E.D. NO. 76-36

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY BOARD OF RECREATION COMMISSIONERS,
Public Employer,

-and-

MONMOUTH COUNTY PARK EMPLOYEES ASSOCIATION, IUE, AFL-CIO,
Petitioner,

Docket No. RO-76-76

-and-

BOARD OF CHOSEN FREEHOLDERS, COUNTY OF MONMOUTH,
Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION, MONMOUTH COUNCIL #9,
Intervenor.

SYNOPSIS

In agreement with the Hearing Officer in a representation case, the Executive Director finds that a county recreation commission and the county's board of freeholders are joint employers under the Act of recreation commission employees, and directs an election. Three voting groups are established, in order to permit professional and craft employees to exercise their statutory options concerning inclusion in mixed units with nonprofessional and noncraft employees, respectively.

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Intervenor,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION, MONMOUTH COUNCIL #9,
Intervenor.

Appearances:

For the Board of Recreation Commissioners, James J. Truncer, Director

For the Board of Chosen Freeholders, Robert Collins, Clerk

For the Park Employees Association, Vladeck, Elias, Vladeck & Lewis, Esquires (Mr. Robert M. Stone, of Counsel) and Julian Leibner, International Representative

For Monmouth Council #9, Felix A. DeSarno, Esq. and John J. Groff, Monmouth Council #9.

DECISION AND DIRECTION OF ELECTION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of public employees, a hearing was held on February 25 and 27, 1976 before Hearing Officer Joel G. Scharff, at which all parties were given an opportunity to present evidence, to examine and cross-examine witnesses, to argue orally, and to file post-hearing briefs. Thereafter, on

April 28, 1976, the Hearing Officer issued his Report and Recommendations (H.O. No. 76-13), a copy of which is attached hereto and made a part hereof. No exceptions to the Hearing Officer's Report and Recommendations have been filed. The undersigned has carefully considered the entire record herein and the Hearing Officer's Report and Recommendations and, on the basis of the facts in this case, finds and determines as follows:

1. Both the Monmouth County Board of Recreation Commissioners (the "Recreation Commission") and the Board of Chosen Freeholders of the County of Monmouth (the "County") are public employers within the meaning of the New Jersey Employer-Employee Relations Act, as amended, and are subject to its provisions. 1/

2. The Monmouth County Park Employees Association, IUE, AFL-CIO (the "Park Employees Association") and New Jersey Civil Service Association, Monmouth Council #9 ("Council #9") are employee representatives within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative, supported by a valid showing of interest, was filed by the Park Employees Association on November 6, 1975 seeking certification in a unit described as follows: All employees of the Recreation Commission including craft and professional employees but excluding policemen, managerial employees, confidential employees and supervisors within the meaning of the Act. There is a dispute as to who is the employer of those employees as well as to the appropriateness

1/ At issue herein is the question of who is the employer of the employees sought by the petitioner.

of the unit. Accordingly, there is a question regarding the representation of public employees and the matter is properly before the undersigned for determination.

4. There are two issues in dispute: (1) who is the employer of the employees sought by the petitioner and (2) is the unit sought an appropriate unit. The position of the County and Council #9 is that the County is the employer of the disputed employees. The Recreation Commission and the Park Employees Association take the position that the Recreation Commission is the employer. However, all parties except Council #9 have indicated a willingness to accept a determination that the County and the Recreation Commission, jointly, are the employer of these employees. The County, the Recreation Commission and the Park Employees Association all agree that the unit sought is appropriate and they take this position regardless of the disposition of the issue as to who is the employer of the disputed employees. Council #9, on the other hand, contends, as stated above, that the employer is the County and that Council #9 already represents the blue-collar employees by virtue of a previous Commission certification (Docket No. RO-927). However, it concedes that it does not represent the blue-collar employees unless the County is found to be the employer.

The Hearing Officer recommended that the Recreation Commission and the County be found and determined jointly to be the employer of the disputed employees. Additionally, and independent of his recommendation regarding the employer, he

recommended that the unit sought by the petitioner be found to be an appropriate unit, with the craft and professional employees voting separately as to whether they desire to be included in a unit with non-craft and nonprofessional employees, respectively.

5. Upon a careful review of the record herein and in the absence of exceptions to the Hearing Officer's findings of fact, the undersigned hereby determines that those findings are supported by competent record evidence and are hereby adopted. Additionally, the Hearing Officer's conclusions of law and recommendations, also unexcepted to, are consistent with the policies of the Act, i.e., the promotion of harmony and stability in public sector labor relations, and are hereby adopted substantially for the reasons cited by the Hearing Officer. Thus, for the purposes of this proceeding, the County and the Recreation Commission are found to be the joint employer of the disputed employees and the unit sought, as described in Section 6 below, is found to be an appropriate unit for purposes of collective negotiations.

6. Based upon the above, the undersigned shall direct that a secret ballot election be conducted among the employees in question. For the purposes of this election, there shall be these voting groups: (1) All employees jointly employed by the Monmouth County Board of Recreation Directors and the Board of Chosen Freeholders of the County of Monmouth but excluding craft and professional employees, policemen, managerial executives,

craft employees, and supervisors within the meaning of the Act; (2) All professional employees jointly employed by the Monmouth County Board of Recreation Directors and the Board of Chosen Freeholders of the County of Monmouth but excluding nonprofessional employees, craft employees, policemen, managerial executives, craft employees, and supervisors within the meaning of the Act; (3) All craft employees jointly employed by the Monmouth County Board of Recreation Directors and the Board of Chosen Freeholders of the County of Monmouth but excluding noncraft and professional employees, policemen, managerial executives, and supervisors within the meaning of the Act.

Council #9, whose status in this matter at the present time is based upon its claim that it already represents the blue-collar employees herein but whose status, as a result of this decision falls, may appear on the ballot in these elections if it submits to the undersigned a showing of interest as required by N.J.A.C. 19:11-1.13(a) within ten days of the date hereof.

Those employees in Group 1 shall vote as to whether or not they desire to be represented for purposes of collective negotiations by the Park Employees Association (or by Council #9 if that organization is permitted to appear on the ballot). Those employees in Groups 2 and 3 shall vote as to whether they desire to be included in a unit with nonprofessional employees and noncraft employees, respectively, as well as for a choice

of employee representative, if any. If a majority of those employees voting in either or both Group 2 and/or 3 vote to be included with nonprofessional or noncraft employees, respectively, then ballots as to choice of employee representative, if any, shall be counted at face value and an appropriate certification shall issue covering one or both of those employees as well as employees in Group 1. If either or both Group 2 and/or 3 votes for separate representation, appropriate separate certifications shall issue covering the groups.

Those eligible to vote are employees set forth above who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were out ill, or on vacation, or temporarily laid off, including those in military service. Employees must appear in person at the polls in order to be eligible to vote. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date.

Pursuant to Rule Section 19:11-2.7 the public employer is directed to file with the undersigned an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. Such list must be received no later than ten (10) days prior to the date of the election. The undersigned shall make the eligibility list immediately available to all

parties to the election. Failure to comply with the foregoing shall be grounds for setting aside the election upon the filing of proper post-election objections pursuant to the Commission's Rules.

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

BY ORDER OF THE EXECUTIVE DIRECTOR

Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
May 12, 1976

H.O. No. 76-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONMOUTH COUNTY BOARD OF RECREATION COMMISSIONERS,[1/]

Public Employer,

-and-

BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MONMOUTH,

Party-at-Interest,

-and-

Docket No. RO-76-76

MONMOUTH COUNTY PARK EMPLOYEES ASSOCIATION, IUE, AFL-CIO,

Petitioner,

-and-

NEW JERSEY CIVIL SERVICE ASSOCIATION, MONMOUTH CO. #9,

Intervenor.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition for certification of public employee representative for certain employees of the Monmouth County Board of Recreation Commissioners (the "Recreation Commissioners") was filed with the Public Employment Relations Commission by the Monmouth County Park Employees Association, IUE, AFL-CIO (the "Park Employees") on November 6, 1975. The Monmouth County Board of Chosen Freeholders (the "County") claiming to be the public employer of such employees, and New Jersey Civil Service Association, Monmouth Council #9 ("Council #9") claiming to be the certified majority representative of some of the employees, have intervened in the proceedings. Pursuant to the appropriate notice, hearings were held before the undersigned Hearing Officer on February 25, 1976, and February 27, 1976, in Freehold, New Jersey at which time all parties were given an opportunity to present evidence, examine and cross-examine witnesses, and argue orally. A memorandum on behalf of the Park Employees was submitted subsequent to hearing. Upon the entire record in this proceeding the Hearing Officer finds as follows:

1. The Monmouth County Park Employees Association, IUE, AFL-CIO is an employee representative within the meaning of the Act and is subject to the provisions of the Act.

2. The New Jersey Civil Service Association, Monmouth Council #9 is an employee representative within the meaning of the Act and is subject to the provisions of the Act.

3. There is a dispute as to whether the employer is the Monmouth County Board of Recreation Commissioners or the Monmouth County Board of Chosen Freeholders.

1/ As amended at hearing (T 1:7) Transcript designations refer to first (1) and second (2) days of hearing.

BACKGROUND

The Park Employees originally petitioned for a unit including "All employees in the employ of the Monmouth County Recreation Commission; Excluded: Director of Parks, Superintendent of Parks, Chief of Plan and Design, Chief Lands and Grants and Chief Visitor Service." The employer designated on the Petition was the Monmouth County Recreation Commission. At hearing, the unit description was amended as follows: "Including all employees of the Recreation Commission including craft(s), including professional; excluding police personnel, managerial executives, confidential employees, and supervisors within the meaning of the Act."[2/] Thus, the Petitioner desires to represent all white collar employees, blue collar employees, craft employees, and professional employees of the Recreation Commission, excluding certain statutorily excluded personnel. Monmouth Council #9 has intervened on the basis of a July 25, 1975 certification by PERC as majority representative of all blue collar workers employed by the County of Monmouth. The Council's position is that the County is the employer of the park and recreation employees, and that employees in the County Park Ranger titles are blue collar employees who are covered under its certification.

In Winter and Spring, 1975, when Council #9 was seeking certification of a county-wide blue-collar unit, the Monmouth County Park Employees Association, then unaffiliated, intervened in that proceeding, claiming (1) that Monmouth County park system personnel, and specifically county park rangers, should be considered employees of the Recreation Commission, and (2) that if these personnel were found to be employees of the County, the park rangers had unique interests and should not be included in a county-wide blue-collar unit. Hearings were held before Commission Hearing Officer Elizabeth Toth, and at a hearing held on June 13, 1975 the matter was resolved by the Park Employees withdrawing their intervention, and indicating that they would subsequently file a certification petition. The County and Council then entered into a consent election agreement which described the unit to include all blue-collar employees of the County.[3/]

ISSUES

There are two main issues before the undersigned that may generally be framed within the following confines:

(1) Is the public employer the Board of Recreation Commissioners or the County Board

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2/ T 1:14

3/ Transcript of Hearing dated June 13, 1975

of Chosen Freeholders? Another possibility exists: that the Recreation Commissioners and County together be considered a joint employer.

(2) If the County is the sole employer, should the county park rangers be part of the blue-collar county-wide unit, or do the responsibilities and employment relationship of all Board of Recreation Commissioners personnel suggest a unique internal community of interest?

POSITIONS OF PARTIES

Park Employees

The Park Employees Association contends that a unit of all Board of Recreation Commissioners personnel with certain above-noted exclusions is appropriate. It states that the Recreation Commissioners are the sole public employer, or that a joint employer relationship exists between the County and the Recreation Commissioners. It disputes the contention that the employer is solely the County. However, it argues that if the County is found to be the employer, the unit sought is still appropriate in that the employees described in the petition do not share a community of interest with the other County employees.[4/]

Recreation Commission

The Board of Recreation Commissioners asserts that it is the employer of the Recreation Commission personnel, not the County. It has also "indicated its willingness and desire to consider a joint employer relationship with the Board of Chosen Freeholders for the purpose of collective negotiations."[5/] Notwithstanding who is found to be the employer, it sees the proposed unit as appropriate.[6/]

County

The County contends it, not the Recreation Commissioners, is the public employer, however, it to is "willing to agree that for the purpose of bargaining it would be a joint employer with the Recreation Commission."[7/] Whether or not it is found to be the sole public employer, it sees the proposed unit as appropriate.[8/]

Council #9

Council #9 contends that the County is the public employer and that County Park Rangers are included in the blue-collar unit it represents. If the County is found not to be the employer, Council #9 states "our position is that we do not represent the blue-collar workers working for the Parks."[9/] Nevertheless, Council #9 states that if the County

4/ See T 1:7, 20 and memorandum in behalf of Petitioner
5/ T 1:8
6/ T 1:14, 19
7/ T 1:8
8/ T 1:14, 19-21
9/ T 1:11

is not the employer, the petitioned for unit is inappropriate.[10/]

DISCUSSION

The Monmouth County Board of Recreation Commissioners was established by the Monmouth County Board of Chosen Freeholders on August 1, 1962 and operates under N.J.S.A. 40:12-1 through 9. Pursuant thereto, the County has appointed seven commissioners for specific terms. The Board of Recreation Commissioners is responsible for the acquisition and operation of public playgrounds and recreation places.

The Recreation Commissioners are vested with the statutory authority to assert full control over all the recreation properties under their charge by adopting regulations for the use thereof; to appoint custodians, supervisors and assistants to preserve order on the properties; and to fix and determine salaries of custodians, supervisors, and assistants. The County provides for the expenses of the Recreation Commissioners by annual appropriation. It has responsibility to "fix, determine and appriate a sum sufficient for the care, custody, policing and maintenance of such playgrounds and recreation places..." The monies appropriated are raised through general taxation. The specific statutory provisions governing the above are herewith set forth in full:

N.J.S.A. 40:12-6. Control of grounds; preservation of order; assistants

> The board of recreation commissioners shall have full control over all lands playgrounds and recreation places acquired or leased under the provisions of sections 40:12-1 to 40:12-9 of this title and may adopt suitable rules, regulations and by-laws for the use thereof, and the conduct of all persons while on or using the same; and any person who shall violate any of such rules, regulations or by-laws shall be deemed and adjudged to be a disorderly person.
>
> The custodians, supervisors and assistants appointed by the board shall, while on duty and for the purpose of preserving order and the observance of the rules, regulations and by-laws of the board, have all the powers and authority of police officers of the respective municipalities in and for which they are severally appointed.
>
> The board may appoint a recreation director for a term not to exceed 3 years, a secretary or clerk, and such number of custodians, supervisors and assistants for the several playgrounds and recreation places under its control as they shall think necessary, and fix and determine their salaries.

N.J.S.A. 40:12-7. Appropriation for current expenses; office

> The board or body having control of the finances of each county and municipality having playgrounds and recreation places shall annually fix, determine and appropriate a sum sufficient for the care, custody, policing and maintenance of such playgrounds and recreation places, and for the expenses of the several boards of commissioners, which shall be raised by taxation in the same manner as other taxes.

10/ The Park Employees dispute Council's standing to object to the proposed unit description in such instance insofar as Council's intervention is based upon its status as a certified exclusive representative of a unit of County employees.

The board or body having control of the finances shall provide a suitable office or offices for the Board of Recreation Commissioners.

In addition, N.J.S.A. 40:12-5 permits the Recreation Commissioners, under certain specified conditions, to charge admission fees and impose service charges to persons using recreation facilities in order to meet or defray operating costs. Pursuant to N.J.S.A. 40:12-8 all monies received by the Recreation Commissioners are to be paid over to the county treasurer to be held in a special fund to be used only for expenses of the Recreation Commissioners.

The Monmouth County Board of Recreation Commissioners has control over approximately a dozen properties. These include parks facilities and golf courses. The Recreation Commissioners are served by approximately 120 employees. All personnel with the exception of the Secretary to the Board are civil service classified personnel. A partial listing of titles include the following: Park Planner, Park Interpreter, Graphic Artist, Carpenter, Mechanic, Luncheonette Worker, County Park Ranger, Clerk Stenographer, Clerk Typist, and Account Clerk Stenographer. There are approximately fifty county park rangers. The Ranger title encompasses the largest group of employees.

The hours of employment, schedule, and assignment to work location of these personnel are established by the Recreation Commissioners and its supervising personnel.[11/] The Recreation Commissioners have adopted rules and regulations concerning hours of work, overtime compensation, compensatory time, and have established a residency requirement for certain employees.[12/] The Recreation Commissioners have also purchased formal dress and work uniforms for county park rangers, and have directed the occasions for proper attire.[13/] Personnel of the Recreation Commission are never assigned or released to other county departments except where the Recreation Commissioners have assisted another department by supplying a piece of equipment and an operator. Promotions are "in-house," i.e. personnel are not promoted into other departments, or promoted from other departments into the parks. Personnel of other departments do not supervise parks employees.[14/]

Focusing on a particular title, County Park Ranger, the record reveals the following: The title, "County Park Ranger", is a relatively new title for personnel previously holding the title "Park Maintenance Worker." The new title designation is the product of a Civil Service reclassification survey initiated by the Recreation Commissioners. A ranger is assigned to a particular work location, or duty station, by the Superintendent of Parks. He performs as directed by the immediate supervisor of the area. Examples of of work include repair, maintenance and construction of facilities, and operation of equipment. At a recreation place he may cut grass, plant, dig ditches and sweep. Depending upon the season, the amount of work and upon a particular park happening, he may

11/ T 1:35-37, 42, 49, 112-113
12/ T 1:36-37, 42, T 2:98
13/ T 1:84-7 Exhibit P-1
14/ T 1:38, 43

be moved to other duty locations as needed. His work is also varied in that he deals with the public. He collects fees; issues receipts; identifies trees, plants and animals; relates information about the history of landmarks; controls and directs traffic; and enforces rules and regulations of the Recreation Commission. A ranger, additionally, learns to fight fires. In the winter, he tests ice for ice skating and may be assigned to control an ice skating facility. A review of the Civil Service Duties Questionnaires completed by the recreation employees during the reclassification period indicates that the employees considered that 60-95% of their work time was spent on maintenance type tasks.15/

While there is an overall training program for almost all recreation personnel, the county park rangers receive comprehensive training which is arranged and provided by the Recreation Commissioners. A ranger receives approximately 80 hours of training. Some of the training includes first aid, safety, security, management, development of recreation programs, crowd control, searching and firefighting. Some rangers have attended the State Police Training Commission program. There are courses given in law enforcement skills.16/

Prospective employees of the Board of Recreation Commissioners may fill out an application at either the parks offices, which are located in a county park, or at the County personnel office. In either event, the applicant's references are checked by the county personnel office, and the applicant is interviewed by a Board of Recreation Commissioners staff employee who handles personnel, safety, and training on a daily basis. The Recreation Commissioners indicate a desire to employ an applicant to the personnel office which forwards the appropriate Civil Service paperwork and places the applicant on the payroll. The County Clerk, who is in charge of personnel for the County, is designated the "appointing authority" of Recreation Commission personnel for Civil Service purposes. While the County generally accepts the referred people, it indicates that it reserves final authority for placing a person on the payroll. It points to a "mild freeze" currently in effect.17/

Employees are evaluated through the Board of Recreation Commissioners supervisory structure. Employees may be terminated by the Secretary to the Board of Recreation Commissioners with authorization of the Recreation Commissioners. However, permanent civil service employees have the right to a hearing before the appointing authority, i.e. the County Clerk.18/

15/ T 1:27, 35, 54-61,64 Exhibits P-2; I-1; RC-3
16/ T 1:40, 46 Exhibits P-4
No party has urged that county park rangers are police within the meaning of the Act.
17/ T 1:36, 40; T 2:7-8
18/ T 1:41, 68; T 2:88

The Recreation Commissioners submit an itemized budget request to the County, which appropriates funds under two lump sum accounts: wages and salaries, and expenses.[19/]

With respect to its expense appropriation, the Recreation Commission has exercised considerable autonomy. Within the lump sum appropriation it determines what subaccounts are reduced or increased. This independence is illustrated in the decision to purchase ranger uniforms. Recreation staff personnel prepared the required specifications for bid, authorized the bids, and arranged for purchase of the uniforms without County oversight.[20/]

Its autonomy in the establishment of salaries for park personnel has been more limited. By virtue of its appropriations authority, the County has exercised considerable oversight in reviewing the Recreation Commissioners salary recommendations. From an operational point of view, the Recreation Commissioners adopt a resolution showing titles and salaries. Final authorization to issue the appropriations for salaries, however, is pursuant to a County resolution that sets forth the minimum-maximum salary ranges for all County personnel titles including those titles in the parks.[21/] As a matter of practice, the County has in past reviewed individual salaries within the proposed wages and salaries account line items submitted by the Recreation Commissioners. In the current year, however, the County has employed a different approach developed with the Recreation Commissioners. As explained in testimony by Mr. Robert Collins, the County Freeholders indicated to the Secretary to the Recreation Commissioners that a lump sum would be allotted for salaries, and that he would be given the leeway to work out a system of increases based on merit and performance. How the system actually finds specific application was testified to as follows:

> Q. Now, that would affect just the new title, the one of the rangers, would it not?
>
> A. It would affect all park employees.
>
> Q. Well, could you give an increase in salary range to a mechanic out of the park and not give it to a same in title, the same title in the transportation?
>
> A. What would happen is this. If, for instance, a mechanic at the park were at a higher rate than a mechanic in a different department, it would be permissible, as long as the range that was established by the freeholders encompassed the higher salary rate. So, yes, the increase in the mechanic in a park could be different from an increase in building and grounds or highways, provided the range affected that.
>
> * * *
>
> Q. Isn't it a fact, salary determination, the final salary determination is up to the Chosen Board of Freeholders and rising out of that, they can make recommendation -- get recommendation from Mr. Truncer and they take in many other things but they make the final determination?

19/ T 1:15, 121

20/ T 1:84-7, 103, 118-119 Compare purchase of uniforms by highway department T 2:14, 40

21/ T 1:38

A. They make the final determination as to the procedures made for the salary account as to the border ranges for each specific title but as far as this year, what they said we're going to give some leeway to Mr. Truncer in working administratively to establish what could be considered equitable salary adjustment to park employees."[22]

The record reveals an instance where the County has utilized its appropriations power to veto increases proposed by the Recreation Commissioners for specific individual employees. In 1975 the Recreation Commissioners proposed salary increases for four employees. There were insufficient funds in the budget appropriation to cover such increases. The County refused to approve the increases.[23]

When an employee has been recommended for a promotion by the Recreation Commissioners, the County has reviewed the recommendation, and according to the County Clerk, "...we would approve and discuss (with the Recreation Commissioners) as far as what the rate would be as far as the salary adjustment for the promotion."[24]

In 1975, two general wage increases in allotments of 5% were granted to all County employees with the exception of certain employees covered by contractual agreements. The 5% wage increases were uniformly applied to personnel under the Recreation Commissioners. The Recreation Commissioners were not involved in the process of granting the general wage increases.[25] Additionally, through County action parks employees also receive accrued sick leave, blue cross and blue shield benefits uniformly applied to almost all County employees.[26]

ANALYSIS

Public Employer

The initial question placed before the undersigned asks a determination as to what entity here involved, i.e. the County or the Board of Recreation Commissioners, is the public employer within the intendment of the New Jersey Employer-Employee Relations Act, Chapter 303, Laws of 1968 as amended by Chapter 123, Laws of 1974 (N.J.S.A. 34:13A-1 et seq.). That determination necessarily entails a finding as to what entity is the public employer for the purpose of collective negotiations with an appropriate unit of public employees.

In defining the term "employer," the Act provides at N.J.S.A. 34:13A-3(c):

> "...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."

Thus, a public employer may be a county or it may be any authority, commission, board or any branch or agency of the public service. The problem of whether the public employer in the instant matter is the County or the Board of Recreation Commissioners brings to light the complexities arising from the various interrelationships in governmental structure and

22/ T 2:60-63
23/ T 1:51
24/ T 2:10
25/ T 1:64, 65
26/ T 1:66, T 2:98

authority that exist in the public sector.

To claim that the County is the public employer of the Board of Recreation Commissioners personnel, solely because of its final fiscal authority in allocating appropriations to the Commissioners is to apply a short sighted approach to this complex problem. While through the appropriations authority a County can assert an effective veto control over salary designations, and salary is an issue that goes to the heart of labor relations, terms and conditions of employment involve other equally important issues. Public employers are required by the New Jersey Employer-Employee Relations Act to negotiate over economic and non-economic terms and conditions of employment. See N.J.S.A. 34:13A-5.3. Additionally, the Act states that proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established. As the Supreme Court has stated in In re: Probation Officers of Bergen County, 58 N.J. 422, 429 (1971), "Employment is not today simply a matter of fixing a wage; it goes far beyond this both in the public and private sectors." In this respect, the instant record supports the conclusion that the Board of Recreation Commissioners has fully determined the working conditions of its personnel including, as an example, their schedule and hours of employment.[27/] Moreover, the salary recommendation power of the Recreation Commissioners is a factor that should not be overlooked.

Similarly, a conclusion that the Board of Recreation Commissioners, solely, is the public employer of park and recreation personnel predicated only upon its statutory grant under N.J.S.A. 40:12-6 to fix and determine salaries would be overly simplistic if in actual practice the statutory grant confers hollow authority.

A determination as to who is a public employer must be supportive and supported by the policy and purpose of the Act. The Declaration of Policy of the Act, N.J.S.A. 34:13A-2, provides that the purpose of the Act is to "promote permanent public and private employer-employee peace..." It is, as the Supreme Court has said in Board of Education of West Orange v. Wilton, 57 N.J. 404, 416 (1971), the "establishment and promotion of fair and harmonious employer-employee relations in the public service." To this end, the Public Employment Relations Commission is directed by N.J.S.A. 34:13A-5.2 to "make policy... relating to dispute settlement, grievance procedures and administration including enforcement of statutory provisions concerning representative elections and related matters and to implement fully all the provisions of this Act." N.J.S.A. 34:13A-6(d) empowers the Commission to resolve the questions concerning representation and to decide problems relating to the appropriate unit for collective negotiations.[28/]

The search for an appropriate unit must concommittantly involve the search for an appropriate employer. Employer status cannot automatically be attributed to arbitrary

27/ See Board of Education of Englewood v. Englewood Teachers Association, 64 N.J. 10 (1973)
28/ See Burlington County Evergreen Park Mental Hospital v. Cooper, 56 N.J. 579, 592 (1970)

standards, such as final fiscal authority. The legislature was made well aware of this ptoblem in its consideration of Chapter 303 through the New Jersey Commission Report.[29] Among its recommendations the Report urges:

> "3. Collective negotiations can be effective in public employment despite the fact that executive bodies often lack final authority to determine matters of wages, salaries, and working conditions and are limited to making recommendations to chief executives and legislators. Many issues can be resolved by negotiations between public employers and employee organizations. However, the scope of negotiations should be limited by the discretionary or recommending power of the appointing authority in public employment, which should guide both the definition of negotiating agencies and the range of subject matter considered. Accordingly, appropriate subjects for negotiation include the determination of public employees' terms and conditions of employment, such as salaries, wages, hours, and other terms and conditions of employment within the power of the appointing authority to determine or recommend."[30]

The courts of this State have on occasion been called upon to resolve matters involving the employer-employee relationship vis-a-vis conflicting levels of governmental authority. These decisions are helpful in ascertaining various indices of the employer-employee relationship.

In the Probation Officers matter, supra, the County of Bergen challenged an entry of an order of the Judges of the County Court fixing salaries, fringe benefits, and working conditions for the county probation officers. The order was entered subsequent to negotiations between the judges and the majority representative of the probation officers. The Supreme Court, in part, confirmed the employer status of the judges emphasizing that the judges appointed the probation officers pursuant to statute (N.J.S.A. 2A:168-5) and, by statute, could also fix their salaries and provide for their expenses subject only to the requirement to give the board of chosen freeholders notice and an opportunity to be heard prior to the entry of the order (N.J.S.A. 2A-168-8).

In another matter, although not involving the Employer-Employee Relations Act, In re John Brennan, 126 N.J. Super. 368 (1974), the Appellate Division found the assignment judge or the presiding judge of the county district court to be the "employer" under the PERS Act for the purpose of terminating the services of the clerk of the county district court (N.J.S.A. 43:15A-47(b)). The Appellate Division stated (at 371) that the presiding judge had statutory authority to appoint and supervise court clerks (N.J.S.A. 2A:6-16 and R. 1:33-4 (2), 1:33-4 (3), and 1:34-2) "even though the attributes of fiscal control as to an employee normally associated with being an employer reside in the Board and the latter may otherwise be considered an "employer" under the PERS Act (N.J.S.A. 43:15A-6 et seq.)." The court also noted that clerk's salary was fixed and paid by the board of chosen freeholders with the judges playing an insignificant role with respect to the economic terms and conditions of employment of court clerks (N.J.S.A. 2A:6-27 and 27).

29/ Final Report to the Governor and the Legislature of the Public and School Employees' Grievance Procedure Study Commission, January 9, 1968

30/ Report, p.19

In the case In re Application of Shragger, 58 N.J. 274 (1971), the Assignment Judge of Mercer County, upon petition filed by the county prosecutor, entered an order approving the hiring of additional personnel and setting salaries and salary ranges of prosecutors detectives, investigators, and assistant prosecutors while the detectives and investigators were engaged in collective negotiations with the Board of Chosen Freeholders. The Court stated that pursuant to N.J.S.A. 2A-158-7, the assignment judge has the authority to require a board of freeholders to meet the needs of the prosecutor, and that the Employer-Employee Relations Act does not dilute the assignment judge's responsibility to see that the prosecutor's needs are met.

In a matter concerning welfare board employees, the Appellate Division has affirmed the right of the Division of Public Welfare of the State Department of Institutions and Agencies to disapprove salary provisions of contracts negotiated with individual county welfare boards where the contracts exceeded salary range guidelines promulgated by the Division. Communications Workers of America, AFL-CIO v. Union County Welfare Board, 126 N.J. Super. 520 (1974). Although the court recognized the responsibility of local welfare boards to negotiate with their employees under the Employer-Employee Relations Act, it stated that local boards are limited by the Commissioner's power, under a "state plan" mandated by Federal HEW requirements, to prescribe statewide salary ranges.[31/]

Courts and labor relations agencies of other states have also grappled with the problem of determining the appropriate employer when confronted with problems concerning the interrelationship of various governmental entities and constitutional appointees. Various indicia of attributes have been identified in many of those cases. These inidicia have been identified as the supervisory control and authority to select, appoint, and pay employees;[32/] control over work, appointment, removal authority, duties and salaries within limits of available appropriation;[33/] day to day control of personnel practice, final control of wages, personnel selection;[34/] and the right to select the employee, the power to discharge him, and the right to direct both the work to be done and the manner in which such work shall be done.[35/]

31/ For other cases involving conflicts in statutory schema that have effect on the employer-employee relationship and in which employee representatives have asserted arguments based upon negotiations requirements, see Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); and Prosecutor's Detectives and Investigators Association of Essex County v. Hudson County Board of Freeholders, 130 N.J. 30 (1974). See also Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970).

32/ State ex. rel. Honorable Timothy P. O'Leary, Presiding Judge, 16th Judicial Circuit et al. v. Missouri State Board of Mediation No. 58336, (Mo. Sup. Ct., April 8, 1974).

33/ County of Erie v. Board of Trustees of the Buffalo and Erie County Library, 74 LRRM 2450 (N.Y. Sup. Ct., Erie Cty., 1970).

34/ In re Employees of Lackawanna County Commissioners, City of Scranton, Scranton School Board, Jointly, 2 PPER 48 (1972), (Pennsylvania Labor Relations Board).

35/ County of Washington v. Sweet, 5 PPER 6 (Pa. Sup. Ct., 1974).

Not only does the above listing reveal contradictory emphases, but the indicia, when applied to specific circumstances at hand, sometimes appear to lead to contradictory results. They have led to findings that one governmental body is more suited with employer attributes than another and therefore should be the public employer, and they have also led to findings of joint employer relationships.

In certain cases, joint employer relationships have been found where the indicia of employer attributes also indicate an extensive integration of labor relations programs[36/] and where the record demonstrates that effective negotiations on behalf of the employees could not take place without the presence of both governmental entities.[37/]

This agency has recently considered, In the Matter of Bergen County Board of Chosen Freeholders, E.D. No. 76-7, a matter involving county court clerks in which the public employer issue involving the county freeholders vis-a-vis the county judges arose. The Hearing Officer therein, after carefully examining the Bergen County Probation Officers and Brennan decisions with respect to employer indicia, concluded "that the judges' possession of general appointive and supervisory authorities concerning court clerks, absent any effective control over the terms and conditions of employment of an economic nature of these particular employees, does not establish the existence of a traditional employer-employee relationship between the judges and these court clerks."[38/] Moreover, in recommending that the County was the employer the Hearing Officer considered an additional factor, i.e., the effectuation of the policy purpose of the Act. There was no evidence presented to indicate any readiness or intent by the judges to function as the public employer with respect to the negotiations process. The Hearing Officer concluded that the purpose of the Act would not be effectuated by burdening the judges with negotiation responsibilities absent their desire or the clerks' desire to have the judges function as part of a management negotiating team. The Executive Director adopted the Hearing Officer's findings, particularly in light of the parties' stipulation that the county was the employer. However, the Executive Director acknowledged that many attributes of employment were in fact controlled by the judges and that it could be argued that the county and judges were joint employers.[39/]

36/ The New York Public Library, Astor, Lenox and Tilden Foundations, 5 PERB § 3045, (New York Public Employment Relations Board, 1972) rev'd 7 PERB § 7013 (App. Div., 1st Dept. 1974) finding that the library is private employer.
37/ Town of Ramapo 8 PERB § 4014 (New York Public Employment Relations Board, 1975).
38/ H.O. Report, P. 20
39/ Request for Review granted and E.D. decision affirmed, P.E.R.C. No. 76-12

If the Board of Recreation Commissioners is to be designated the public employer in this matter, as the petitioner argues, careful attention must be given to the manner in which it has exercised traditional employer attributes. Based upon the entire record in the instant matter, the undersigned concludes that the Board of Recreation Commissioners exercise substantial control over non-economic terms and conditions of employment of parks personnel. It has completely controlled the establishment of their working conditions. It effectively controls the selection, promotion, discipline and termination of parks employees subject to Civil Service constraints.[40/] In addition, the record reveals that the Recreation Commissioners have an effective voice in determining the wages and salaries of parks personnel within the limits of appropriations granted by the County. In this regard, the undersigned emphasizes that the Recreation Commissioners have no control over the County's appropriations authority. Nor have they participated in previous County determinations to provide for general wage increases to employees, including those in the parks.[41/] However, they have been granted the necessary leeway by the County to formulate equitable salary adjustments for parks personnel within their lump sum wages and salaries appropriation. They participate in determining the salary adjustments for promoted personnel. Additionally, they have adopted their own overtime compensation policy. Based upon all the evidence in the record regarding the impact that the Recreation Commissioners have on the parks employees economic benefits, the undersigned concludes that the Recreation Commissioners have effective recommending power with respect to economic terms and conditions of employment.

40/ It is the designation of the County Clerk as Civil Service "Appointing Authority" that involves the County in Civil Service matters relating to the parks personnel. In 1975 the Recreation Commissioners passed a resolution intending to change the designation of appointing authority to their Secretary. The County prevailed upon the Recreation Commissioners to revoke the resolution, and they subsequently did (Exhibit RC-1). The County Clerk indicates that, at least in his opinion and in the opinion of the Freeholders, the Recreation Commissioners could change the appointing authority. Mr. Collins' opinion is in part based upon an opinion of County Counsel that the Recreation Commissioners are the public employer and upon various communications of of the Civil Service Commission staff in response to the Recreation Commissioners' inquiries (T 2:63-64, 87-88). The undersigned has not relied upon County Counsel's opinion or Civil Service staff letters in formulating his conclusions. However, the Clerk's and Freeholders' opinion as the authority of the Recreation Commissioners reflects a state of mind that characterizes the two parties' cooperative relationship and their mutual respect for each other's autonomy and authority.

41/ The extent to which the County's statutory authority to fix, determine and appropriate a sum sufficient for the care, custody, policing and maintenance of recreation places and for the expenses of the Recreation Commissioners (N.J.S.A. 40:12-7) is circumscribed by the Recreation Commissioners authority to fix and determine salaries N.J.S.A. 40:12-6 is a legal question that has not been tested and its determination is unnecessary to this proceeding.

The undersigned having carefully examined the extent of the Recreation Commissioners' authority over economic and non-economic terms and conditions of employment, and the assertion of that authority, concludes and recommends that the Board of Recreation Commissioners is a public employer within the intendment of the Act. It is important to note that the legislature, aware of the problem that in government the designated public employer is not necessarily vested with absolute authority to determine the terms and conditions of employment but, rather, is accountable to other governmental bodies, did not seek to narrowly define the term "employer." Moreover various limitations in a designated public employer's power to negotiate with absolute authority with its employees have been recognized and construed by the courts of this State.

Minor limitations in a public employer's ability to negotiate with its employees are no bar to a stable and productive relationship. However, as the extent of an employer's ability to negotiate becomes more limited, the employer-employee relationship becomes more strained, and the purpose of the Act, the fosterance of harmonious employer-employee relations, cannot be effectuated. For example, if the impact of a managerial decision upon terms and conditions of employment might present a justifiable argument for an increase in employee compensation, it is little help to an employee organization to negotiate with an employer that has no authority with respect to compensation. Similarly, an employer with authority limited only to wages cannot effectively negotiate non-monetary terms and conditions of employment. The problem of empty authority only tends to frustrate and aggravate the purpose of collective negotiations.

Thus, while the Board of Recreation Commissioners may have sufficient attributes to be considered a public employer of parks personnel, it is encumbent upon a labor relations commission to recognize the limitations of an employer's authority prior to a determination designating it as such, and to examine whether under the circumstances presented an alternative to the traditional one-employer approach to collective negotiations can be established.

The record reflects that the Recreation Commissioners' limitations are in a very real sense the result of the County's appropriations authority. The County has final fiscal control and, in fact, has asserted it by granting overall wage increases and by exercising veto power over certain employee increases.

However, the record reveals that the County and the Recreation Commissioners see salary determinations as cooperative matters, not matters for confrontation. This is also evidenced by their approach to dealing with the wages of parks employees and in their approach to the

instant proceedings. The County and the Recreation Commissioners have both expressed on the record a desire and willingness to act as joint employer for the purpose of collective negotiations. The Recreation Commissioners have passed a resolution authorizing the County Clerk to be their representative for contract negotiations.[42] The County indicates that it sees a joint employer relationship where the County Clerk and the Secretary to the Board of Recreation Commissioners represent both bodies.[43]

The undersigned sees no reason why a joint employer relationship cannot succeed under these circumstances. The County and the Recreation Commissioners are equally motivated by a desire to best effectuate the purposes of the Act. Their concerns are not complicated by other public interest considerations such as those presented by employer-employee relationships in areas involving the separation of branches of government or federal stated interaction.

The undersigned, having carefully considered the record with regard to the attributes of employment, and considering the willingness in which both the County and Recreation Commissioners seek to enter into a joint employer relationship concludes and recommends that a determination of joint employer status in the present circumstances is both desirable and appropriate. It is the opinion of the undersigned that truly effective negotiations can best take place with both the County and Recreation Commissioners participating in the process.

COMMUNITY OF INTEREST

For reasons substantially related to the conclusion that the Board of Recreation Commissioners is a public employer and that the Act is best effectuated by a joint employer relationship, the undersigned concludes that a community of interest between the Recreation Commissioners employees and other county employees is lacking. The analysis as to community of interest goes beyond a determination that some recreation titles are identical to other county titles or that certain employees, like other county employees, primarily perform physical labor. Factors traditionally attributed to "community of interest" among employees include similarity in training, skills and level of education; the scope of their job functions and responsibilities; their relative placement within the pertinent supervisory and organizational structure; the relevant negotiating history; and an examination of the economic and non-economic benefits accorded to members of this particular grouping. Other factors to be considered, whether they fall within the above general areas or are substantially related, should include separateness of identity, function, purpose and operating conditions of a statutorily distinct public entity.[44] In considering these factors, the statutory grant of independence to the Board of Recreation Commissioners stands out like a sore thumb. The existence of a potential for treatment of recreation personnel which

42/ Exhibit RC-1

43/ T 2:79

44/ See Matter of Monmouth County Library Commission and Council No. 73, AFSCME, AFL-CIO U.D. No. 21, Hearing Officer's Report, P.4

differs considerably from treatment accorded to other county blue and white collar employees is striking in view of the Recreation Commissioners statutory powers. For this reason, even if the Board of Recreation Commissioners is found not to be a public employer, the undersigned recommends that as a statutorily distinct entity exercising substantial authority over terms and conditions of employment, the employees under its charge do not share a community of interest with other county employees.[45/]

There is nothing to indicate that the parks personnel do not share a community of interest among themselves. Both the County and Recreation Commissioners agree that the petitioned for unit of all recreation employees including professional and craft personnel, excluding supervisors, etc., is an appropriate unit. Council #9, however, argues that such a unit is inappropriate. Its statement of position in this regard seems to be based on the argument that the employees belong in County-wide functional units of blue-collar employees (already in existence), and white-collar employees, etc. (yet to be formed.)[46/]

Setting aside the question of standing to present such an argument, the undersigned disagree for the reasons above cited. Moreover, there is nothing per se that makes the unit petitioned for inappropriate.

RECOMMENDATIONS

Based upon the above findings and conclusions, tne undersigned recommends that the Executive Director direct elections among the employees in a unit described as all personnel employed by the Monmouth County Board of Chosen Freeholders and Monmouth County Board of Recreation Commissioners, jointly, including craft and professional employees, but excluding managerial employees, confidential employees, policemen and supervisors within the meaning of the Act. Separate elections should be directed for the craft and professional employees pursuant to N.J.S.A.34:13A-6(d).

45/ Should the employer not be found to be the Recreation Commissioners, or the County and Recreation Commissioners jointly, but rather the County solely, the undersigned believes that the petitioner is not barred from petitioning for a unit that includes blue collar employees by Council's July 1975 certification of majority representative for a county-wide unit of blue collar employees. Firstly, Council has not asserted a certification bar (T 1:12). Secondly, Council's ability to enter into a consent election agreement subsequent to its certification was predicated by the Park Employees' withdrawal as an intervenor in that matter and notice of intent to file a certification petiton. In the instant matter the undersigned would recommend that the Commission's timeliness rule (N.J.A.C. 19:11-1.15), be liberally construed under N.J.A.C. 19:19-1.1. Notably, Council has not argued that the Park Employees be precluded from pursuing their Petition.

46/ T 1:14-18

Council #9 claims to enjoy substantial support among parks employees; however, its showing of interest provided inthis matter is insufficient for placement on the ballots for the unit as recommended. Council #9 should be afforded an opportunity to present additional showing to participate in the elections.

The elections are to determine a question concerning the representation concerning the aforementioned employees, and whether they desire to be represented by Monmouth County Park Employees Association, IUE, AFL-CIO, or, if ballot participation is warranted, by the New Jersey Civil Service Association, Monmouth Council #9.

RESPECTIVELY SUBMITTED

Joel G. Scharff
Hearing Officer

DATED: April 28, 1976
Trenton, New Jersey