken only after he had given the charged employee a full hearing. While the Captain in charge of personnel, and the officer who reported the alleged violation may be present at this hearing, the Warden indicated that a final decision concerning discipline or discharge is his alone.32/ These facts were also borne out by the testimony of Captain Helbe and Sergeant Jones.33/

The question of the power of the petitioned for employees to discipline other employees is somewhat more complex. The testimony of all witnesses indicates that Superior Officers have the power and duty to issue verbal reprimands and instructions to subordinate officers where they have incorrectly carried out their duties or violated a rule governing the conduct of their work or the institution. Further, these same Superiors have the discretion, in cases of minor import concerning rule violations, to adjust the matter informally and issue a reprimand, without resort to an official written report of the incident. When an infraction of a more serious nature is believed to have been committed, the Superior Officer is under a duty to file a written factual report of the incident, which is then passed up the chain of command.34/ The testimony of Warden Ennis is unclear as to the nature of the discretion, if any, given higher ranking superior officers to dispose of a written report of an alleged infraction. It is clear however that a shift commander may relieve an employee of his duty and send him home in exigent circumstances e.g. intoxication on duty. In minor matters the shift commander may

31/ Exhibit J-1, B D, and E.

32/ Transcript, April 23, 1976, Pg. 18-21, 30-34.

33/ Transcript, April 6, 1976, Pg. 26-27 and Pg. 69.

34/ Transcript, April 6, 1976 Pg 26-27 and April 23, 1976 Pg. 17.

dispose of the matter informally without taking such action, although the Warden may be informed and reserves the right to intervene. In any case, no Superior Officer has the right to suspend an employee from his duties in the normal course of events.[35]

When a report is submitted alleging a serious infraction of the rules the matter is brought to the attention of the Warden, through the chain of command.[36] There is some conflict in the testimony as to whether such a report submitted by a Superior Officer concerning an alleged infraction of a subordinate is strictly factual in nature or whether it also includes a recommendation concerning the disciplinary action to be taken. Warden Ennis indicated that most such reports do carry a recommendation of discipline and Captain Helbe and Sergeant Jones stated that their reports are strictly factual in content.[37] Should a formal report of an alleged infraction reach the Warden, the charged employee is thereafter notified to appear before the Warden at a stated time for a hearing. At the hearing the Superior Officer alleging violation may or may not be asked to appear and give a statement. The charged employee is given an opportunity to state his explanation of the incident and a discussion of the incident may ensue. At the close of the hearing, the Warden alone issues a decision concerning the charge. Where a violation is found the Warden stated that the disciplinary action imposed as a result of the violation may or may not be influenced by any recommendation concerning discipline contained in the original report.[38]

Deputy Wardens do not have the authority, on a regular basis, to conduct the aforementioned disciplinary hearings. However, if the Warden should be absent over an extended period of time, and a Deputy Warden appointed to act

35/ Transcript April 23, 1976, Pg. 33-36.
36/ Transcript April 23, 1976, Pg 33-35.
37/ Transcript April 6, 1976 Pg. 26, 70-71, and April 23, 1976, Pg. 21.
38/ Transcript April 23, 1976, Pg. 18-21.

in his place, the Deputy Warden in charge would be invested with the authority to convene disciplinary hearings and mete out discipline based upon his findings.[39/]

In view of the above, the undersigned reiterates his conclusion that the petitioned for employees are not possessed of the authority to hire, discharge or discipline or to effectively recommend these actions. The fact that a superior's written report may allege an infraction committed by a subordinate or that a majority of such reports do in fact result in discipline, is not in itself sufficient to sustain a finding of their supervisory status. Likewise, the fact that a Deputy Warden may, in the case of the Warden's extended absence, have the authority to mete out discipline does not merit a finding of supervisory status. Lacking is the consistency of a recommendation concerning discipline and evidence that the recommendation is either "rubber-stamped" by the Warden or at least followed in most cases. The reserved, but as yet unexercised, power of a Deputy Warden, mitigates against a finding that Deputy Wardens are supervisors within the meaning of the Act. However, these facts are not without importance and they will be considered infra, in the discussion of the applicability of the Wilton standards to the petitioned-for employees.

B. Conflict of Interest

An application of the rule of law established by the Supreme Court in the Wilton case and the various Commission and Executive Director decisions applying that rule to analogous cases has led the undersigned to conclude that the duties and interests of County Corrections Sergeants, Lieutenants, and Captains are in actual and substantial conflict with the interests of Correction Officers. In addition, the undersigned finds that the duties of the Deputy Wardens pose a substantial potential conflict of interest to the interests and duties of all other corrections officers employed at the Jail, be they of superior or subordinate rank.

39/ Transcript, April 23, 1976, Pg. 17-18.

The record indicates that the organization and administration of the Essex County Jail, parallels that of a military establishment, and relies heavily upon precise discipline and regimentation to carry out its function. The testimony of all witnesses and an examination of the Jail's operating rules indicates the heavy emphasis placed upon the chain of command in carrying out day to day activities.[40/] The Commission has repeatedly encountered this type of organization when dealing with issues involving state and municipal police and fire departments. The Commission has evolved a rule of general application when it has been asked to determine whether superior officers exercise such a significant authority over rank and file subordinate officers as to create a conflict of interest between the two groups. This rule may be stated as follows: Unless a de minimus situation, such as may be expected to exist in a small police or fire department, is clearly established, the distinction between superior officers and the rank and file should be recognized in unit determination by not including the two groups in the same unit.[41/] The undersigned having applied this rule to the issues in this case, finds that the continuance of the mixed unit ignores both the actual and potential substantial conflict of interest between superior officers and subordinate officers.

As a group, Superior Officers share active responsibility for the conduct and discipline of Correction Officers and are, from time to time, consulted by the Warden with regard to the Jail's policies and procedures. The contrary is not true.[42/] Individually, the responsibility of the various ranks of Superior Officers is as follows: (1) Deputy Wardens are "shift commanders" on the day and evening shift, and are responsible for conduct,

40/ Transcript, April 23, 1976, Pg. 12-17.

41/ See, In re Township of Hanover, E.D. No. 41, (1970), and In re City of Union City, P.E.R.C. No. 70, (1971).

42/ Transcript, April 23, 1976, Pg. 7 and April 6, 1976, Pg. 6.

efficiency, and safety of all officers assigned to their shift. In the absence of the Warden, a Deputy Warden may be appointed to act in his place. Where the Warden was absent for an extended period the Deputy Warden in charge would be empowered to act in his stead in all matters, including disciplinary proceedings. As the Warden has not been absent and the Deputy Wardens have been on sick leave, this situation has yet to occur; (2) Captains are assigned command duties in specific areas of responsibility e.g. personnel training, etc. They may also be called upon to perform command duties outside their normal assigned areas of responsibility. Captains may grant a Correction Officer time off assuming the officer has time owed to him and the Captain, in his discretion believes the officers absence will not adversely affect the efficiency of his command. A Captain is assigned a "shift-commander" on the midnight to eight work shift and as such may order that a Correction Officer be relieved of his duty because of intoxication, etc.; (3) Lieutenants are similarly assigned specific command duties e.g. security, direct supervision over Sergeants, and the scheduling of work assignments. They assist and report to a Captain or Deputy Warden; (4) Sergeants are assigned specific physical areas of responsibility throughout the Jail and supervise the work of Correction Officers assigned to these areas.[43/]

Clearly, the delineation above and the previously detailed authority of Superior Officers to command Correction Officers and under some circumstances to relieve them from duty, illustrate a situation where the duties and responsibilities of Superior Officers create friction and grievances among rank and file Officers. This finding is reinforced by the testimony of the Warden and other witnesses that most reports filed by Superior Officers alleging a rule violation by a Correction Officer, resulted in some form of disciplinary action against the Correction Officer.[44/] Surely, the representation of both superior and

43/ Transcript, April 6, 1976, Pg. 16-10 and April 23, 1976 Pg. 12-17.

44/ Transcript, April 6, 1976, Pg. 56 and 73, April 23, 1976 Pg. 21.

subordinate officers in the same negotiating unit may reasonably be anticipated to be innimical to the prosecution and resolution of infractions and grievances, and thus a substantial potential and actual conflict of interest may be said to exist. The Public Employer has not affirmatively demonstrated the contrary be adducing evidence that the conflict is de minimus in nature.

The stated desire of the Superior Officers to improve their salary differential vis-a-vis rank and file Correction Officers and their attempts to influence their negotiating committee on this matter enhances the distinction between the two groups.[45/] This distinction is also apparent from a former, but untimely, representation petition filed on behalf of the Superior Officers by their Association. Likewise, the recent vote by the rank and file members of P.B.A. Local No. 153 to continue limited participation by Superior Officers in matters of contract, expenditures and other subjects provides a sharpened view of the divergent interests of the two groups of officers. This observation is not a reflection upon the adequacy of representation given the Superior Officers, rather it is a view of an almost inevitable occurrence given the interests of the two groups and further illustrates the conflict, as opposed to community of interest between superior and rank and file Correction Officers.

As previously stated, the Warden is the only Correction Officer at the Jail normally possessed of the authority necessary to be considered a Supervisor within the meaning of the Act. However, the record indicates that in the absence of the Warden, a Deputy Warden may be designated in his place to carry out all the duties normally performed by the Warden. While this situation has not yet occurred, there is a substantial likelihood that it will occur at some future date, requiring a Deputy Warden to act in place of the Warden for a substantial period of time e.g. sick leave, vacation, etc.[46/] This potential creates

45/ See, respectively, Transcript April 6, 1976, Pg. 46-48; Exhibit PE-2; Pg. 52; and Exhibit P-2, Pg. 3.

46/ Transcript, April 23, 1976, Pg. 12, 17 and 38-39.

a situation where the interests of the Deputy Wardens are potentially substantially adverse to both rank and file Correction Officers and Superior Officers. This fact pattern is not dissimilar to the conditions faced by the Court in the Wilton case [see supra.]. In Wilton the Court held that the mere fact that the proposed unit would include all supervisory titles was not enough in itself to find the unit appropriate, and required a complete examination of the authority the employees in question over subordinates and an evaluation of the employees' duties vis-a-vis the employer and the proposed unit.47/ Upon the facts in the instant matter, the undersigned finds that the actual and potential duties of Deputy Wardens so closely ally them to the interests of the Public Employer that the community of interest they might otherwise share with other Superior Officers is negated.

II. ESTABLISHED PRACTICE AND PRIOR AGREEMENT

The Public Employer has alleged that the unit of superior and rank and file Correction Officers has a history of fair and effective collective negotiations with the County which antedates the passage of the Act. This contention is cited in support of the continuance of the mixed unit. The undersigned, having carefully studied the proffered testimentary and documentary evidence, finds that this assertion is not supported by the weight of the evidence. Even assuming arguendo, the existence of established practice or prior agreement, the manifest actual conflicts of interest between superior and rank and file officers would be of overriding importance and dictate against the continuance of the mixed unit.

The record indicates that at some time prior to 1961 the Essex County Employees Association (the "CEA") spoke with the Public Employer on behalf of all County employees only with respect to wages and not other terms or conditions

47/ Wilton, Pg. 424-426.

of employment. The representation of Correction Officers in this organization was accomplished by one person, who may or may not have been an official of the C.E.A. No evidence was adduced concerning meetings in which negotiations proposals were discussed, explained, or voted upon. Nor was there any indication that any agreements were reached or executed by the parties on terms or conditions of employment.[48/]

At some point between 1963 and 1966, P.B.A. Local No. 153 began meeting with the Public Employer on matters of concern to all Correction Officers and Superior Officers employed at the Essex County Jail and the Essex County Correction Center, a separate institution. The record is devoid of any conclusive evidence of an agreement reached by the Public Employer and the P.B.A. during this period and does not indicate the subjects which may have been "negotiated" by the parties. The relationship between the parties was formulated in 1970, when the Commission jointly certified P.B.A. Local No. 153 and P.B.A. Local No. 157 as the exclusive negotiations representative for all Correction Officers employed at the Essex County Jail and Correction Center.[49/]

A review of the aforementioned facts does not evidence the existence of a pre-1968 negotiations relationship between an employer and an employee organization, nonetheless a written negotiations agreement between them which specifically includes within its purview both supervisors and non-supervisory employees. Missing is any demonstration of a consistent pattern of give and take negotiations on methods of payment, salary, fringe benefits, and non-economic matters with an employer who had come to the table with an intent to reach an agreement. While some type of relationship may be said to have existed between one or more employee organizations and the Public Employer prior to 1968, the relationship may not be said

48/ Transcript, April 6, 1976, Pg. 31-32.

49/ Exhibit J-1A.

to have been sufficient to prove the existence of established practice or prior agreement.

III. STATUS OF DEPUTY WARDENS AS MANAGERIAL EXECUTIVES OR CONFIDENTIAL EMPLOYEES

In reliance upon the application of N.J.S.A. 34:13A-3(f), 3(6), 5.3; and the previously stated case law, the undersigned concludes that Deputy Wardens are neither managerial executives nor confidential employees as defined by the Act.

Warden Ennis's testimony concerning rule and policy making, budget preparation, personnel and grievance administration, and interchange with the penal committee of the Freeholders, along with the testimony of Captain Helbe and the description of the duties of Deputy Wardens contained in the Rules and Regulations of the Jail, form the factual basis for the aforementioned conclusion.[50/]

Although Deputy Wardens act as shift commanders they do not formulate management policies formal, written rules and statements of policy must be approved and signed by the Warden. Proposed policies and rules are discussed at meetings attended by superior officers including the Deputy Wardens but the final authority to approve or disapprove a proposal rests with the Warden. The Deputy Wardens are charged by the rules and regulations with carrying out the rules promulgated by the Warden, no mention is made of any additional authority possessed by the Deputy Wardens other than those delineated by the rules or assigned to them by the Warden.[51/] The inevitable conclusion is that Deputy Wardens normally perform proscribed functions without exercising the significant independent judgment normally possessed by a managerial executive. In support of this conclusion is the testimony of Captain Helbe concerning discussions he has had with Deputy Wardens wherein they indicated that they had not role in making policy at the Jail.

50/ See respectively, Transcript, April 23, 1976, Pg. 7, 19, 9; See also Transcript, April 6, 1976, Pg. 20-21; and Exhibit PE-1.

51/ See respectively, Exhibit J-1E; Transcript, April 23, 1976, Pg. 37, 17 and 19.

The 1974 collective negotiations agreement between the parties does not specifically designate the Public Employer's grievance representative, but the testimony at hearing establishes the Warden as the first step representative. There is no evidence of the Deputy Wardens' participation in this process, on the contrary the Warden stated that if a grievance reached the Deputy Warden the matter would then surely reach the Warden. The Warden also stated that the Captain in charge of personnel, not a Deputy Warden, occasionally assisted the Warden at a grievance meeting.[52/]

Annual budgets are prepared by the Warden with input from various Superior Officers and an Officer Manager. The Deputy Wardens are not regularly included in this process. Only the Warden attends the monthly meetings with the Penal Committee of the Freeholders.[53/] These facts lend additional credence to the finding that the Deputy Wardens are not regularly possessed of the authority to exercise independent judgment in the determination and effectuation of managements policies and practices.

The Public Employer's contention that Deputy Wardens are confidential employees is not supported by the evidence. Neither the testimony at hearing nor the exhibits submitted in evidence lend credence to the assertion. Warden Ennis specifically stated that he alone consulted with the Public Employer's designated negotiator concerning the Public Employer's negotiations posture. No other member of the staff is directly involved although some subjects may be generally explored with the staff.[54/] The subjects of the adjustment of grievances and the responsibility for personnel records has been examined, supra. In no instance has there been any indication that Deputy Wardens have functional

52/ See respectively, Exhibit J-1E; Transcript, April 23, 1976, Pg. 37, 17 and 19.

53/ See Supra at footnote No. 49.

54/ Transcript, April 23, 1976, Pg. 27-28.

responsibilities in or knowledge of the issue involved in the collective negotiations process that would make their membership in any appropriate unit incompatible with their official duties.

RECOMMENDATION

Based upon the entire record in this case including the transcript of hearing and the exhibits in evidence the undersigned recommends that the Director of Representation Proceedings direct a secret ballot election to be conducted pursuant to the Commission's Rules, in a unit of all County Correction Captains, Lieutenants, and Sergeants employed by the Essex County Board of Chosen Freeholders at the Essex County Jail, but excluding the Warden, Deputy Wardens, etc.

The employees in the proposed unit to vote as to whether or not they wish to be represented by the Superior Officers Association at the Essex County Jail, for the purposes of collective negotiations.

RESPECTFULLY SUBMITTED

J. Sheldon Cohen
Hearing Officer

DATED: August 12, 1976
Trenton, New Jersey