

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARK COMMISSION,

Respondent,

-and-

PALISADES INTERSTATE PARKWAY
POLICE OFFICERS ASSOCIATION,

Petitioner,

Docket No. RO-H-87-4

-and-

STATE OF NEW JERSEY,

Intervenor.

SYNOPSIS

The Public Employment Relations Commission dismisses a petition for certification of public employee representative filed by the Palisades Interstate Parkway Police Officers Association. The Association seeks to represent a negotiations unit of all New Jersey police personnel employed by the Palisades Interstate Park Commission, a bi-state agency. Because of the substantial control the State of New Jersey continues to exercise over the terms and conditions of employment of these police, the Commission finds that the State continues to be their public employer. In the absence of evidence that severance of these police from their existing unit is warranted, the petition is dismissed.

P.E.R.C. NO. 89-123

STATE OF NEW JERSEY
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PALISADES INTERSTATE PARKWAY
POLICE OFFICERS ASSOCIATION,

Docket No. RO-H-87-4

Petitioner,

-and-

STATE OF NEW JERSEY,

Intervenor.

Appearances:

For the Respondent/Intervenor, Peter N. Perretti, Jr.,
Attorney General (Melvin E. Mounts, Deputy Attorney General)

For the Petitioner, Loccke & Correia, Esqs.
(Richard D. Loccke, of counsel)

DECISION AND ORDER

On July 5, 1986, the Palisades Interstate Parkway Police Officers Association ("Association") filed a Petition for Certification of Public Employee Representative. The Association seeks to represent a negotiations unit of all New Jersey police personnel employed by the Palisades Interstate Park Commission ("PIPC"), a bi-state agency. These officers are currently represented by three employee organizations in state-wide units: patrol officers are represented by the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent

Association; sergeants are represented by the New Jersey Law Enforcement Supervisors Association-Primary Level Supervisory Law Enforcement Unit; and lieutenants are represented by the New Jersey Superior Officers Law Enforcement Association-Superior Officers Law Enforcement Unit.

The Association contends that the officers should be severed from the existing units because, for purposes of collective negotiations, they are employed by PIPC, not by the State of New Jersey ("State"). The State opposes severance, arguing that it is the public employer of the police personnel, the existing units are stable, and no employees have been unfairly represented.

On March 19, 1987, the Director of Representation issued a Notice of Hearing.

On October 13 and December 9, 1987, Hearing Officer Marc F. Stuart conducted a hearing. The parties examined witnesses and introduced exhibits. They submitted post-hearing briefs and reply briefs by April 12, 1988.

On June 30, 1988, the Hearing Officer recommended the petition's dismissal. H.O. No. 88-7, 14 NJPER 487 (¶19206 1988). He concluded that the police are employed by the State and that no evidence suggests that the employees should be severed from their current negotiations units.

On July 20, 1988, after an extension, the Association filed exceptions.^{1/} It maintains that the PIPC is the employer of the

^{1/} It requested oral argument. We deny that request.

police officers and that we have no jurisdiction over the PIPC, pursuant to the enabling statute, N.J.S.A. 32:14-1.1 et seq., and Palisades Interstate Park Comm'n, P.E.R.C. No. 60 (1971). It asserts that the Hearing Officer misinterpreted the statute, particularly N.J.S.A. 32:14-4, purportedly giving PIPC authority over police officers' terms and conditions of employment; he inaccurately distinguished Delaware River and Bay Authority v. PERC, 112 N.J. Super 160 (App. Div. 1970), aff'd 58 N.J. 338 (1971), and he underrated the significance of deploying New Jersey officers to New York.

Pursuant to N.J.A.C. 19:11-8.8, we have transferred the case to ourselves. We have reviewed the record. The Hearing Officer's findings of fact (pp. 3-10) are generally accurate. We adopt them with these modifications.

We add to finding no. 4 that in 1970, the statute authorizing the PIPC was amended to make New Jersey employees of the PIPC employees of the State for purpose of coverage under Civil Service statutes. N.J.S.A. 32:4-4. In 1981, the statute was amended to authorize the PIPC to appoint a chief of police and to provide for removal of appointees by the PIPC after notice and an opportunity to be heard. N.J.S.A. 32:14-4.1; 14-4.2. In 1987, it was amended to include PIPC volunteers under the Workers' Compensation and Tort Claims Acts.

We add this language concerning allocation of the PIPC within the Department of Environmental Protection:

Notwithstanding this allocation, the Commission shall be independent of any supervision or control by the department or by the commissioner or any officer or employee thereof, except as otherwise expressly provided in this act. [N.J.S.A. 32:14-1.3]

We add this section concerning park police. It states:

Palisades Interstate Park Commission may appoint such patrolmen as it may deem necessary for the purpose of keeping order and enforcing the laws and the provisions of this chapter. The patrolmen so appointed shall be provided with uniforms by the commission and shall have, within such portions of Palisades interstate park as lie within the boundaries of this State, and such parts of any State, county or other public highways as lie within the limits of such portions of the park and all the lands, parks and parkways in this State under the jurisdiction of the commission, all the powers, duties and liabilities of police officers in cities in the making of arrests and the execution of criminal process and the enforcement of all the laws of the State and the provisions of this chapter. The commission may appoint such patrolmen to hold office at the pleasure of the commission or for such term as the commission may determine and may determine the duties of such patrolmen and make all reasonable rules and regulations respecting the same. Such patrolmen shall receive such compensation as from time to time may be fixed and determined by the commission. Each of such patrolmen shall be a resident of either this State or the State of New York, and if a resident of the State of New York he shall not be disqualified to act as a patrolman in this State by reason of non-residence in this State, anything in the statutes of this State to the contrary notwithstanding. [N.J.S.A. 32:14-21]

We add to finding no. 6 that N.J.S.A. 32:14-4 originally authorized the PIPC to appoint employees, and "determine the duties and compensation of its appointees, remove them at pleasure and make all reasonable rules and regulations respecting them." The 1970

amendment gave the PIPC the power to appoint "subject to the applicable Civil Service Statute of the party states."

We modify the last sentence of finding no. 6 to indicate that part of N.J.S.A. 32:14-4 states:

Employees of the commission [PIPC] whose salary is paid in full from funds appropriated by this State shall be deemed to be employees of this State for the purpose of covering such employees under the provisions of Title 11 (Civil Service)...."

We add also that the 1980 amendments required the Civil Service Commission to reexamine the titles and salary ranges of all employees of the PIPC covered by Civil Service, subject to the approval of the PIPC, and make changes required to provide parity with other comparable State or local civil service provisions.

N.J.S.A. 32:14-1.10.

We add to finding no. 11 that between 1982 and 1987 New Jersey PIPC police assisted New York PIPC police in New York about 24 times. New Jersey officers often responded to automobile accidents north of the state line. They occasionally assisted disabled motorists in New York but are not responsible for patrolling park areas north of the New Jersey border. In 1980, the New Jersey officers were trained in rescue techniques at Bear Mountain, New York.

We begin with this jurisdictional question: Do we have jurisdiction to decide what entity is the public employer of New Jersey PIPC police and to implement that determination? We believe the answer is yes.

In Delaware River and Bay Authority, the Court held that we did not have jurisdiction to entertain representation petitions involving Delaware River and Bay Authority employees because, as a bi-state agency, the Authority did not come within our Act's definition of public employer. That Authority's compact provided that "no additional duties or obligations shall be undertaken by the authority under the law of either State or of Congress without authorization by the law of both States." N.J.S.A. 32:11E-1.

Shortly afterwards, a union sought to represent non-police employees of the New Jersey PIPC. Unlike the compact creating the Delaware River Bay Authority, the compact creating the PIPC authorizes certain unilateral state action:

Either the State of New York or the State of New Jersey may by law applicable to parks or park commissions generally within such state, or by law specifically applicable to the commission or to any of the parks within such state under its jurisdiction, and without the concurrence of the other state, withdraw, modify, alter or amend any of the functions, jurisdiction, rights, powers and duties transferred to the commission by this article or confer additional functions, jurisdiction, rights, powers and duties on the commission, but such action by one state shall be effective only within the territorial limits of such state. [N.J.S.A. 32:17-5; emphasis added]^{2/}

Thus the New Jersey Legislature could have unilaterally subjected PIPC to our jurisdiction. But our review of New Jersey statutes in

^{2/} Legislation placing the states' respective employees in the civil service system are examples of such unilateral action. N.J.S.A. 32:14-4; N.Y. Conserv. Law §766 (McKinney 1969).

1971 did not reveal any legislation doing that. Accordingly, we dismissed the petition. Palisades.

In 1977, however, the Legislature amended our Act to authorize compulsory interest arbitration to resolve disputes involving public fire and police departments. N.J.S.A. 34:13A-14. Public police departments were defined as including those having units composed of "patrolmen of the Palisades Interstate Park Commission." We read this language as a comprehensive grant of Commission jurisdiction over the PIPC's relations with its New Jersey employees. Specifically, we have the power to entertain representation petitions for employees who are employed in New Jersey by the PIPC, either as a sole or joint employer.

We next present an overview of the PIPC's structure. In 1927, the PIPC was authorized by compact between New York and New Jersey and approved by Congress. Each state's governor appoints five members to the PIPC. The PIPC staff includes a bi-state executive director and assistant executive director. They work at the PIPC's principal office in Bear Mountain, New York and are paid by funds appropriated by both states. Each state has a superintendent. New Jersey has an assistant superintendent, office manager and supervisor of maintenance. Both states have chiefs of patrol. The New Jersey chief is appointed by the bi-state PIPC.^{3/}

^{3/} The 1981 amendment authorizes the appointment of a New Jersey chief of police. It provides, in part:

We next address which entity -- the State, the PIPC or both, as joint employers -- is the public employer of New Jersey PIPC police.^{4/} N.J.S.A. 34:13A-3(c) defines public employer:

This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

The State has negotiated most economic terms and conditions of employment for New Jersey PIPC police since at least 1973. Those

3/ Footnote Continued From Previous Page

[T]he commission may, by resolution, appoint a chief of police, who shall have served as a superior police officer and shall possess at least 5 years' administrative and supervisory police experience. The chief of police shall be in the unclassified service of the Civil Service and shall receive such salary as shall be authorized by the commission.

The Senate Committee Statement of January 26, 1981 states that the bill gives the authority to the PIPC to appoint a chief of police, who shall be in the unclassified Civil Service. It notes that "[T]here is precedent for this...in P.L. 1979, c. 163 (c. 40:69A-60.7), which gives this authority to the governing body of certain cities of the first class." That statute provides that certain cities may provide, by ordinance, that the mayor shall appoint a police chief with similar qualifications who also shall serve in the unclassified service of the civil service.

4/ We are not as concerned as the parties over how often New Jersey officers go into New York for work or training. The question is not whether the PIPC is truly bi-state, but which entity should negotiate with representatives of New Jersey PIPC police in light of the Legislature's authorization of collective negotiations.

terms and conditions have been set forth in a series of collective negotiations agreements between the State and its three statewide law enforcement units. But this alone does not make the State the sole employer. As the Senate Energy and Environment Committee stated in its April 1980 report to the Senate:

As a bi-state agency created pursuant to Congressional authorization, the commission is a rather unique governmental instrumentality....

Accordingly, we must review all aspects of the employment relationship and the respective roles of both the State and the PIPC in that relationship.

Virtually all funding for New Jersey PIPC police is provided by the State through its Office of Management and Budget. Funds for salaries are transferred from the State to the PIPC. Paychecks are issued by the PIPC on its own checks from Bear Mountain. Salaries are incorporated into the salary ranges of the State compensation plan. N.J.S.A. 32:14-4. The 1980 amendments required the Civil Service Commission to reexamine PIPC titles and ranges, subject to the approval of the PIPC, and make changes required to provide parity with other comparable State or local civil service positions.

Clothing allowances also come from the State's salaries and wages appropriation. Overtime compensation, like salaries, is paid with State funds through the PIPC. The decision to schedule overtime hours and to pay overtime compensation is made by the New

Jersey chief subject to contractual requirements or Department of Personnel regulations.

The State, thus, primarily controls the purse strings determining the economic terms and conditions of New Jersey PIPC police. But the PIPC, under Civil Service guidelines, has some influence over the distribution of these economic terms.

N.J.S.A. 32:14-4 grants the PIPC the power to appoint employees, subject to applicable civil service statutes. Because their salaries are paid in full from New Jersey appropriated funds, New Jersey PIPC police are deemed employees of New Jersey for the purpose of Civil Service coverage. Accordingly, New Jersey PIPC police are appointed pursuant to Department of Personnel rules and regulations. If the New Jersey chief wants to fill a vacancy, he advises the superintendent who asks the bi-state controller if funds are available. If available, the superintendent may authorize resort to a Department of Personnel list of eligibles.

The PIPC determines the duties of its appointees and may make all reasonable rules and regulations respecting them. N.J.S.A. 32-14.4. The PIPC may remove any person after notice and an opportunity to be heard. N.J.S.A. 32:14-4.2.

Requests for promotional examinations originate from the New Jersey superintendent's office. The Department of Personnel promulgates and conducts the examination and certifies the results.

Routine workforce direction goes up the chain of command to the New Jersey chief. Administrative matters continue up past the

chief to the New Jersey superintendent and the bi-state executive director. Under the Park Patrol's rules and regulations, the New Jersey Superintendent "shall report to the General Manager [now the bi-state executive director] as to all patrol matters requiring his attention."

Major employee discipline (more than five day suspensions) may be appealed through Department of Personnel (Merit System Board) procedures. Minor discipline can be grieved under the collective negotiations agreements. Discipline normally originates with the New Jersey chief. The record, however, contains two examples of minor discipline that originated with the bi-state executive director (then general manager): a reprimand for participation in a job action and a notice of infraction for an incident involving the director. As recently as 1987, a patrol officer was disciplined for violating what appear to have been PIPC rules and regulations.

The record also contains a commendation issued to a New Jersey police officer by the bi-state general manager.

Day-to-day decisions affecting terms and conditions of employment are made by the New Jersey chief, the New Jersey superintendent, the bi-state executive director, or the PIPC itself.

In sum, most economic and some non-economic terms and conditions of employment are set or regulated by the State and the

Department of Personnel. These authorities have not diminished during the long time these employees have been included in their existing units. Because of the substantial control the State continues to exercise over their terms and conditions of employment, we find that the State continues to be the public employer of the New Jersey PIPC police.

However, we are mindful that some economic and some non-economic terms and conditions of employment are controlled by the PIPC: hiring, initiation of discipline and review of minor discipline, promotion, commendation, and direction of workforce. Since the bi-state Commission exercises this control, we have carefully considered whether a joint employer status is warranted.^{5/} Such a finding might be appropriate if the record were to demonstrate that the State has been unwilling or unable to negotiate over terms and conditions of employment controlled by the bi-state commission. But there is no such evidence which would warrant disturbing the unit placement of these employees.

In light of this finding and the absence of evidence that severance of PIPC police from their existing unit is warranted, the petition is dismissed. See Jefferson Tp. Bd. of Ed., P.E.R.C. No. 61 (1971). In addition, the petitioned-for unit is facially

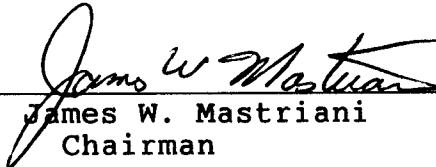
5/ Bergen Cty. Sheriff, P.E.R.C. No. 84-98, 10 NJPER 168 (¶15083 1984).

inappropriate because it seeks to represent police officers of all ranks. See N.J.S.A. 34:13A-5.3.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid, Ruggiero and Wenzler voted in favor of this decision. None opposed. Commissioner Smith was not present.

DATED: Trenton, New Jersey

May 15, 1989

ISSUED: May 16, 1989

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PALISADES INTERSTATE PARK COMMISSION,

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-and-

PALISADES INTERSTATE PARKWAY
POLICE OFFICERS ASSOCIATION,

Docket No. RO-H-87-4

Petitioner,

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STATE OF NEW JERSEY,

Intervenor,

SYNOPSIS

A Hearing Officer recommends that the Public Employment Relations Commission find that Palisades Interstate Park Commission Police Officers are employed by the State of New Jersey, and not by the Palisades Interstate Park Commission. The Hearing Officer further recommends that the Commission find that there is insufficient evidence of unit instability or failure of responsible representation to warrant a severance of Palisades Interstate Park Commission Police Officers from their existing state-wide units. Jefferson Tp. Board of Education, PERC No. 61 (1971).

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

H.O. NO. 88-7

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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-and-

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POLICE OFFICERS ASSOCIATION,

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Docket No. RO-H-87-4

-and-

STATE OF NEW JERSEY,

Intervenor,

Appearances:

For the Public Employer
Department of Law & Public Safety
(Melvin E. Mounts, D.A.G.)

For the Petitioner
Loccke & Corriea, Esqs.
(Richard D. Loccke, Esq.)

HEARING OFFICER'S RECOMMENDED
REPORT AND DECISION

On July 8, 1986 the Palisades Interstate Parkway Police Officers Association ("Petitioner" or "Association") filed a petition for certification of public employee representative with the Public Employment Relations Commission ("Commission") seeking to represent a unit of approximately 30 "police personnel of all ranks"

employed by the Palisades Interstate Park Commission (PIPC).^{1/}
The Petitioner seeks to remove the police personnel from three statewide units:

1. State Law Enforcement Conference of the New Jersey Policemen's Benevolent Association - Law Enforcement Unit;
2. New Jersey Law Enforcement Supervisors Association - Primary Level Supervisory Law Enforcement Unit;
3. New Jersey Superior Officers Law Enforcement Association - Superior Officers Law Enforcement Unit

The Petitioner asserts that the employees in question are not employees of the State of New Jersey, but rather of the Palisades Interstate Park Commission, a separate employer. The State Law Enforcement Conference of the New Jersey Policemen's Benevolent Association - Law Enforcement Unit, the New Jersey Law Enforcement Supervisor's Association - Primary Level Supervisory Law Enforcement Unit, and the New Jersey Superior Officers Law Enforcement Association - Superior Officers Law Enforcement Unit have taken no position and have chosen not to participate in these proceedings (See C-1; C-2). The State takes the position that Palisades Interstate Park Police Officers in the ranks of police officer, police officer sergeant and police officer lieutenant should not be severed from the three aforementioned statewide law enforcement units in the absence of a showing that the existing

^{1/} The State of New Jersey denies that the Palisades Interstate Park Commission is the employer of the Palisades Interstate Park Police and asserts, instead, that the State of New Jersey is the employer of these public employees.

relationships are unstable or that there has not been responsible representation of the employees in question. The State further asserts that it (The State) is the public employer of all Palisades Interstate Park Police Officers.

On March 19, 1987, the Director of Representation issued a Notice of Hearing. On October 13 and December 9, 1987, I held hearings in this matter, at which time the parties had the opportunity to examine and cross examine witnesses, present evidence and argue orally. Post hearing briefs were submitted by April 12, 1988.

Based upon the entire record, I find the following facts:

FINDINGS OF FACT

1. The State of New Jersey is a public employer within the meaning of the Act.^{2/}
2. The Palisades Interstate Parkway Police Officers Association, The Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association, The New Jersey Law Enforcement Supervisors Association and the New Jersey Superior Officers Law Enforcement Association are employee representatives within the meaning of the Act. The Palisades Interstate Park Police Officers are currently represented by the State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association - Law

^{2/} The parties do not agree that the Palisades Interstate Park Commission is a public employer within the meaning of the Act.

Enforcement Unit (C-5b). Palisades Interstate Park Police Officer Sergeants are currently represented by the New Jersey Law Enforcement Supervisors Association - Primary Level Supervisory Law Enforcement Unit (C-7b). Palisades Interstate Park Police Officer Lieutenants are currently represented by the New Jersey Superior Officer's Law Enforcement Association - Superior Officers Law Enforcement Unit (C-6b; TA92). Palisades Interstate Park Police Officers working out of New Jersey locations have been included in the New Jersey State Law Enforcement Unit since at least 1973 (C-5b). Palisades Interstate Park Police Officer Sergeants have been included in the New Jersey Primary Level Supervisory Law Enforcement Unit since at least 1978 (C-7b). Palisades Interstate Park Police Officer Lieutenants have been included in the New Jersey State Superior Officers Law Enforcement Unit since at least 1978 (C-6b).

3. The Petitioner seeks a secret ballot election to determine whether Palisades Interstate Park Commission Police personnel located in New Jersey wish to be represented in a separate unit by the Palisades Interstate Parkway Police Officers Association. The State refuses to consent to an election for the reasons stated above.

4. The Palisades Interstate Park was created in 1900 (N.J.S.A. 32:14-1 - footnote). In 1937, the Palisades Interstate Park Commission was created by Compact between the states of New York and New Jersey (N.J.S.A. 32:14-1). In 1980, Chapter 14 was

amended to provide for the PIPC's ^{3/} continuation and allocation within the Department of Environmental Protection of the State of New Jersey (DEP) (N.J.S.A. 32:14-1.3). The 1980 amendments further provided that the PIPC prepare its annual budget request in consultation with DEP to be submitted to the Governor and Legislature as part of DEP's annual budget request (N.J.S.A. 32:14-1.4).

5. The hierarchy of staff at the PIPC is as follows: There is an Executive Director and an Assistant Executive Director who oversee both the New Jersey and New York operations, but, who are physically located in New York and paid by funds appropriated by both New Jersey and New York (J-1; J-2). There are then the Superintendents of the New Jersey and the New York sections, and under the New Jersey Superintendent, the Assistant Superintendent, Office Manager, and Chief of Patrol (J-2).

6. The PIPC has the power to appoint employees subject to the provisions of Title 11 (Civil Service) (N.J.S.A. 32:14-4). The PIPC may remove any person appointed pursuant to the provisions of Chapter 14 following notice and an opportunity to be heard (N.J.S.A. 32:14-4.2). The PIPC determines the duties of its appointees and makes all reasonable rules and regulations respecting them (N.J.S.A. 32:14-4). The PIPC has the power to take any action necessary to secure and maintain for its employees the benefits of the State's

^{3/} Unless otherwise stated, reference to the PIPC is restricted to the New Jersey portion.

Employee Retirement System (N.J.S.A. 32:14-4). To the extent that employees of the PIPC in New Jersey are paid with funds derived from monies appropriated by New Jersey, or received from other sources in New Jersey, these employees are deemed to be employees of New Jersey for membership in the State's retirement system (N.J.S.A. 32:14-4). For purposes of determining their rights under the Workman's Compensation Act of New Jersey, employees of the PIPC employed wholly or partly in New Jersey are deemed to be employees of New Jersey (N.J.S.A. 32:14-4). PIPC employees whose salaries are paid in full from funds appropriated by New Jersey are employees of New Jersey for coverage under the provisions of Chapter 11 (Civil Service) (N.J.S.A. 32:14-4).

7. Similarly, under New York State Statutes, Article 9, §§ .01 - .09, the PIPC (New York portion) has the power to appoint employees; provide or operate facilities under its jurisdiction; adopt, amend or rescind rules, regulations or orders necessary or convenient for the exercise or performance of its functions powers and duties; secure and maintain the benefits of the Public Retirement System of the State of New York for PIPC employees in New York; secure participation and survivors' benefits for PIPC New York employees in the State Health Insurance Plan; and secure rights for New York PIPC employees under the Workman's Compensation Law of New York. The New York statutes further provide that employees of the PIPC whose salaries are paid in full from funds appropriated by the State of New York are deemed to be employees of New York under the

provisions of the New York Civil Service Law. PIPC employees not deemed to be New York State employees are employees of the PIPC (New York State Statutes - Article 9, §§.01-.09; J-2).

8. The Palisades Interstate Park Police in New Jersey must undergo training required by the New Jersey Police Training Commission (J-2). ^{4/} The hiring of Palisades Interstate Park Police Officers, Sergeants and Lieutenants is handled through the New Jersey Department of Civil Service. (See J-2 - Job Descriptions). Job classification and the fixing of compensation for Palisades Interstate Park Police Officers, Sergeants, and Lieutenants is similarly performed by the New Jersey Department of Civil Service (J-2 - Appendix K). The Palisades Interstate Park Commission also conducts training programs for its employees (J-1, J-2 - Stipulation 32). Palisades Interstate Park Police Officers in New Jersey have received some limited training by the Commission in New York State (TA59-60; TB45-TB55)^{5/} However, training of New Jersey Palisades Interstate Park Police Officers in New York State is the exception, with the majority of training being conducted at the Bergen County Police Academy (TA71; TB38-39).

^{4/} However, see J-1 - Attachment 5, expressing an earlier position by the State of New Jersey, Division of Criminal Justice and Police Training, that the Palisades Interstate Park Commission did not come under the jurisdiction of the New Jersey Police Training Act. This opinion was revised, and the revision was expressed in a memo dated October 27, 1986, to field representatives from Ed Collen, Supervisor, School Operations (J-2).

^{5/} TA refers to the transcript dated October 12, 1987.
TB refers to the transcript dated December 9, 1987.

9. The PIPC has the authority to raise revenues from its own activities; however, the proceeds derived from these activities in New Jersey are used by the PIPC for the development and management of the portions of the Park within New Jersey N.J.S.A. 32:14-20; (J-1; J-2).^{6/} Funds representing salary to Palisades Interstate Park Police are distributed by the PIPC (J1 - Attachment 3). That funding comes from the Treasury Department - New Jersey State Office of Management and Budget; and, such funding is reflected in the New Jersey Appropriations Handbook (TB129-130; J-2 - Appendix I). The clothing allowance funding for Palisades Interstate Park Police Officers in New Jersey is derived from funding from the State of New Jersey (TB135). The PIPC is the registered owner of its motor vehicles (TB137-138). In the case of purchases other than very minor cash purchases, typically the New Jersey Chief will request of the New Jersey Superintendent the purchase of an item. The Superintendent will then make a recommendation either to purchase or not to purchase, to the bi-state comptroller situated in Bear Mountain, New York (TB143). Following the comptroller's "verification and issuance of a subsequent document," the item may be purchased (TB143). However, the funding for equipment for the New Jersey section of the PIPC is derived from funding from the State of New Jersey (TB136-137).

^{6/} These proceeds generated by the PIPC constitute a minority of the PIPC's funding.

10. Appeals of disciplinary decisions are ultimately taken to the New Jersey Civil Service Commission (J-2 - Attachments). Minor disciplinary appeals are made directly to the PIPC, and may ultimately result in an arbitration proceeding (TA55-56; TA85-88; P-7; P-8)^{Z/}

11. Occasionally, New Jersey Palisades Interstate Park Police Officers are called upon to perform their duties in New York; however, these situations appear to arise when an incident requiring attention occurs at or near the border and New Jersey officers can be dispatched to the appropriate location more quickly than New York officers; or, because New York lacks sufficient personnel to cover the particular incident (TA61-63; 72-79). Beyond occasional training, New Jersey Palisades Interstate Park Police Officers have some contacts with New York and perform some of their duties in New York State by virtue of the nature of the bi-state Commission; however, these instances of crossing state lines appear to be relatively infrequent (TB55-TB107). The Palisades Interstate Park

^{Z/} P-7 and P-8 are examples of New Jersey Palisades Interstate Park Police Officers receiving discipline from Nash Castro, Executive Director of the PIPC, operating out of the State of New York. However, this procedure is unusual. Normally discipline of New Jersey employees originates with the New Jersey Chief of Police (TA112). The New Jersey Chief reports to the New Jersey Superintendent. The New Jersey Superintendent, Charles Quadri, reports to Director Castro in the chain of command (TA114).

Police Officers' badge, I.D. card and shoulder insignia all bear the state seals of New Jersey and New York (TB140-141).^{8/}

12. Hiring and promotions are made through the Department of Civil Service - now the the Department of Personnel (TA93). Procedurally, the PIPC requests that a promotional examination be announced and given by the Department of Personnel; and, from the certified results, the PIPC makes its promotions (TA94). The need for additional personnel and the determination to establish additional positions are functions performed by the PIPC; however, a request must be made to the Budget Bureau and the Department of Personnel to certify that such position(s) should be created and that funds will be available (TB110-112). If the Chief of the New Jersey section has a vacancy he believes should be filled, he advises the Superintendent of the New Jersey section who authorizes the filling of the existing position (TB116). Thereafter, a list of eligibles from the Department of Personnel is sought from which the successful candidate is selected (TB116).

LEGAL ANALYSIS

As the parties have framed their arguments, the primary question for determination is who is the public employer of the employees

^{8/} However, there appears to be no dispute that the New York PIPC Police Officers wear a shoulder insignia that bears only the New York Seal (J-2; TB 140-141).

described in this petition. They are either employees of the Palisades Interstate Park Commission, the State of New Jersey, or of both the Palisades Interstate Park Commission and the State of New Jersey.

N.J.S.A. 34:13A-3(c) defines "employer" and "public employer" as follows:

The term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest of an employer with the employer's knowledge or ratification, but a labor organization, or any officer or agent thereof, shall be considered an employer only with respect to individuals employed by such organization. This term shall include "public employers" and shall mean the State of New Jersey, or the several counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, commission, or board, or any branch or agency of the public service.

In the past, this Commission and its designees have considered the issue of who is the employer or the public employer. They have relied upon the test developed by the National Labor Relations Board and the federal courts in the private sector. This approach is to determine which entity actually controls the labor relations of the affected employees.^{9/} Specifically, it is necessary to determine who controls the hiring, firing, work schedules, promotions, discipline, evaluations, vacations,

^{9/} See: Howard University, 224 NLRB No. 44, 92 LRRM 1249 (1976); We Transport and Town Bus Corp., 214 NLRB No. 91, 87 LRRM 1745 (1974); Herbert Harvey, Inc. v. N.L.R.B. 424 F 2nd 777, 72 LRRM 2213 (1969).

establishment of hours, wages, benefits and the control of funding. Generally the entity controlling those factors is the employer; however, where control of those factors is split between the two entities, a joint employer relationship will probably be found to exist. ^{10/}

In application of the policies developed in the private sector, the Commission has held in Newark Housing Development and Rehabilitation Corporation, D.R. 80-2, 5 NJPER 328 (¶10175 1979); Cape May County Guidance Center, D.R. 78-19, 3 NJPER 350 (1977); and ARA Services, Inc., E.D. 76-31, 2 NJPER 112 (1976), that despite some involvement and relationship with a public entity, the labor relations of the affected employees was controlled by a private, not a public, employer. Critical to the decision in Newark Housing, supra, and Cape May, supra, was a finding that although a public entity contributed funds to the respective employers, the public entity did not retain primary control over the use of those funds. ^{11/}

^{10/} The N.L.R.B. has held that where control over wages and control over work assignments is divided, a joint employer relationship exists. See the Groundhound Corporation and Floors, Inc. 153 NLRB 1488, 59 LRRM 1665 (1965); Manpower Inc and Armour Grocery Products Company, 164 NLRB 287, 65 LRRM 1059 (1967); Jewel Smokeless Coal et. al., 170 NLRB 392, 67 LRRM 1417 (1968).

^{11/} Accord,: It is possible in the private sector for the N.L.R.B. deny jurisdiction over an employer if the funding source is public (government) money and the government retains control of how that money is spent.

And in further application of the "control of labor relations test," the Commission and its designees and the courts in this state have already had the opportunity to choose the public employer from different competing entities. In Township of Neptune, D.R. 87-26, 13 NJPER 386 (¶18155 1987), the Director of Representation determined the Board of Health and not the Township of Neptune to be the public employer of the Secretary to the Board of Health. In Bergen County Sheriff, PERC No. 84-98, 10 NJPER 168 (¶15083 1984)," the Commission held that the County of Bergen and the Bergen County Sheriff were joint public employers of all sheriffs and corrections officers employed in Bergen County. In Bergen and Mercer County Prosecutor D.R. 78-34 4 NJPER 105 (¶4047), aff'd P.E.R.C. 78-77, 4 NJPER 220 (¶4110 1978), aff'd 178 N.J. Super 363, 411 (App. Div. 1980), the Commission and the Appellate Division held that the Prosecutor and not the respective counties was the public employer of employees in the Prosecutor's office.

In Mercer County Supt. of Elections, D.R. 78-37, 4 NJPER 147 (¶4069), aff'd P.E.R.C. 78-78, 4 NJPER 221 (¶4111 1978), the Commission held that the Superintendent of Elections, not the County, was the public employer of the employees in the Superintendent's office. The Superintendent controlled the labor relations of his employees, and although his funding was provided by the County, the statute requiring County funds, N.J.S.A. 19:32-27, did not give the County the discretion to deny the Superintendent's requests.

Here, virtually all the funding for Palisades Interstate Park Police Officers located in the New Jersey portions of the Palisades Interstate Park is provided by the State of New Jersey. Thus, through the exercise of its funding prerogative, the State of New Jersey effectively controls all PIPC activities in New Jersey requiring funding for their implementation. The PIPC, through its supervisory personnel, controls the day-to-day operation of its employees, all of whom are ultimately responsible to the State of New Jersey (See Findings of Fact, par. 5); however, in this it is no different from any of a number of other governmental subdivisions which carry out their own agenda but do not constitute separate public employers. Even the day-to-day functions within the control of the PIPC are diluted by the State's authority. As an example, although the PIPC has control over hiring and firing of its personnel, that control is limited by the authority of Civil Service which establishes and administers procedures for the hiring of new employees and the discipline and dismissal of other employees.

The number of instances of deployment of New Jersey personnel to locations in New York, and the number of activities performed by PIPC Police Officers crossing state boundaries is very limited. Were it to be otherwise it might suggest an independent bi-state agency rather than employees of New Jersey and employees of New York working within their own respective geographical

boundaries. Furthermore, the record reveals only isolated instances of training of New Jersey Personnel in New York. ^{12/}

Comparison of the bi-state features of the PIPC with other bi-state agencies is not depositive. Indeed, the New Jersey Supreme Court has held the Public Employment Relations Commission to be without jurisdiction to entertain Petitions for Certification of Public Employee Representative involving Delaware River and Bay Authority employees on the ground that the Authority, as a bi-state agency established by Compact between sovereign states, did not come within the definition of public employer contained in Chapter 303 of the Public Laws of 1968 and; therefore, that the Act had no application to that Authority. Delaware River and Bay Authority v. Public Employment Relations Commission et. al. 112 N.J. Super 160 (App. Div. 1970), aff'd 58 NJ 338 (1971). In that case, however, the Authority exercised substantial control over the labor relations functions of its employees, and this control was not limited by either of the party State's interference as a funding source. Moreover, the issue of what entity was the public employer of the employees was never raised in Delaware, supra. Instead, the Court simply ruled that the Public Employment Relations Commission lacked jurisdiction to entertain a petition regarding employees of a bi-state agency.

^{12/} The record reveals certain other indices of bi-state authority such as the insignias, badges and I.D. cards of PIPC Police Officers each of which bear the emblem of New Jersey and New York; however, these appear to be largely symbolic and do not rise to the level necessary under the "control of labor relations test."

Similarly in Port Authority Transit Corporation PERC No. 62 (1971), the Commission held that the Port Authority Transit Corporation, as defined by N.J.S.A. 32:3-2, is a "public corporate instrumentality of the commonwealth of Pennsylvania and the State of New Jersey." Accordingly, it was determined to be a bi-state agency. The Commission further held that N.J.S.A. 32:3-5, which lists the general powers of the Authority, stated that while additional powers may be delegated to it, this shall be done by the action of either state concurred in by legislation of the other. Thus, the Commission held that it was the intent of the Compact that any action taken with regard to the Authority be compatible with the wishes of both states.

In contrast Chapter 14 and its amendments provide for numerous functions which may be taken unilaterally by the State of New Jersey or its agents. Thus, under N.J.S.A. 32:14-1, et. seq. and its amendments, New Jersey employees of the PIPC are already considered employees of the State of New Jersey for several purposes such as membership in the State Employees' Retirement System, Workmen's Compensation, and Civil Service; and, these privileges are not dependent upon the joint consent of the party states.^{13/}

^{13/} Cf.: Trotman v. Palisades Interstate Park Commission, 557 Fed. 2nd 35 (1977), in which the court held that a suit against the Palisades Interstate Park Commission for torts allegedly committed by a park policemen in New York was really a suit against the State of New York itself, for 11th Amendment immunity purposes, despite the contention that the PIPC could not pledge the credit of either signatory state except by and with the authority of the legislature thereof.

N.J.S.A. 32:14-1, et. seq., and its amendments simply do not provide the same type of bi-state dependency or bi-state agency autonomy found in the enabling legislation of other bi-state agencies.

From this record, the State of New Jersey's control over the employees of the New Jersey portion of the PIPC is established. Moreover, there appear to be no instances of PIPC control over significant aspects of New Jersey employees' labor relations. Nor do there appear to be instances of conflict between the PIPC, as an independent body, and the State of New Jersey in which the PIPC attempted to assert its autonomous control over employees or matters affecting the PIPC. Under the table of organization of the PIPC, there are never instances of a "PIPC" or a New York official controlling any aspect of the labor relations of a New Jersey PIPC Police Officer since even the highest officials, the Executive Director and the Assistant Executive Director, are paid from funds appropriated directly by New Jersey and New York. Thus they function as agents of one or the other of these states depending upon which PIPC subdivision or subordinate employee they are dealing with. As for the rest of the top echelon in New Jersey, they are strictly New Jersey based and paid officials dealing with New Jersey personnel.

Based on the entire previous analysis, there appears to be little doubt that the employees covered by the instant petition are employees of the State of New Jersey and not of the Palisades Interstate Park Commission. Furthermore, there is no evidence that

a severance of these employees from their existing units is warranted. Jefferson Township Board of Education, PERC No. 61 (1971).

The Petitioner relies upon Palisades Interstate Park Commission, PERC No. 60 (1971), in which the Commission held that it had no jurisdiction to process a representation petition filed on behalf of the employees of the PIPC. However, having found the employees covered by this petition to be employees of the State of New Jersey, PERC No. 60 has no application here.

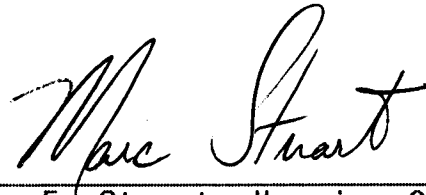
RECOMMENDATION

This petition by the Palisades Interstate Parkway Police Officers Association seeking to represent a unit of police personnel employed by the Palisades Interstate Park Commission should be dismissed for lack of evidence of unit instability or failure to provide responsible representation. Jefferson Township Board of Education, supra. ^{14/}

^{14/} It should also be noted that the petitioned-for unit of police officers, police officer sergeants, and police officer lieutenants appears to be inappropriate on its face. Under N.J.S.A. 34:13A-5.3:

...[N]or, except where established practice, prior agreement or special circumstances dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership....

H.O. NO. 88-7

A handwritten signature in cursive script that reads "Marc Stuart". The signature is written in dark ink and is positioned above a horizontal line.

19.

Marc F. Stuart, Hearing Officer

DATED: June 30, 1988

Trenton, New Jersey