P.E.R.C. NO. 84-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF BERGEN,

Respondent-Public Employer,

-and-

Docket Nos. CO-83-96-55
CO-83-100-56
CO-83-149-62
RO-83-61
CU-83-62

LOCAL 29, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,

Charging Party-Petitioner (RO),

-and-

NEW JERSEY EMPLOYEES LABOR UNION LOCAL #1,

Respondent Union-Petitioner (CU).

SYNOPSIS

The Commission rules upon a consolidated representation, clarification of unit and unfair practice proceeding involving the County of Bergen, New Jersey Employees Labor Union Local No. 1, and Local 29, Retail, Wholesale and Department Store Union. The Commission, after clarifying a unit composed of blue collar employees currently represented by Local 1, orders that a representation election be conducted upon a Petition for Certification of Employee Representation filed by Local 29 which seeks to represent blue collar employees employed by the County.

The Commission determines that the election will be held within 30 days after the County and Local 1 have posted Notices to Employees prepared by the Commission in order to remedy unfair practices committed by the County and Local 1 during the period that Local 29 began its organizing campaign seeking to represent County blue collar employees.

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Respondent Union-Petitioner (CU).

Appearances:

For the Respondent-Public Employer,
Michael B. Ryan, Esq.

For the Charging Party-Petitioner(RO),
Reitman, Parsonnet, Maisel & Duggan, Esqs.
(Jesse Strauss, of Counsel)

For the Respondent Union-Petitioner (CU)
Hogan and Palace, Esqs.
(Thomas A. Hogan, of Counsel)

DECISION AND ORDER

This case is a consolidated certification of employee representative, unfair practice, and clarification of unit proceeding involving a unit of non-supervisory blue collar employees of the County of Bergen ("County"), an employee organization, New Jersey Employees Labor Union Local #1 ("Local #1"), which represents these employees now, and an employee organization, Local 29, Retail, Wholesale and Department Store Union ("Local 29"), which seeks to represent these employees. A Hearing

Examiner has recommended that an election be conducted in the unit of non-supervisory blue collar employees and has found that certain unfair practices were committed by the County and Local 1 which interfered with Local 29's organizational efforts. We agree with his recommendation concerning the election and, with certain modifications, his findings that unfair practices occurred. We direct an election as promptly as possible, consistent with the necessity of remedying, through a proper order and posting, the unfair practices which occurred.

On October 4, 1982, Local 29 filed a timely Petition for Certification of Public Employee Representative in which it sought to represent the unit of non-supervisory blue collar County employees currently represented by Local #1. Subsequently, Local 29 filed unfair practice charges against both the County and Local 1. Local 29 alleged in essence that the County violated subsections 5.4(a)(1) and (2)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), by interfering with the attempts of Local 29 and its employee adherents to gain further employee support and by assisting Local 1 in its campaign against Local 29. In its charges against Local 1, Local 29 alleged in essence that Local 1 violated subsection 5.4(b)(1)[2/] of the Act by interfering with the rights of unit employees to

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; and (2) Dominating or interfering with the formation, existence or administration of any employee organization."

2/ This subsection prohibits employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

support Local 29 and the rights of Local 29 to campaign for their support. Subsequently, Local 1 filed a Clarification of Unit Petition in which it sought the inclusion of the title of Chief Stationary Engineer in the existing blue collar unit.[3/]

On January 19, February 23, March 15, 16, and 30, and April 11, 15, 22, and 28, 1983, Commission Hearing Examiner Arnold H. Zudick conducted hearings on the consolidated representation petition, unfair practice charges, and clarification of unit petition.[4/] The parties examined and cross-examined witnesses, introduced exhibits, and argued orally. All parties filed post-hearing briefs, the last of which was received on May 31, 1983.

On June 8, 1983, the Hearing Examiner issued his report and recommendations. H.E. No. 83-44, 9 NJPER __ (¶_____ 1983) (copy attached). He reached the following conclusions.

With respect to the certification of employee representative petition, the Hearing Examiner concluded that a secret ballot election should be conducted pursuant to N.J.A.C. 19:11-5.1 in a unit of County non-supervisory blue collar employees. He recommended that the election be held within 30 days after the completion of the posting period for notices from the County and Local 1 informing

3/ The attached report of the Hearing Examiner (pp. 1-6 and n. 1-17) sets forth the content of the petitions and charges and the ensuing procedural history in great and precise detail. We incorporate, rather than repeat, that discussion here.

4/ Pending the completion of the consolidated proceedings, Commission Hearing Examiner Alan R. Howe, applying In re Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (¶12118 1981) ("Middlesex County"), preliminarily enjoined Local 1 and the County from negotiating over a successor collective negotiations agreement or giving effect to any agreement reached. In re County of Bergen, I.R. No. 83-12, 9 NJPER 91 (¶14049 1983). The Appellate Division of the Superior Court denied a motion for leave to appeal, App. Div. Docket No. AM-443-82T1 (1983).

unit employees they had violated the Act and had taken the necessary actions to remedy these violations. Of the titles in dispute, the Hearing Examiner recommended that the following be included in the non-supervisory blue collar employee unit: (1) regular part-time employees working less than 20 hours per week; (2) Juvenile Detention Officer and Senior Juvenile Detention Officer; (3) Children's Supervisor and Adult Day Care Worker; (4) Principal Inspector; (5) Storekeeper and Senior Storekeeper; and (6) Communications Technician. The Hearing Examiner also found that the unit should be clarified to include the Chief Stationary Engineer since he was neither a supervisor, nor a white collar employee and shares a community of interest in the existing blue collar unit. Of the titles in dispute, the Hearing Examiner recommended that the following be excluded from the blue collar unit: (1) Youth Group and Senior Youth Group Workers; (2) Recovery Assistant, Senior Recovery Assistant; and Supervisory Recovery Assistant; (3) Senior Construction Inspector; (4) Senior Stock Clerk; (5) Photographer; and (6) Communications Officer.

With respect to the unfair practice charges against Local 1, the Hearing Examiner concluded that Local 1 violated subsection 5.4(b)(1) of the Act when: (1) on July 6, 1982, its president interfered with the rights of employees Thomas Gangemi and Anthony Sipala to collect A&D cards; (2) on July 6, 1982, its president conducted a meeting with employees in which, by mis-stating the law concerning the collective of A&D cards, she

discouraged employees from signing such cards; (3) on September 9, 1982, its president interfered with a meeting of employees and Local 29 organizers at Van Saun Park; (4) on September 14, 1982, its president met with the County Administrator and Local 29 organizers, encouraged the County's adoption of an illegal no-solicitation/no-access rule against Local 29, and interfered with Local 29's right of access to the County Administration building; (5) in late September or early October, 1982, a Local 1 shop steward prevented Local 29 organizers from meeting in a police maintenance garage lunchroom with employees during non-work time; and (6) it engaged, through its president, in a pattern of conduct which unlawfully interfered with Local 29's attempts to organize the blue collar employee unit and the rights of unit employees to support Local 29.

With respect to the violations he found that Local 1 had committed, the Hearing Examiner recommended that we order Local 1 to: (1) cease and desist from the above illegal actions; (2) post notices, signed by its president, of its violations for 30 days; and (3) notify the Chairman of the Commission within 20 days what steps it has taken to comply with the above obligations.

With respect to the unfair practice charges against Local 1, the Hearing Examiner also concluded that Local 29 had failed to establish by a preponderance of the evidence the following alleged violations: (1) that on September 23, 1982, Local 1's president illegally interfered with the ability of

Local 29 organizers to solicit employees driving into parking lots adjacent to the County administration complex; and (2) that in September, 1982, Local 1 shop stewards had illegally denied Local 29 organizers access to the Juvenile Detention Center and the Conklin Home for disturbed children. In addition, the Hearing Examiner concluded that Local 1 did not violate subsection 5.4(b)(2) of the Act.[5/] He recommended dismissal of all these allegations.

With respect to the unfair practice charges against the County, he found that the County violated subsections 5.4(a)(1) and (2) when: (1) on July 6, 1982, its Assistant Supervisor of Roads interfered with the rights of two employees to collect authorization and designation cards ("A&D cards") on behalf of Local 29; (2) on the same day, it permitted the president of Local 1 to meet with employees on work time concerning Local 1's opposition to the signing of A&D cards on behalf of Local 29; (3) on September 3, 1982, it issued a memorandum prohibiting Local 29's access to County parks and bulletin boards; (4) on September 14, 1982, the County Administrator announced an overly broad no-solicitation/no-access rule against Local 29 and denied Local 29 reasonable access to blue collar employees during non-working time in the public cafeteria of the Administration Building; (5) in mid-September, 1982, the manager of the Overpeck Golf Course refused to allow a Local 29 organizer to meet with employees in their lunchroom at the golf course or to post notices on the lunchroom bulletin board; (6) on September 23 and 30, 1982,

5/ This subsection prohibits employee organizations, their representatives or agents from: "(2) Interfering with, restraining or coercing a public employer in the selection of his representative for the purposes of negotiations or the adjustment of grievances."

the superintendent of the Mosquito Control Commission required Local 29 organizers to relocate their efforts to contact employees approximately one-quarter mile, rather than 300 feet, away from the Mosquito building; (7) in late September, 1982, supervisors of the County Road Department Yard refused a Local 29 organizer access to employees during non-working times in non-working places; (8) during the open period for filing representation petitions, it denied Local 29 equal access to bulletin boards and a list of employees; (9) during the pendency of representation proceedings before the Commission, it negotiated and reached a collective negotiations agreement with Local 1; and (10) it engaged in a pattern of illegal activity which unlawfully interfered with Local 29's attempt to organize the blue collar employees.

With respect to the violations he found the County had committed, the Hearing Examiner recommended that we order the County to: (1) cease and desist from the above illegal actions; (2) permit Local 29 non-employee organizers to meet with employees in non-work areas on non-work time in facilities where the County's operations would not be disrupted; (3) where non-employee access is inappropriate because of the private, sensitive, or hazardous nature of a facility, permit Local 29 organizers to place themselves at a reasonable proximity to those facilities to solicit employees going to and from work; (4) permit Local 29 equal access to all bulletin boards and internal mail systems available to Local 1; (5) provide Local 29, upon request, a list of employees in the blue collar unit, including job titles and home addresses; (6) refuse to implement the successor contract it negotiated with Local 1 until the question concerning representation is resolved

and maintain the status quo ante by continuing to implement the previous contract; (7) post notices, signed by the County Administrator, of its violations for 30 days; and (8) notify the Chairman of the Commission within 20 days what steps it has taken to comply with the above obligations.

With respect to the unfair practice charges against the County, the Hearing Examiner also concluded that Local 29 had failed to establish by a preponderance of the evidence the following alleged violations: (1) that the County threatened employee Anthony Sipala or in August or September 1982, harassed employee Thomas Gangemi; (2) that on September 9, 1982, the County illegally denied Local 29 organizers access to employees gathered in Van Saun Park; (3) that on September 23 and October 4, 1982, the County illegally refused to allow Local 29 organizers to solicit employees driving into parking lots adjacent to the County administration complex; (4) that the County illegally denied Local 29 organizers access to employees at the Department of Public Works; (5) that in September, 1982, the County illegally denied Local 29 organizers access to the Juvenile Detention Center and the Conklin home for disturbed children; (6) that the County illegally denied a Local 29 organizer access to the Department of Engineering; (7) that during the open period, the County discriminatorily denied Local 29 the same access to the internal mail system Local 1 enjoyed; (8) that in January, 1983, the County illegally allowed one of its supervisors to use a County vehicle to collect signatures for Local 1; (9) that the same alleged

supervisor threatened employee Jeff Oltar because he supported Local 29; and (10) that the County illegally removed a Local 29 organizer from the police maintenance garage. In addition, the Hearing Examiner concluded that the County did not violate subsection 5.4(a)(3) of the Act.[6/] He recommended dismissal of all these allegations.

On June 27, 1983, the County and Local 1 filed Exceptions and accompanying briefs.[7/] Local 29 has not filed any Exceptions, but has submitted its post-hearing brief as a response and statement in support of the Hearing Examiner's report and recommended decision.

In its Exceptions, Local 1 asserts that the Hearing Examiner erred in: (1) not considering the timing of the filing of the unfair practice charge, (2) not considering Local 29's alleged failure to follow procedures for securing access to employees; (3) his findings of fact and conclusions of law concerning the alleged interference of Local 1's president on July

6/ This subsection prohibits public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

7/ Exceptions were due June 21, 1983. In a letter dated June 16, 1983, the County's attorney asked for an extension of time until June 30, 1983 in which to file Exceptions so that the attorney could meet with the County's Board of Freeholders to consider the Hearing Examiner's report and recommendations. Local 1 took the position that if the Commission granted the County any extension of time, it should grant all parties the same extension. In accordance with the County's request and Local 1's position, the Chairman of the Commission granted all parties an extension of time until June 27, 1983 in which to file Exceptions.

All parties were also informed that the Commission would entertain oral argument, upon request, at its June 24, 1983 meeting. No party requested oral argument at that meeting. Local 1 subsequently requested oral argument, but then withdrew its request.

6, 1982 with the rights of employees Gangemi and Sipala to collect A&D cards; (4) his conclusion of law concerning its president's July 6, 1982 meeting with unit employees during working time; (5) his findings of fact and conclusions of law concerning the September 14, 1982 meeting with the County Administrator; (6) his findings of fact and conclusions of law concerning the incident at the police maintenance garage; (7) his findings of fact and conclusions of law concerning the Van Saun Park incident; (8) his findings of fact and conclusions of law concerning the County and Local 1 negotiating during the pendency of representation proceedings; (9) his conclusion of law that Local 1 engaged in a pattern of unfair practices; (10) his conclusion that the amended representation petition was properly filed and considered; (11) his allegedly changing the existing unit; and (12) his conclusions excluding the youth group worker, senior youth group worker, recovery assistant (detox unit), senior recovery assistant (detox unit), senior construction inspector, photographer, and communications officer from the unit of non-supervisory blue collar employees.

In its Exceptions, the County asserts that the Hearing Examiner erred in: (1) his findings of fact and conclusions of law concerning the alleged interference of its Assistant Supervisor of Roads on July 6, 1982 with the rights of two employees to collect A&D cards on behalf of Local 29; (2) his conclusions of law concerning the permission given Local 1 to hold a meeting with unit employees during work time on July 6, 1982; (3) his

findings of fact and conclusions of law concerning the September 14, 1982 meeting of the County Administrator and Local 1 and Local 29 representatives; (4) his conclusion of law concerning the September 3, 1982 memorandum about the County parks; (5) his conclusion of law about the Overpeck Golf Course incident; (6) his conclusion of law about the incident at the Mosquito Control Commission; (7) his conclusion of law about the incident at the Road Department; (8) his conclusion of law about the County's failure to supply Local 29, upon request, with a list of unit employees; (9) his conclusion of law about the County's negotiating and reaching an agreement with Local 1 during the pendency of Commission representation proceedings; and (10) his overall conclusion of law that the County engaged in a pattern of conduct calculated to interfere with Local 29's organization efforts.

We have reviewed the record. Except to the extent specifically modified herein, the Hearing Examiner's findings of fact (pp. 6-31, n. 18-41) are supported by substantial evidence and we adopt and incorporate them here. We specifically adopt his credibility determinations.

We adopt the Hearing Examiner's recommendations that an election be held in the unit of non-supervisory blue collar employees and his recommendations concerning the placement of disputed titles within or without that unit. We further generally agree with the Hearing Examiner that both Local 1 and the County committed unfair practices which had the effect of interfering with the organizational efforts of Local 29. We, however, disagree with some of his specific findings. In particular, we disagree with his finding that the County engaged in a

"pattern" of illegal activity calculated to interfere with Local 29's organizational efforts and instead find that the County violated the Act through acquiescing in Local 1's demands that only it and its supporters be allowed to solicit and gain access to County employees and in thus helping to create an atmosphere which resulted in a series of acts of unlawful interference.

We first consider whether to direct an election in the unit of non-supervisory blue collar County employees. We conclude that an election should be directed in order to resolve a real question of representation. We specifically agree with the Hearing Examiner's determination (p. 59) that the amended representation petition merely clarified the initial petition and was not intended either as a new petition or as a petition for an essentially different unit. We also specifically agree with his determination (p. 59) that the showing of interest was adequate and his conclusion that the unfair practices which interfered with unit employees' rights to solicit and Local 29's ability to organize would justify a waiver of the showing of interest requirements in any event. In re State of New Jersey, P.E.R.C. No. 81-94, supra at pp. 15-16; Loray Corp., 184 NLRB No. 57, 74 LRRM 1513 (1970).8/

8/ Of the three parties, only Local 1 has challenged any of the Hearing Examiner's determinations and recommendations concerning the direction of an election and the placement of employees inside or outside the unit of non-supervisory blue collar employees. With respect to the amended petition, Local 1 maintains that it was untimely and that it improperly changed the scope of the unit Local 29 sought to represent. We disagree. In December 1972 and January 1973, this Commission (continued)

We next consider whether to adopt the Hearing Examiner's determinations (pp. 59-67, n. 62-65) with respect to the unit placement of particular employees or positions and the unit clarification issue. Each of his conclusions is supported by substantial evidence and logical analysis. We adopt and incorporate his determinations here.9/

8/ (Continued)
certified Bergen Council No. 5, New Jersey Civil Service Association, the predecessor to Local 1, as the majority representative, respectively, of a unit of non-supervisory white collar employees and non-supervisory blue collar County employees in certain County departments. P.E.R.C. Docket No. RO-507; P.E.R.C. No. 73 (1973). The County and Local 1 subsequently negotiated collective agreements covering these two different units. The recognition clauses in each agreement for 1980-82 stated generally that the County recognized Local 1 as the majority representative of all non-supervisory blue collar employees or non-supervisory white collar employees in certain departments and then attached, as Schedule A to each agreement, a list of titles specifically covered by that agreement. Local 29's initial representation petition sought to represent a unit of all non-supervisory blue collar employees in certain departments and added, parenthetically, "the contractual unit;" the amended petition specifically deleted the reference to the contractual unit and excluded white collar employees.

We believe that both the original petition and the amended petition sufficiently registered Local 29's desire to represent generally a unit of non-supervisory blue collar employees, and only non-supervisory blue collar employees, in certain County departments. Nothing in either petition limited Local 29 to the title-by-title list of positions found in Schedule A to the agreement between the County and Local 1. The latter petition only made more emphatic what the former petition already stated. We specifically reject Local 1's reliance on In re County of Atlantic, D.R. No. 81-19, 7 NJPER 39 (¶12018 1980) and In re City of Atlantic City, D.R. No. 82-119, 7 NJPER 642 (¶12289 1981), since here, unlike those cases, the amended petition merely clarified, rather than changed, the description of the petitioned-for unit and, in any event Local 29 met all the procedural requirements for the processing of the petition.

9/ We specifically reject Local 1's Exceptions with respect to the unit placement of particular employees or positions. Local 1 essentially argues that in the absence of a showing of instability or lack of proper representation, the existing unit should remain absolutely intact or, in the alternative,
(continued)

Accordingly, we direct a representation election in the unit of non-supervisory blue collar County employees, including

9/ (continued)
that titles should remain in the blue collar unit of employees if these titles are performing both "blue collar" and "white collar" functions and Local 1 and the County have agreed to their inclusion in the blue collar unit. Under all the circumstances of this case, we disagree.

After Local 29 filed its petition, the County submitted a list of eligible employees in the unit of its non-supervisory blue collar employees. Local 29 asserted that 29 of the titles on this list should be excluded from the blue collar unit; Local 1 asserted they should be included. Of these 29 titles, 11 titles do not appear on Schedule A, and of these 11 titles, one (supervising recovery assistant) previously appeared on the list of white collar employees and another one (senior store clerk) currently appears in the schedule attached to the contract for white collar employees. One title (graduate nurse) which was originally in the unit of white collar employees certified by the Commission had been subsequently and inexplicably included in Schedule A to the blue collar unit.

Local 1 subsequently agreed that four of the 16 titles which do not appear in Schedule A should be excluded from the blue collar unit and that four titles which had been included in Schedule A should be excluded from the blue collar unit. In addition, the parties agreed that two of the 29 disputed titles included in Schedule A should remain in the blue collar unit and that one title in Schedule A and currently unoccupied should not be resolved until, if necessary, after any Commission-conducted election.

The Hearing Examiner was required to make a determination with regard to 18 titles. He determined that nine of these titles concerned employees who were generally involved in some form of manual or physical labor, who performed their work in the field or outside an office environment, and who did not require much formal education: he concluded that these employees should remain in the blue collar unit. The Hearing Examiner determined that the remaining nine titles concerned employees whose work generally involved greater mental or intellectual skills, who were more likely to work in an office environment, and who were more likely to need a higher educational background: the Hearing Examiner concluded that these employees should not remain in the blue collar unit.

Several titles remain in dispute after the Exceptions. Given the past shifting of positions between the blue collar and white collar units and the parties' own willingness in this case to reassess the propriety of particular unit placements, we do not believe the Hearing Examiner erred in considering anew the proper unit placement of the titles still in dispute and in not focussing on the past practice of Local 1 and the County with respect to these positions. Finally, we agree with the standards he used and his placement of these titles in the white collar unit represented by Local 1.

the specific titles the Hearing Examiner found to be appropriately within that unit. We now turn our attention to the specific unfair practice charges Local 29 has filed against Local 1 and the County, the findings the Hearing Examiner has made with respect to these charges, and the parties' Exceptions.

We first consider whether the County violated subsections 5.4(a)(1) and (2) and Local 1 violated subsection 5.4(b)(1) by virtue of their actions and statements on July 6, 1982 concerning the attempts of unit employees such as Gangemi and Sipala to collect A&D cards from other unit employees on non-working time. Under all the circumstances of this case, we hold that they did.

We incorporate the Hearing Examiner's detailed and careful analysis (pp. 32-38, n. 42-43). We add that under NLRB v. Magnavox Co., 415 U.S. 322, 85 LRRM 2475 (1974) ("Magnavox") and In re Union County Regional Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50, 53, n. 15 (1976) ("Union County"), an employer and incumbent organization may not agree to ban employee solicitation, including the signing of A&D cards, of union support from other employees during non-working time in the absence of any evidence that special circumstances make the ban necessary in order to maintain production or discipline. See also, Beth Israel Hospital v. NLRB, 437 U.S. 483, 98 LRRM 2727 (1978); Republic Aviation Corp. v. NLRB, 324 U.S. 793, 16 LRRM 620 (1945); Olsen v. CWA, __ F.Supp. __, 112 LRRM 3182 (D.N.J. 1983). That is precisely what happened here: Local 1's president threateningly, erroneously, and with stifling effect informed employees that the collection of A&D cards for Local 29, although performed solely on non-working time, was illegal and could lead to discipline or arrest. The

Assistant Supervisor adopted this ban on employee solicitation as the County's position without making any effort to check its legality and warned that continued solicitation could lead to "trouble." No business justification for such a ban existed.10/

This clearcut violation of fundamental employee rights was compounded later that day when Local 1's president, a non-unit employee, was allowed to meet at the worksite with over 50 employees during work time and the president then improperly told unit employees that employee solicitation in favor of Local 29 before September 1, 1982 was illegal and any signed A&D cards were void.11/ The denial of pro-Local 29 solicitation by unit

10/We specifically reject the County's and Local 1's Exceptions with regard to the meeting with Gangemi and Sipala. While it is true that the Assistant Supervisor of Roads declined to suspend or discipline Gengemi for distributing A&D cards during non-working time, it is also true, and violative of the Act, that he told Gangemi that he did not have the right to solicit cards and could get into trouble, and immediately thereafter allowed Sipala to be told and to believe the same denial of his rights. With respect to Local 1's Exceptions, we find that the charge concerning the Gangemi meeting was specific enough to apprise Local 1 of the misconduct ultimately found, that the Hearing Examiner properly rejected its contention that its president only sought to question Gengemi's right to solicit cards during working time, that Gangemi was in fact intimidated and that the president's representations certainly tended to coerce employees such as Gangemi and Sipala; and that the passage of ample time for Local 29 to correct the misstatement is not relevant to determining whether the misstatement constituted an unfair practice, although such a factor can be relevant in the context of deciding when an election should be held or set aside.

11/The Hearing Examiner was correct in stating (p. 34) that Local 29 and its supporters were entitled to solicit A&D cards in July 1983, even though Local 29 could not file a representation petition under N.J.A.C. 19:11-2.8(c)(2) until the open period commenced on September 2, 1982. We do not agree with the Hearing Examiner to the extent he suggests, in passing, that employees might not have been able to solicit A&D cards on behalf of Local 29 earlier than six months before the commencement of the open operiod. The right of employees under Magnavox and Union County to ask other employees, during non-working time, to join a certain union is not conditioned upon the ability of that union to use any A&D cards collected for showing of interest purposes under N.J.A.C. 19:10-1.1 and N.J.A.C. 19:11-1.2. Further, (continued)

employees during non-working time and the allowance of an anti-Local 29 meeting between Local 1's president and unit employees during working time constituted illegal discrimination and organizational abuse of Local 1's access to unit employees. Union County.[12/]

We next consider whether the County violated subsections 5.4(a)(1) and (2) and Local 1 violated subsection 5.4(b) (1) by virtue of their actions and statements denying Local 29 organizers, who were not unit employees, access to County property for organizational purposes during the open period for filing a representation petition. Under all the circumstances of this case, we hold that they did.

Union County is our leading case concerning the rights of competing unions to solicit employee support during the open period. There, we upheld, in the absence of any evidence of organizational abuse, contractual clauses which granted the incumbent union exclusive access prior to the open period to school bulletin boards, teacher mailboxes, and certain other equipment. We then stated, however, that:

11/ (continued)
N.J.A.C. 19:10-1.1 does not under all circumstances bar the use for showing of interest purposes of A&D cards collected more than six months before the filing of a petition.

12/ We specifically reject the County's and Local 1's Exceptions with regards to this meeting. The County, given the president's coercive and erroneous statements earlier that day denying the rights of unit employees to solicit on behalf of Local 29, had every reason to believe that the president would repeat this unfair practice, as she did. With respect to Local 1's Exception, whether Local 1 repeated the president's misrepresentations and whether Local 29 had a subsequent opportunity to correct her misrepresentations after July 6, 1982 are not relevant to determining whether a violation of the Act occurred on July 6, 1982. Further, Local 29 was not required to submit evidence that employees actually changed their views concerning its organizing attempts as a result of this meeting; it suffices that the president's misstatements tended to interfere with the rights of employees to support Local 29.

> [Once a timely representation petition is filed or during an open period when such a petition could be filed, the interest of the individual employees in being able to freely choose their representative will outweigh the need for stability. If an incumbent is permitted the use of the employer's facilities for communication with the employees, the employer will have to make provisions to allow the challenging group access to the facilities. The potential for abuse in the exclusive use of facilities is obviously enhanced during such periods. Additionally, the requirement of strict neutrality by the employer during such periods shifts the balance against exclusivity.
> Supra at p. 53.

Thus, during the open period, the public employer must treat competing unions equally and must grant to the challenger the same privileges it grants to the incumbent. See also, In re Elizabeth Bd. of Ed., P.E.R.C. No. 83-66, 9 NJPER 21 (¶14010 1982) (Board illegally posted and applied memorandum during the open period which granted incumbent organization exclusive access to school mailboxes); In re Essex County Vocational Technical School Bd. of Ed., P.E.R.C. No. 82-23, 7 NJPER 509 (¶12227 1981) (Board properly allowed non-incumbent union access to school facilities during the open period for organizational purposes since incumbent had contractual right to use facilities for communications purposes during the open period); In re State of New Jersey, D.R. No. 83-20, 9 NJPER 114 (¶14061 1983), request for review denied, P.E.R.C. No. 83-118, 9 NJPER 182 (¶14086 1983) (employer must provide non-incumbent union during the open period with same information (such as names and addresses) it provides incumbent); In re State of New Jersey, D.R. No. 83-27, 9 NJPER 290 (¶14135 1983) (State properly limited, on an equal basis, access of both incumbent and competing organization during election campaign).

Recently, the United States Supreme Court, in Perry Education Ass'n v. Perry Local Educator's Ass'n, __ U.S. __, 112

LRRM 2766 (Feb. 23, 1983) ("Perry"), upheld the constitutional validity of a contractual clause which granted an incumbent public employee organization exclusive access for purposes of its official business as majority representative to an interschool mail system and teacher mailboxes before the open period for filing representation petitions. The Court in footnote 11 specifically approved our decision in Union County.

Perry's reasoning has implications beyond Union County. The Court started its analysis by stating that "...[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue." 112 LRRM at p. 2769. The Court then distinguished between three different types of public property:

> In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks which "have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 515 (1939). In these quintessential public forums, the government may not prohibit all communicative activity. For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. Carey v. Brown, 447 U.S. 455, 461 (1980). The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. United States Postal Service v. Council of Greenburgh, 453 U.S. 114, 132 (1981); Consolidated Edison Co. v. Public Service Comm'n, 447 U.S. 530, 535-536 (1980); Grayned v. City of Rockford, supra at 115; Cantwell v. Connecticut, 310 U.S. 296 (1940); Schneider v. State of New Jersey, 308 U.S. 147 (1939).
>
> A second category consists of public property which the state has opened for use by the public as a place

> for expressive activity. The Constitution forbids a state to enforce certain exclusions from a forum generally open to the public even if it was not required to create the forum in the first place. Widmar v. Vincent, 454 U.S. 263 (1981) (university meeting facilities); City of Madison Joint School District v. Wisconsin Public Employment Relations Comm'n, 429 U.S. 167 (1976) (school board meeting); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) (municipal theater). Although a state is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. Widmar v. Vincent, supra, at 269-270.
>
> Public property which is not by tradition or designation a forum for public communication is governed by different standards. We have recognized that the "First Amendment does not guarantee access to property simply because it is owned or controlled by the government." United States Postal Service v. Greenburgh Civic Ass'n, supra, at 129. In addition to time, place, and manner regulations, the state may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. Id. at 131, n. 7. As we have stated on several occasions, the State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." Id. at 129; Greer v. Spock, 424 U.S. 828, 836 (1976); Adderley v. Florida, 385 U.S. 39, 48 (1966).
> 112 LRRM at pp. 2769-70 (footnote omitted).

The Court concluded, under all the circumstances of that case, that the school mail facilities fell within the third category and that employer could therefore draw a distinction concerning access to such facilities based on the exclusive representative status of the incumbent organization and its need to communicate with unit employees.

Perry stands for the proposition that some governmental property may be more "public" than other governmental property and that the constitutional claims of non-incumbent organizations

and supporters may grow in validity as the "public" nature of the property increases. We believe this principle makes sense as a matter of labor relations law as well. For example, in Montgomery Ward & Co. v. NLRB, __ F.2d __, 111 LRRM 3021 (7th Cir. 1982), the Court held that the employer violated the federal Labor-Management Relations Act, 29 U.S.C. §151 et seq. ("LMRA"), when it prevented non-employee organizers from meeting with employees during non-work time in a department store cafeteria which was open to the public without restriction. See also, Olsen v. CWA, supra (while State as employer may grant incumbent exclusive access to bulletin boards before the open period, it may not constitutionally prohibit employees from communicating viewpoints opposed to incumbent anywhere on State property, regardless of whether the areas constituted public or non-public fora).

We do not believe it is necessary or advisable in this case to articulate general rules, besides those announced in Union County and Perry, concerning the rights or lack of rights of non-unit employees and non-employees to solicit for organizational purposes before the open period. We specifically decline the Hearing Examiner's invitation (pp. 45-46) to do so. The only incidents which occurred before the open period -- the July 6 meetings discouraging employee solicitation on behalf of Local 29 -- primarily involved the rights of unit employees to solicit among themselves and can be easily resolved under Magnavox principles. Instead of articulating further general principles, we emphasize that claimed rights of access to the premises of a public employer must be determined on a case-by-case and fact-by-fact basis. The

range of potentially relevant factors is wide and complex and may include such circumstances as who was attempting to organize whom, where, by what means, and when, what other methods of communication, access, and organization were available, what was the employer's stated policy concerning access to its premises and how had it been applied to different groups, and what is the employer's specific interest -- for example, maintaining safety, preventing disruption of operations, or preserving property -- in not allowing access to a particular location.

In the instant case, we are persuaded, under the general principles of Union County and Perry and all the circumstances in the record, that the County maintained and applied an overly broad and discriminatory no-solicitation/no-access rule in violation of subsections 5.4(a)(1) and (2) and that Local 1 encouraged and assisted in the maintenance and application of this invalid rule in violation of subsection 5.4(b)(1). Of significance in this regard is the meeting between the County Administrator, the president of Local 1, and two Local 29 organizers on September 14, 1982. At that meeting, Local 1's president took the position that Local 29 had no right to be in any County buildings or talk to County employees, even though portions of the County Administration Building -- for example, the lobby and the third floor cafeteria -- were indisputably open to the general public and to Local 1 organizers. Again, the County's representative adopted this position as the County's position without making any further efforts to check its legality. This interference with Local 29's organizing activity, while Local 1 had access to unit

employees on County property open to the general public, violated Union County's injunction against unequal treatment of competing organizations during the open period and Perry's injunction, which we adopt as a matter of statutory labor law, against content-based preclusion of access to property open to the general public.[13/]

This violation was compounded and the oral ban on Local 29 solicitation implemented when, both before and after the September 14, 1982 meeting, Local 29 was denied all access to County property.[14/]

13/ In addition to our analysis of the September 14, 1982 meeting, we adopt and incorporate that in the Hearing Examiner's report (pp. 38-40, n. 44-46). We reject the County's and Local 1's Exceptions with regards to the September 14 meeting. We acknowledge that the County Administrator willingly had an impromptu meeting with Local 1 and Local 29 despite a busy schedule, that he tried to please both Local 1 and Local 29 and was not hostile to either, that he may have been confused at the meeting, and that he may not have meant to favor Local 1 over Local 29 in their competition for employee support. Nevertheless, regardless of his motive or intent, the County Administrator did repeat and support the position of Local 1's president that Local 29 had no right to be in any County buildings or talk to County employees and thus violated subsection 5.4(a)(1). With respect to Local 1's Exceptions, we find that the unfair practice charge was sufficiently specific to place into question Local 1's conduct at the September 14, 1982 meeting, that Local 1 interfered with the rights of unit employees by persuading the County Administrator to deny Local 29 organizers all access to County property, and that the Hearing Examiner properly credited Wagner's testimony.

14/ It appears that the County's labor attorney, subsequent to the September 14, 1982 meeting, agreed with a Local 29 organizer that Local 29 was entitled to access to cafeterias, lunchrooms, and bulletin boards in County facilities and to speak to County employees before and after work and during lunchtime and other non-working breaktime. This statement, however, was not carried out, as a Local 29 organizer testified and as is evident from the repeated refusal to allow Local 29 to organize in such non-work places at such non-work times.

In light of the illegal September 14, 1982 no-solicitation rule and its implementation to deny Local 29 all access, we need not review each of the specific incidents discussed by the Hearing Examiner (pp. 48-53) to determine whether the County, if it had legally adopted a narrower no-solicitation/no-access rule, could have properly applied it to the facts of that particular situation in order to protect specific and legitimate governmental interests.[15/] It suffices to hold that a public employer cannot completely and discriminatorily ban one union, but not its rival, from soliciting on any of its property, open to the general public or not, and then enforce that ban completely and discriminatorily.[16/]

We next consider whether Local 1 violated subsection 5.4(b)(1) when one of its shop stewards interrupted an open

15/ We certainly recognize, as did the Hearing Examiner, that the County does have such legitimate governmental interests as maintaining the security of the Juvenile Detention Center and the Conklin Home and maintaining safe conditions in its parking lots or near the Mosquito Control Commission Building which a narrower no-solicitation/no-access rule might seek to protect. We also note, for the reasons discussed infra at pp. 26-28, that the Van Saun Park and Overpeck Golf Course incidents and the September 3, 1982 Bergen County Park Commission memorandum are not properly in issue in this case.

16/ Local 1, but not the County, has argued in the "background" to its Exceptions that Local 29 failed to follow proper procedures for securing access to employees and thus should not be able to challenge the denial of access in particular cases. Given our finding that the no-solicitation/no access rule was invalid in its establishment and uniform application, we need not address this contention further.

period solicitation by a Local 29 organizer with unit employees at the police maintenance garage, loudly told the organizer to leave the premises, threatened to call the police, and refused to check with an employer representative after the organizer told him he had received permission to solicit employees during break-time. Under all these circumstances, we hold that Local 1, through its shop steward, interfered with, restrained, and coerced employees in their right to meet with Local 29. We adopt and incorporate the Hearing Examiner's analysis (pp. 50-51) here.[17/]

We next consider whether the County violated subsection 5.4(a)(1) when it denied Local 29 access to employee lists, bulletin boards, and mailboxes during the open period. We hold that the denial of lists, but not bulletin board and mailbox access, violated the Act.[18/]

Union County again provides the central principle: the County must make available to Local 29 the same information and access during the open period as it makes available to Local 1.

17/ We reject Local 1's Exceptions concerning this incident. The incident was fully and fairly litigated at the hearing and Local 1 did not specifically object to testimony concerning its shop steward's misconduct. In re Commercial Township Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), appeal pending, App. Div. Docket No. A-1642-82T2. We are satisfied that the meeting occurred during non-working time in a non-working place and that under all the circumstances, the shop steward improperly broke up the meeting, despite being told by the organizer that he had permission for the meeting.

18/ We reject the County's Exception questioning the absence of a written request to the County Administrator for a list of employees. There is no dispute that a Local 29 organizer visited the County Administrator's Office in an attempt to clarify Local 29's right of access, that the County Administrator was out of Town, that the organizer was referred to the County's labor attorney, and that the organizer requested the list from that attorney. There was no need for a further request in writing to another County official.

We find that the County is required to supply Local 1 with employee lists in connection with a contractual representation fee provision; accordingly, Local 29 is entitled to a list of employees during the open period.[19/] We do not find, however, any evidence in the record that Local 1 had access to unit employee mailboxes or bulletin boards[20/] during the open period and therefore hold that Local 29 was not entitled to such access.

We next consider whether the County violated subsections 5.4(a)(1) and (a)(2) and Local 1 violated subsection 5.4(b)(1) with respect to the September 3, 1982 memorandum concerning organizing in County park facilities, Local 29's September 9 organizing attempt in Van Saun Park, and Local 29's mid-September organizing attempt in a lunchroom at the Overpeck Golf Course. Because we find that these incidents all involved a different unit of employees -- park employees employed by the County of Bergen (operating the Bergen County Park Commission) --, we dismiss these allegations of the Complaint.[21/]

On September 3, 1982, during the open period, the Assistant Executive Director of the Bergen County Park Commission issued a memorandum entitled "Union Activities on Park Lands" to all managers, supervisors, and foremen. The memorandum stated:

19/ In footnote 15 of Union County, we also suggested that lists of employees may be a matter of public record under the New Jersey "Right-To-Know" law, N.J.S.A. 47:1A-1 et seq.

20/ For the reasons discussed infra at pp. 26-28, the September 3, 1982 Park Commission memorandum concerning bulletin boards is not evidence of Local 1 access to bulletin boards insofar as the unit of employees involved in this case is concerned.

21/ We specifically accept the County's and Local 1's Exceptions concerning these allegations.

> Please note that according to Michael Ryan, the Bergen County Union Counsel, the public employment relations [commission] has certified Council #1 to represent Park Commission employees. No other union activities, other than Council #1 are allowed to post notices on any bulletin boards under County park jurisdiction. All Managers, Supervisors and Foremen must remove any unauthorized Union material from park bulletin boards. There shall be no meetings on park property of any unauthorized Union. This is prohibited by the present Union and County regulations.

This memorandum was indisputably illegal under Union County and Elizabeth. It was posted in 25 of 29 parks operated by the Park Commission.

On September 9, and in mid-September, 1982, Local 29 attempted to organize employees at Van Saun Park and the Overpeck Golf Course. They were not allowed to do so. On September 13, 1982, Local 29 filed a representation petition with the Commission in which it sought to represent the Park Commission's non-supervisory blue collar employees, a unit represented by Local 1. Included in this unit were employees of Van Saun Park and Overpeck Golf Course. An election was held in which Local 29 received a majority of votes. On November 24, 1982, the Director of Representation certified Local 29 as the majority representative of a unit of non-supervisory blue collar employees employed by the County of Bergen (operating the Bergen County Park Commission).[22/]

The Hearing Examiner found that the County had not sufficiently disproved that the memorandum, the Van Saun Park incident, and the Overpeck Golf Course incident involved County,

22/ We take administrative notice of the representation petition, the tally of ballots, and the certification of representative since these documents are public Commission records.

rather than Park Commission, employees. Even assuming that the County had any burden of proof on this issue, we disagree. The memorandum was issued by the Park Commission and was posted only in parks operated by that Commission. The police officer who dispersed the meeting at Saun Park because Local 29 did not have a permit testified that the employees gathered were "park employees" and his police report so indicates; a Local 29 organizer also testified that the gathering involved park employees. The Overpeck Golf Course incident involved a meeting in the employee lunchroom and the non-supervisory blue collar employees at that golf course are all members of the unit of park employees Local 29 now represents. Regardless, therefore, of the abstract legality of the memorandum and ensuing events at Van Saun Park and the Overpeck Golf Course, we cannot find that these events impermissibly interfered with Local 29's attempts to organize County employees in the unit involved in these consolidated proceedings.

We next consider whether the County violated subsections 5.4(a)(1) and (2) of the Act when it negotiated with Local 1 during the pendency of representation proceedings before this Commission. We hold that it did.

In Middlesex County, we held that an employer with knowledge of a pending petition and question concerning representation violates N.J.S.A. 34:13A-5.4(a)(1) and (2) if it negotiates with the incumbent union before the Commission resolves the representation issue. There is ample evidence to adopt the Hearing Examiner's recommendation that under Middlesex County, the County violated subsections 5.4(a)(1) and (2).

The County and Local 1 ask that we overrule Middlesex County in light of a recent National Labor Relations Board ("Board" or "NLRB") case changing the Board's approach to an employer's right or lack of right to negotiate with an incumbent employee organization when a rival organization has filed a representation petition. From 1945 to 1981, the Board had held that an employer violated the LMRA when it negotiated and reached agreement with an incumbent union in the face of a rival organization's representation petition. Midwest Piping Co., Inc., 63 NLRB 1060, 17 LRRM 40 (1945); Shea Chemical Corp., 121 NLRB 1027, 42 LRRM 1486 (1958). In RCA Del Caribe Inc., 262 NLRB 116, 110 LRRM 1369 (1982) ("RCA Del Caribe"), however, the Board, by a vote of 3-2, reversed and held that an employer must continue to negotiate with an incumbent organization, despite a pending representation petition, unless the employer has an objective good faith doubt concerning the incumbent's continued majority status. The Board concluded that its previous efforts to promote employee free choice had detracted too greatly from the stability of employer-incumbent organization relationships.

The New Jersey Supreme Court has suggested that the decisions and policies of the NLRB interpreting the LMRA may in some, but not all instances serve as the model for decisions and policies interpreting the New Jersey Employer-Employee Relations Act. Lullo v. Int'l Ass'n of Firefighters, Local 1066, 55 N.J. 409 (1970); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of

Ed. Secy's, 78 N.J. 1 (1978); but see, Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). We are not bound, however, to reflexively follow every change in long-established Board law and instead must utilize our own experience and expertise in New Jersey public sector labor relations to determine what policies will foster the purposes of the New Jersey Employer-Employee Relations Act. We believe that Middlesex County promotes both employee free choice and labor stability while RCA Del Caribe might undermine both of these fundamental values. Accordingly, we reaffirm Middlesex County and reject RCA Del Caribe.

In Middlesex County, we found that employee free choice would be compromised unless employers, when faced with a pending representation petition, maintained strict neutrality by refusing to negotiate over future contracts with either incumbents or rival organizations. Nothing in RCA Del Caribe nor in our experience before or since Middlesex County changes that finding.

We steadfastly believe that the act of continuing to negotiate, despite pending representation proceedings, inevitably and unmistakably tends to transmit to unit employees a signal that their employer may prefer the incumbent to its rival and may be inclined to treat them more favorably if they agree with the employer's choice.[23/]

23/ We do not share the concern of RCA Del Caribe that employees may construe an employer's refusal to negotiate with an incumbent pending a representation proceeding as a repudiation of the incumbent and a preference for the rival. The employer may readily inform its employees that it is legally barred from continuing to negotiate pending representation proceedings.

We also believe that allowing an employer to negotiate with an incumbent organization during representation proceedings raises the unacceptable possibility that an employer may seek to influence the election process through its negotiations strategy. An employer which wishes to have an incumbent organization reelected can hasten the negotiations process and sweeten the terms of a collective agreement in order to appeal to undecided voters;[24/] an employer which wishes to have an incumbent organization defeated can retard the negotiations process and take a hardline stance in order to make the incumbent look ineffective. In either case, the election process can be turned into a contract ratification vote manipulated by the employer's strategy and preferences rather than an examination of the positions of competing organizations in an atmosphere of employer neutrality. We conclude, as we did in Middlesex County, at p. 267, that "[t]he interests of a fair election where a pending question concerning representation exists can only be served by requiring employer neutrality."

We also believe that Middlesex County has promoted labor stability in the New Jersey public sector. A reversal of this policy at this time would change a course of conduct which has been routinely accepted throughout this State as a means of

24/ Compare R. Gorman, Basic Text on Labor Law, pp. 205-206 (1976) and R. Williams et al, NLRB Regulation of Election Conduct, 206 (1974), both of which draw the common sense analogy between this situation and an illegal promise of future benefits to employees voting against a union. In re Passaic Valley Sewerage Commission, P.E.R.C. No. 81-51, 6 NJPER 504 (¶11258 1980).

preserving neutrality by and for the public employer and freedom of choice for the public employee prior to the conduct of an election. A change could only cause confusion. We find it noteworthy that the Pennsylvania Employment Relations Board has recently re-examined its policy, essentially the same as ours, and has rejected the approach of RCA Del Caribe based upon its judgment that it would be unsound labor relations policy which could lead to instability in the public sector. Chartiers-Houston School District, 14 PPER 11 (¶14055 1983).

We reject as unsound the County's assertion, as stated in its Exceptions urging a reversal of Middlesex County, that "if such a rule were adopted then the employees in the bargaining unit would receive negotiated salary and benefit increases and still vote for the representative of their choice." The majority decision in RCA Del Caribe, supra at p. 1371, recognizes that a challenging union which wins an election and receives certification does and should have the right to unilaterally render null and void any prior agreement negotiated by the incumbent, despite the fact that agreement would be valid and binding on the incumbent. The consequences of allowing employers and incumbents to negotiate agreements which could later be repudiated would, in our opinion, have a deleterious effect upon labor relations stability. Middlesex County prevents this possibility.

We further observe that under Middlesex County, the incumbent organization continues to process grievances and administer the collective negotiations agreement while the question concerning representation is being resolved. See also,

NLRB Regulation of Election Conduct, supra at pp. 206-207. Thus, the incumbent retains, through its shop steward and other officials at the workplace and through its contract-related activities, its visibility and accessibility to unit employees. The incumbent therefore retains the advantages it has earned through a previous certification or recognition. It also has a right to preserve the status quo benefits of any expired contract under existing case law during the pendency of the representation proceeding. Galloway Twp. Bd. of Ed. v. Galloway Twp. Ed. Ass'n, 78 N.J. 25 (1978).25/

25/ The time it takes in incumbent-rival organization cases to resolve questions concerning representation under the Act will almost invariably be so short as to be inconsequential in terms of the concerns RCA Del Caribe identifies. It has been our experience that in cases involving timely and properly supported petitions seeking to replace an incumbent union elections are usually held pursuant to N.J.A.C. 19:11-4.1 no more than 40-50 days after the filing of the representation petition; this period is well within the framework of N.J.A.C. 19:11-2.8(c)(1) which seeks to insure that questions concerning representation are resolved before the expiration of current contracts. This case has proven to be a rare exception because of the necessity of a hearing on the unfair practice charges and unit placement issues before an election could be held. Specifically, Local 29 established, through documentation submitted to the Director of Representation, a specific basis for its claim that the conduct underlying the alleged unfair practices could prevent fair and free elections and thus the Director exercised his discretion to block an election pending the disposition of the charges and the taking of any necessary remedial action. In re State of New Jersey, P.E.R.C. No. 83-118, supra; In re State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981), mot. for recons. den. P.E.R.C. No. 81-95, 7 NJPER 133 (¶12056 1981), aff'd sub. nom. New Jersey Employees Ass'n, Local 4089 a/w AFT, AFL-CIO v. State of New Jersey, App. Div. Docket No. A-3275-80/A-4164-80T2 (November 10, 1982). Also, a hearing on the unit placement issues -- one of only a handful of pre-election hearings on such issues in the past 15 years -- was ordered only after the Director of Representation was initially satisfied that Local 29's claims of improper unit placement might well have merit; for example, some of the titles which had previously been placed in the white collar unit after an election (continued)

Middlesex County also provides a bright-line and simple standard by which the parties can guide their conduct during pending representation proceedings and by which unit employees can understand the parties' positions. Under Middlesex County, the parties know, and can so inform concerned employees, that contract administration and grievance processing will continue, but negotiations over a successor contract must stop until the pending question concerning representation is resolved either through an administrative investigation (if the petition is defective or improperly supported) or through an election. Compare, Bruckner Nursing Home, 262 NLRB No. 115, 110 LRRM 1374 (1982) (in initial organizing situations involving two or more rival unions, employer must refrain from recognizing one of unions after a representation petition is filed; bright-line test allows employers, unions, and employees alike to know where they stand). Under RCA Del Caribe, by contrast, an employer will still be required to stop negotiating with the incumbent if a good faith doubt of its majority status is raised through objective considerations; this standard can only be assessed on a case-by-case basis and may place the employer in a position of uncertainty concerning its obligations and its employees in a position of uncertainty concerning the employer's motivation -- objective

25/ (continued)
and certification inexplicably appeared in the appendix to Local 1's contract as included in the blue collar unit. In sum, the period of delay in negotiations which may result under Middlesex County will in almost all cases be insubstantial. We will, of course, continue to give any exceptional cases such as this one the most expedited consideration possible.

doubt of majority status or subjective preference for another organization -- for refusing to negotiate with the incumbent.

On balance, then, our experience in administering the Act does not make it evident to us, as it was to the Board, that our effort to promote employee free choice has been at a price to the stability of labor-management relationships. Rather, we believe Middlesex County serves both freedom of choice and labor stability and prevents needless confusion. Thus, applying Middlesex County, we hold that the County violated subsections 5.4(a)(1) and (2) when it continued negotiating with Local 1 during the pendency of a question concerning representation before this Commission.[26/]

26/ We reject the County's Exceptions concerning its negotiations with Local 1 during the pendency of representation proceedings involving the unit of non-supervisory blue collar employees. We specifically find that the negotiations unit petitioned for was not so substantially different from the one Local 1 represented that Local 29's representation petition did not raise a valid question concerning representation in that unit. Local 1 has also filed Exceptions concerning these negotiations in the belief that the Hearing Examiner found that it committed an unfair practice by engaging in such negotiations: he did not. While technically Local 1 may not have standing to pursue Exceptions to an unfair practice finding solely against the County, we entertain its Exceptions. We specifically agree with Local 1 that the record before us does not reflect that it reached or executed a final collective negotiations agreement with the County and that the Hearing Examiner erred in finding that it had. We reject, however, Local 1's argument that we should eschew a bright line test for determining the propriety of continuing negotiations during the pendency of a question concerning representation and should instead examine all the circumstances of a particular case before deciding whether to enjoin or permit negotiations with the incumbent. We believe that sound labor relations requires in this instance a rule that everyone concerned can understand and follow and that Local 1's approach would eliminate predictability and engender confusion.

We next consider whether Local 29 proved by a preponderance of the evidence that the County violated subsections 5.4(a)(1) and (a)(2) by allegedly allowing a supervisor to use a County vehicle to organize for Local 1 and to threaten a Local 29 supporter. We agree with the Hearing Examiner (pp. 58-59) that Local 29 did not. We adopt and incorporate his analysis here.

We next consider whether the County violated subsections 5.4(a)(1) and (2) and Local 1 violated subsection 5.4(b)(1) by engaging in a pattern of conduct calculated to interfere with Local 29's organizational efforts and the rights of unit employees to support Local 29. We find that the County did not intentionally engage in such a pattern, but that Local 1 did. Local 1 repeatedly pressed to have Local 29 supporters and organizers barred from talking or meeting with unit employees and thus repeatedly interfered with their rights under the Act. The County, by contrast, appears to have acquiesced in Local 1's actions, rather than to have affirmatively sought to suppress support for Local 29. In the absence of more specific evidence showing discriminatory motive or intent on the part of the County officials, we are unwilling to find that the County engaged in a pattern of illegal activity calculated to interfere with Local 29's organizational activities and the rights of unit employees to support Local 29.[27/]

27/ We accept the County's Exceptions in this regard, but not Local 1's Exceptions.

Given our determination that a representation election should be conducted and that certain unfair practices have occurred, we must enter an order which will allow the representation election to proceed as quickly as possible while at the same time remedying the unfair practices and insuring a fair and free atmosphere for that election. Pursuant to our discretion, expertise, and authority under the Act and Galloway Twp. Bd. of Ed. v. Galloway Twp. Ass'n of Ed. Secy's, 78 N.J. 1 (1978), we enter the following order.

ORDER

IT IS HEREBY ORDERED that:

A. A secret ballot election shall be conducted among eligible County blue collar employees within thirty (30) days after completion of the fourteen (14) day posting of Appendices "B" and "C." Notices of Election shall be posted at the expiration of the 14 day period. The unit shall include: All blue collar employees employed by the County of Bergen including foremen and employees in the following departments: General Services, Sheriff's Office, County Police Department, Department of Public Works, Mosquito Commission, Public Safety Education, County Jail, Child Welfare Department, and Animal Shelter Department. The unit shall also specifically include the Juvenile Detention Officer, Senior Juvenile Detention Officer, Children's Supervisor,

Adult Day Care Worker, Principal Engineering Aide, Principal Engineering Aide and Construction Inspector, Storekeeper, Senior Storekeeper, Communications Technician, Chief Stationary Engineer, Agency Aide, and Chauffeur, and it shall include all other titles listed in Exhibit J-1 Schedule A which are not specifically excluded herein and which were not the subject of these proceedings. Finally, the unit shall include all regularly employed part-time employees holding titles which are included in the unit whether they work more or less than twenty (20) hours per week.

The unit shall Exclude: All white collar employees; and, all managerial, confidential, police, and supervisory employees within the meaning of the Act; all seasonal, temporary, and per diem employees; and all employees in the Sanitary Landfill Department and all employees of Bergen Pines Hospital. The following titles are specifically excluded: Youth Group Worker, Senior Youth Group Worker, Recovery Assistant (Detox), Senior Recovery Assistant (Detox), Supervising Recovery Assistant, Senior Construction Inspector, Senior Stock Clerk, Photographer, Communications Officer, Alcoholism Counselor, Graduate Nurse, Graduate Nurse Narcotics, Graduate Nurse Penal Institution, Supervisor of Nurses, Teacher, Teacher Juvenile Facilities, Recreation Program Administrator, and all other County employees.

Any employee holding the title of Investigator Public Works shall vote subject to challenge.

Only those employees of the County occupying included titles are eligible to vote in the election. They shall vote as to whether they wish to be represented for purposes of collective negotiations in the above-described unit by Local 29, or Local 1, or whether they wish no representation.

B. Local 1 shall:

1) cease and desist from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act by:

a) threatening unit employees who solicit A&D cards on behalf of Local 29 from other unit employees during non-working time;

b) encouraging and assisting the County in the maintenance and enforcement against Local 29 of an overly broad and discriminatory no-solicitation/ no-access rule;

c) interrupting Local 29 organizational meetings being held on non-working time at facilities where the County's operations and legitimate governmental interests are not being disrupted.

2) Take the following affirmative action:

a) sign Appendix "B" and cooperate with the County in the posting of Appendix "B," and take all reasonable steps to ensure that copies of Appendix "B" are not altered, defaced, or covered by other material;

b) notify the Chairman of the Commission within ten (10) days what steps Local 1 has taken to comply with this order.

C. The County of Bergen shall:

1) cease and desist from interfering with, restraining, and coercing employees in the exercise of rights guaranteed to them by the Act and from dominating or interfering with the formation, existence, or administration of any employee organization by:

a) interfering with the rights of unit employees to solicit authorization and designation cards from other unit employees during non-working time;

b) discriminatorily allowing Local 1 officials to hold organizational meetings opposing Local 29 with unit employees during working time unless it allows Local 29 to hold such meetings as well;

c) discriminatorily prohibiting Local 29, but not Local 1, from soliciting on any of its property, open to the general public or not;

d) discriminatorily denying Local 29 access to employee lists; and

e) negotiating over a successor collective negotiations agreement with Local 1 despite the pendency of a question concerning representation raised by Local 29.

2) take the following affirmative action:

a) during the ensuing representation election campaign, permit Local 29 and Local 1 organizers the opportunity to meet with employees in non-work areas on non-work time in facilities where the County's operations and legitimate governmental interests are not disrupted;

b) during the ensuing representation election campaign, permit Local 29 and Local 1 organizers to solicit employees at a reasonable proximity to those facilities where the County's operations and legitimate governmental interests would be disrupted by on-site access;

c) during the ensuing representation election campaign, make available to Local 29 the same information and facilities which it makes available to Local 1;

d) provide Local 29, (Local 1), and the Public Employment Relations Commission, a list of employees in the non-supervisory blue collar employee unit, including job titles and home addresses, immediately or no later than the expiration period for the attached notice in Appendix "C." These lists shall satisfy the requirements of N.J.A.C. 19:11-9.6 for the submission of an eligibility list;

e) maintain the status quo ante by continuing to implement the terms and conditions of employment set forth in the 1980-82 collective negotiations agreement;

f) sign Appendix "C" and post side-by-side in all places where notices to unit employees are customarily posted, copies of the attached notices marked as Appendix "B" and Appendix "C." Copies of these notices, on forms to be provided by the Commission, shall be posted side-by-side immediately upon receipt thereof and shall be maintained by the County for at least fourteen (14) consecutive days thereafter. Reasonable steps shall be taken by the County to ensure that such notices are not altered, defaced, or covered by other materials;

g) notify the Chairman of the Commission within ten (10) days of receipt what steps the County has taken to comply with this order.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hartnett, Hipp, Graves and Newbaker voted in favor of this decision. Commissioner Suskin voted against the decision.

DATED: Trenton, New Jersey
July 15, 1983
ISSUED: July 15, 1983

APPENDIX "B"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

Local 1 hereby notifies the non-supervisory blue collar employees of the County of Bergen that in order to insure a fair and free election atmosphere and to remedy violations of the Act it has committed:

Employees will be able to exercise the rights guaranteed to them by the Act without interference, restraint or coercion.

Employees who solicit authorization and designation cards on behalf of Local 29 shall be able to do so without fear or threat.

Local 29 organizational meetings shall not be interrupted.

We recognize and will not interfere with the rights of Local 29 to solicit and gain access to unit employees.

New Jersey Employees Labor Union, Local #1

Dated _____ By _____
(Title)

This Notice must remain posted for 14 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

APPENDIX "C"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

The County of Bergen hereby notifies its non-supervisory blue collar employees that in order to insure a fair and free election atmosphere and to remedy violations of the Act it has committed:

Employees shall be permitted to solicit authorization and designation cards from other employees during non-working time.

Rules concerning the convening of organizational meetings during work time and solicitation of employees on County property, whether or not open to the public, shall be administered and enforced without discrimination as between Local 1 and Local 29.

Local 29 and Local 1 shall be permitted access to employee lists.

In order to preserve employer neutrality, negotiations with Local 1 concerning a collective negotiations agreement shall be held in abeyance during the pendency of a question concerning representation raised by Local 29, or until further order of the Commission.

During the ensuing representation election campaign:

a) Local 1 and Local 29 organizers shall be afforded the opportunity to meet with employees in non-work areas on non-work time in facilities where the County's operations and legitimate governmental interests are not disrupted;

b) Local 1 and Local 29 organizers will be permitted to solicit employees at a reasonable proximity to those facilities where on-site access would disrupt the County's legitimate operational and governmental interests;

c) The identical information and facilities shall be made available to both Local 1 and Local 29.

d) Both Local 1 and Local 29 will be furnished with a list of employees in the non-supervisory blue collar unit including job titles and home addresses;

(continued)

e) The terms and conditions of employment as contained in the 1980-1982 collective negotiations agreement shall be maintained.

f) All employees shall be able to exercise the rights guaranteed to them by the Act without interference, restraint, or coercion.

g) We will not interfere with, dominate, or assist any employee organization in its formation or administration.

COUNTY OF BERGEN
(Public Employer)

Dated _____ By _____
(Title)

This Notice must remain posted for 14 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 429 East State, Trenton, New Jersey 08608 Telephone (609) 292-9830.

H. E. No. 83-44

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

In the Matter of

COUNTY OF BERGEN,

Respondent-Public Employer,

-and-

LOCAL 29, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,

Charging Party-Petitioner (RO),

-and-

NEW JERSEY EMPLOYEES LABOR UNION LOCAL #1,

Respondent Union-Petitioner (CU)

Docket Nos.

CO-83-96-55
CO-83-100-56
CO-83-149-62
RO-83-61
CU-83-62

SYNOPSIS

A Hearing Examiner recommends that the Public Employment Relations Commission find that the County of Bergen, and New Jersey Employees Labor Union, Local No. 1, violated the New Jersey Employer-Employee Relations Act. The County violated the Act by unlawfully interrogating and interfering with employees in their attempt to solicit A & D cards for the Charging Party, by causing the destruction of A & D cards, and by denying the Charging Party reasonable access to the employees, the County's facilities, and County bulletin boards. The Hearing Examiner recommended that the Commission adopt a policy regarding access to employees for soliciting for A & D cards prior to the open period, and a policy against broad no solicitation rules concerning employees and non-employees. The County also violated the Act by dominating and interfering with the Charging Party by giving assistance to Local 1 by negotiating and reaching an agreement over the instant unit with Local 1 after the filing of the RO Petition. This was found to be a violation of the Commission's policy established in Middlesex County (Roosevelt Hospital). The Hearing Examiner recommended that the Commission reject adopting the NLRB's decision in RCA Del Caribe which overturned the legal principle upon which Middlesex County is based.

Local 1 violated the Act through the actions of its President who interrogated and threatened an employee for soliciting cards for the Charging Party, and by interfering with other employees in their right to meet with and solicit cards for the Charging Party. Local 1, through its President, also violated the Act by materially misrepresenting the law to the County and the employees thereby causing certain employees to refrain from soliciting cards for the Charging Party, and causing the County to deny the Charging Party access to the employees.

However, the Hearing Examiner found that the County did not violate the Act by denying the Charging Party access to certain facilities because of the sensitive or hazardous nature of the facility. In addition, the County did not violate the Act by preventing Charging Party organizers from soliciting employees going into or out of the County parking lots.

With respect to the Representation Petition, the Hearing Examiner found that several titles were white collar in nature and recommended their removal from the unit. The Hearing Examiner then recommended the Commission to Order an election giving employees the opportunity to vote for the Charging Party Local 29, Local 1, or no representation.

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

H. E. No. 83-44

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

In the Matter of

COUNTY OF BERGEN,

Respondent-Public Employer,

-and-

Docket Nos.

LOCAL 29, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,

CO-83-96-55
CO-83-100-56
CO-83-149-62
RO-83-61
CU-83-62

Charging Party-Petitioner (RO),

-and-

NEW JERSEY EMPLOYEES LABOR UNION LOCAL #1,

Respondent Union-Petitioner (CU)

Appearances:

For the Respondent-Public Employer
Michael B. Ryan, Esq.

For the Charging Party-Petitioner (RO)
Reitman, Parsonnet, Maisel & Duggan, Esqs.
(Jesse Strauss, of Counsel)

For the Respondent Union-Petitioner (CU)
Hogan and Palace, Esqs.
(Thomas A. Hogan, of Counsel)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

A Petition for Certification of Public Employee Representative, RO-83-61 (RO), was filed with the Public Employment Relations Commission ("Commission") on October 4, 1982 and amended on October 20, 1982, by Local 29, Retail, Wholesale and Department Store Union ("Local 29") seeking to represent a unit of blue collar employees employed by the County of Bergen ("County"), and currently represented in a negotiations unit by New Jersey Employees Labor Union, Local

No. 1 ("Local 1"). 1/*

Subsequently, three Unfair Practice Charges were filed with the Commission by Local 29 (also known as the Charging Party), alleging that the County and Local 1 had engaged in certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq ("Act"). The Charge in Docket No. CO-83-96-55 was filed with the Commission by Local 29 on October 14, 1982 and amended on October 19, 1982 alleging that the County violated N.J.S.A. 34:13A-5.4(a)(1), (2) and (3) of the Act; 2/ CO-83-100-56 was filed by Local 29 on October 19, 1982 alleging that Local 1 violated N.J.S.A. 34:13A-5.4(b)(1) and (2) of the Act; 3/ and, CO-83-149-62 was filed by Local 29 on December 21, 1982 and amended on March 14, 1983, alleging that the County violated N.J.S.A. 34:13A-5.4(a)(1) and (2) of the Act.

Thereafter, on March 29, 1983, Local 1 filed a Clarification of Unit Petition, CU-83-62 (CU), with the Commission seeking to include the title of Chief Stationary Engineer into its existing blue collar unit.

It appearing that the allegations of the Unfair Practice Charges in CO-83-96-55 and CO-83-100-56 may constitute unfair practices within the meaning of the Act, and it appearing that the RO Petition raised factual issues that could not be decided without a hearing, the Director of Representation and Unfair Practices consolidated those charges with that Petition and issued a consolidated Complaint and Notice of Hearing on December 23, 1982. The Charges had a blocking effect to the independent processing of the

*As a matter of convenience all of the footnotes will appear at the end of the decision.

RO Petition. Thereafter, on January 13, 1983 the Director issued a Notice of Hearing in CO-83-149-62 and consolidated that matter with the previous Charges and RO Petition. The CU Petition was thereafter consolidated with the Charges and RO Petition by the undersigned Hearing Examiner at hearing on March 30, 1983.

Pursuant to the Notices of Hearing and based upon the parties' agreement, hearings were conducted herein on January 19, February 23, March 15, 16 and 30, and April 11, 15, 22 and 28, 1983 in Newark, New Jersey. [4/] At the hearing all of the parties had the opportunity to examine and cross-examine witnesses, to present evidence, and to argue orally. All of the parties filed post-hearing briefs, the last of which was received on May 31, 1983.

The issues in the instant matters are:

1. In the RO Petition filed on October 4, 1982, Local 29 appeared to petition to represent the existing blue collar unit represented by Local 1. [5/] The description of the petitioned-for unit was essentially the same as the existing Local 1 unit as described in the recognition clause of the blue collar collective agreement Exhibit J-1A. [6/] On October 20, 1982, Local 29 amended the Petition and slightly changed the description of the petitioned-for unit. [7/] In addition, Local 29 argued that numerous titles (the disputed titles) were inappropriate for inclusion in the blue collar unit. [8/] However, certain differences between the petitioned-for unit and the recognized unit were resolved by the parties during the hearing. [9/]

Neither the County nor Local 1 were willing to consent to an election in the petitioned-for unit. [10/] Both of those parties argued that the petitioned-for unit was inappropriate and that the

RO Petition(s) should be dismissed because it was untimely, [11] and because it was not accompanied by an adequate showing of interest. In addition, although all three parties were able to agree as to the disposition of some of the disputed titles, Local and the County maintained that the remaining disputed titles should be in the blue collar unit. [12]

2. In CO-83-96-55 Local 29 alleges that the County interfered with, restrained and coerced employees in the exercise of their rights guaranteed by the Act, in part by refusing to permit Local 29 any access to employees, and by engaging in conduct which resulted in the destruction of authorization and designation cards which were used to satisfy Local 29's showing of interest requirement. [13] The amendment to that Charge alleges a denial of access to Local 29 as well as collusion between the County and Local 1 regarding several specific incidents. [14]

The County's Answer on that Charge, Exhibit C-4, denies the general and specific allegations of the Charge and raises certain affirmative defenses.

3. In CO-83-100-56 Local 29 alleges that Local 1 interfered with and coerced employees in violation of the Act and in the selection of a majority representative, in part, by acting in collusion with the County in preventing Local 29 from soliciting authorization cards, by engaging in certain unlawful actions resulting in the destruction of authorization cards, and by engaging in certain other specific allegations. [15]

Local 1 has submitted an Answer, Exhibit C-3, and has denied the allegations of that Charge.

4. In CO-83-149-62 Local 29 alleges that the County violated the Act by interfering with Local 29's attempt to form a union,

and by failing to maintain a neutral posture between Local 29 and Local 1 as evidenced by having negotiated a new contractual agreement with Local 1 after the RO Petition was filed. 16/ In the amendment to that Charge Local 29 alleged certain other specific violations of the Act. 17/

The County did not file a specific Answer to that original Charge, but rather relied upon its original Answer to CO-83-96-55 and CO-83-100-56, Exhibit C-4. Regarding the amendment to CO-83-149-62, the County answered that Charge on the record by denying the allegations.

Although Local 1 is only an Intervenor in CO-83-149-62, it submitted an Answer to that Charge, Exhibit C-5, denying that any violation occurred.

5. In CU-82-62, Local 1 sought the inclusion of the Chief Stationary Engineer into the blue collar unit. In compliance with N.J.A.C. 19:11-1.5(b)(3), Local 1 submitted a letter to the undersigned Hearing Examiner on April 8, 1983 arguing that said title was neither professional nor supervisory and belonged in the instant unit.

Both Local 29 and the County opposed the CU Petition. Local 29 argued that the title at issue was a supervisor within the meaning of the Act and was therefore inappropriate for inclusion in the blue collar unit. The County did not assert that the title was supervisory, but, nevertheless, argued that the title was insppropriate for inclusion in the unit because Local 1 had at one time agreed to remove that title from the unit.

The Unfair Practice Charges and the RO and CU Petitions having been filed with the Commission, a question concerning alleged

violations of the Act, and questions concerning representation and composition of a negotiations unit exist, and after hearing and after consideration of the post-hearing briefs of the parties, the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. The County of Bergen is a public employer within the meaning of the Act, is the employer of the employees involved herein, and is subject to its provisions.

2. Local 29, RWDSU, and Local 1, NJELU, are public employee representatives within the meaning of the Act and are subject to its provisions.

3. Local 1 is the current majority representative of a unit of County blue collar employees (covered in Exhibit J-1A), and a unit of County white collar employees (covered in Exhibit C-C-7. [18/] Local 29 petitioned to represent the blue collar unit, and in addition to the issues raised in the RO Petition, Local 29 filed the instant Charges which are all related to the RO Petition. In reviewing all of the issues raised herein, the Charges will be considered first.

4. Findings of Fact CO-83-96-55 and CO-83-100-56

In these Charges Local 29 alleged general and specific violations of the Act. The undersigned finds the following pertinent facts.

The Gangemi/Sipala Incident July 6, 1982

Sometime during the July 4, 1982 holiday weekend, Agnita Hastings, President of Local 1, was informed that organizing had been taking place at the County Road Department Zabriskie Street garage by a rival union (Local 29). On July 6, 1982 Mrs. Hastings telephoned Frank Linardi, Assistant Supervisor of Roads, and arranged to meet with him later that day concerning an employee problem. When she arrived at the Zabriskie Street location Hastings spoke with Linardi and said:

> I told Mr. Linardi I had received phone calls from other employees that Tom Gangemi [Road Department Yard Foreman] was actually getting people to sign cards for another union [Local 29]. And I didn't know whether or not that was true, but I would like to know. I asked Mr. Linardi if he knew about it and he said no. Transcript ("T") - 5 p. 178.

Linardi, thereafter, offered to summon Gangemi to his office and Hastings agreed to such a meeting (T-2 p. 85, T-5 p. 178). Gangemi arrived at Linardi's office at about 11:30 a.m. and in addition to Linardi and Hastings, George Gallagher, then vice-president of Local 1, Steve Kovich, General Road Foreman, and Julian Gandolpho, then Local 1 grievance chairperson, were also present.

Hastings admitted that prior to Gangemi entering the room she told Linardi that in her opinion it was illegal for Gangemi to collect authorization and designation cards because PERC rules had a specific time period within which a showing of interest could be obtained. (T-5 p. 179)

When Gangemi arrived Linardi explained that he and Hastings wanted to know whether cards were being distributed on the premises during working hours (T-2 p. 85). Linardi admitted that Gangemi

indicated that he distributed cards before working time (T-2 p. 86), and Gangemi's testimony supports that statement (T-1 pp. 65-66). Gangemi testified that he collected approximately 67 signed authorization and designation cards for Local 29 (T-1 pp. 55-56).

At that point Hastings told Gangemi that passing out cards prior to September 1 was contrary to PERC rules and violated the contract between the employees and the County. (T-1 p. 56, T-2 p. 86, T-5 p. 133). Hastings then told Gangemi that he could be arrested for what he did, and she recommended he be suspended. (T-1 p. 56, T-2 p. 86).

In addition, Hastings admitted she told Gangemi that what he did was wrong and that she was disappointed in his activities on behalf of Local 29 (T-5 p. 133).

Although Linardi, thereafter, indicated that there was no basis for suspending Gangemi (T-2 p. 86), he did tell Gangemi that it was illegal to solicit cards and that he (Gangemi) could get in trouble for doing it (T-1 p. 57). Thereafter, in Gangemi's presence, Hastings asked Linardi if it would offend him if she went to a higher authority regarding Gangemi's suspension. Linardi responded that it would not. (T-2 p. 88).

When asked whether he said anything at that point in the meeting Gangemi said:

> I was more or less apologizing because she [Hastings] did have me believe the cards were illegal to hand out and I did apologize to her and I did say to her something about we have to have representation from you. There is nobody coming down to see us as employees and we felt that we should try to have another union come in. (T-1 pp. 57-58).

Gangemi further indicated that as a result of the meeting he felt that passing out cards was illegal and he was afraid he would go

to jail, therefore, he apologized to Hastings (T-1 p. 58). Gangemi testified that he believed Hastings was correct about the illegality of the cards because she made it sound illegal, and because as union president he thought she knew the law better than himself (T-1 pp. 62-63). In addition, Linardi didn't dispell anything Hastings had said concerning the cards. (T-1 p. 67).

Although Gangemi was aware of the purpose of the cards and knew they were to show support for Local 29 (T-1 pp. 60-61), as a result of the comments made to him by Hastings and Linardi he ripped up and destroyed all of the cards he collected because he did not want anyone else to get into trouble or be locked up. (T-1 p. 58).

Although Gangemi admitted that neither Hastings nor Linardi literally told him to destroy the cards, and that he did not first contact Local 29 business agent David Wagner, he (Gangemi) testified that when he left the meeting he didn't want anyone else to get in trouble so he disposed of the cards (T-1 pp. 61-62). Gangemi also said:

> ...I didn't take it on my own to go and bring someone in here and organize a union or whatever and I'm not going to...start no trouble. I took it on my own to just eliminate the whole thing and throw everything away. (T-1 p. 62)

Gangemi indicated that after that meeting he didn't solicit any more cards for Local 29 because he was afraid of being arrested. (T-1 p. 59).

After Gangemi left the meeting, another employee, Anthony Sipala, a mechanic foreman in the Road Department, voluntarily entered the meeting room and asked Linardi and Hastings what had

occurred with Gangemi. Hastings replied that in her opinion handing out cards for Local 29 before September 1 was illegal (T-2 pp. 5, 11), and that the cards were null and void no matter when they were handed out. (T-2 p. 12).

Sipala indicated that when he left the meeting he believed that it was illegal to have Local 29 authorization cards signed prior to September 1 whether they were signed on work time or not. (T-2 p. 15). 19/

Local 1 Union Meeting July 6, 1982

In the afternoon of July 6, 1982, after the meeting with Gangemi and Sipala, Mrs. Hastings as President of Local 1, called a meeting with certain County employees. The meeting was held in the recreation room of the Road Department Garage at Zabriskie Street, and was held during work time at approximately 3:15 p.m. and approximately 50 or 60 people attended. (T-1 p. 67, T-2 p. 18, T-4 pp. 5, 10). Gangemi, Sipala, and another employee, Jeffrey Oltar, a mechanic, were among the employees in attendance.

Both Gangemi and Sipala testified that Hastings told the employees that the cards that had been signed for Local 29 were illegal, and that they were null and void, and that no cards or petitions could be signed before September 1, 1982. (T-1 p. 67, T-2 p. 18).

Harrassment of Gangemi - August and September 1982

Although Local 29 alleged that the County harassed Gangemi throughout August and September, 1982, no independent evidence of such harassment was presented at the hearing.

Van Suan Park Incident September 9, 1982

Local 29 Business Representative David Wagner arranged a union meeting for certain County employees for 5:00 p.m. on September 9, 1982 at the Van Suan Park, a County park. At approximately 4:40 p.m., prior to the commencement of the meeting, County Police Officer Richard O'Grady arrived at the scene and observed a group of about 20 to 30 people (T-3 pp. 75-76). O'Grady approached Wagner and asked him if he had a permit for the meeting and Wagner presented an application for a permit (T-3 p. 77). O'Grady indicated that he told Wagner that the application was insufficient and he (Wagner) could not hold the meeting in the Park (T-3 pp. 77-78). In fact, O'Grady testified that the reason he asked Wagner to leave the Park was because Article 5, Section 7 of the Park Rules and Regulations (Exhibit RE-1) required a permit for groups of 25 people or more. 20/ O'Grady also testified that he has enforced that provision of the Rules on prior occasions (T-3 pp. 90-91).

By the time O'Grady had finished speaking to Wagner, Mrs. Hastings had arrived at the scene and she told O'Grady that the meeting was illegal and that she wanted the people removed from the Park (T-3 p. 84, T-2 p. 28).

After Mrs. Hastings spoke to O'Grady she told Wagner and the employees that they had no right to be on County property, and they had no right to be at a meeting conducted by Local 29, and she ordered the employees to disperse. (T-2 pp. 27-28). Mrs. Hastings did not deny those comments, and admitted she told the group they had no right to be there. (T-6 p. 15).

After these conversations the meeting broke up, and O'Grady filed a report about the incident, Exhibit RU-2. 21/

Memo for the County Parks September 3, 1982

Wagner testified that a memorandum from Assistant Executive Director William Mann, to managers, supervisors and foremen dated September 3, 1982 concerning union organizing was posted in at least 25 of the 29 County park facilities. (T-2 pp. 41-42). His particular copy of the memorandum, Exhibit CP-1, had been posted at the Garfield Park. The memorandum read as follows:

> Please note that according to Michael Ryan, the Bergen County Union Counsel, the public employment relations committee has certified Council #1 to represent Park Commission employees. No other Union activities, other than Council #1, are allowed to post notices on any bulletin boards under County park jurisdiction. All Managers, Supervisors and Foremen must remove any unauthorized Union material from park bulletin boards. There shall be no meetings on park property of any unauthorized Union. This is prohibited by the present Union and County regulations.

The County offered no evidence to contradict the posting of said memorandum nor any evidence to suggest that it (the County) was not responsible for the memorandum.

Meeting with County Administrator September 14, 1982

At approximately noontime on September 14, 1982 Wagner and David Forbes, another representative of Local 29, were in the County Administration Building talking to a custodian in a small room off the corridor. The custodian was neither working nor eating lunch, he was just standing still. (T-6 pp. 52-53).

While Wagner and Forbes were talking to the custodian Mrs. Hastings approached them and questioned their right to talk

to an employee. Hastings insisted that they all speak with County Administrator, Eugene DiPaola, and Wagner and Forbes agreed to the meeting. (T-2 pp. 29-30, T-5 p. 148, T-6 p. 33).

Hastings began the meeting by telling DiPaola that Local 29 was involved in organizing County employees and she believed, and assumed the County's position was, that Local 29 had no right to be inside any buildings nor to solicit employee interest, and that what they were doing was illegal. 22/ (T-2 p. 30, T-6 pp. 33-34).

Hastings also informed DiPaola about the 30-day time period within which a petition could be filed. (T-3 pp. 100, 128-129). Although DiPaola testified that he understood the meaning and purpose of the 30-day period (T-3 pp. 128-129), his overall testimony reveals that he was confused about the 30-day period, and he had no clear understanding as to whether the time period had already gone into effect or not. 23/ (T-3 pp. 100, 128, 130-131).

After Hastings made her comments, DiPaola agreed with her that the County's position was that Local 29 had no right to be in the County buildings or talk to County employees. 24/ (T-2 p. 30, T-6 pp. 36, 54). Local 1 officials, however, did have access to the employees in the County facilities.

Wagner then indicated that he had no intention of disrupting work or talking to employees during work time, but that he wanted to talk to employees during lunch time, break time, and before and after work. (T-2 p. 31, T-6 p. 37). DiPaola then attempted to discourage Wagner from organizing the employees (T-2 p. 31), and the meeting soon came to an end. 25/

DiPaola also acknowledged on the record that members of the

public were not restricted from the Administration Building between 8:30 a.m. and 5:00 p.m., that there was no requirement for a visitor to check in or be screened, and, that members of the public were not prohibited from using the cafeteria on the third floor of the Administration Building. (T-3 pp. 109-111).

Organizing in the County Parking Lot September 23, 1982

Between 7:30 and 8:00 a.m. on September 23, 1982, David Wagner and Local 29 Business Representative John Kraemer, and approximately eight County employees, appeared at the parking lots adjacent to the County administration complex and began to solicit County employees on behalf of Local 29 on their way into the parking lots. (T-1 p. 19, T-2 p. 36).

Kraemer acknowledged that he and his people were standing at the entrance to the parking lot and had all entrances covered and were talking to the employees as they were pulling into the lot. (T-1 pp. 29, 38, 41). In fact, Kraemer admitted that cars were being stopped at the entranceway to the lot to allow Local 29 personnel to identify themselves and their purpose. (T-1 pp. 41-43). Wagner also acknowledged that Local 29 personnel were standing in the parking lot and stopping cars as they were coming into the lot to speak to the employees and hand out literature. (T-2 p. 69). He also admitted that he had never requested permission of the County to use the parking lots for that pupose. (T-2 pp. 69-71).

At approximately 8:15 that morning Sergeant John Paladino of the County Police force arrived at the scene. He observed some people distributing literature to employees inside the County lot, but he also observed several people passing out literature to people

coming into the lot. (T-3 pp. 12-13).

Thereafter, Paladino called his lieutenant for instructions and he was told to ask the individuals in question to leave County property and go to the sidewalk outside the lot. (T-3 p. 19) After speaking with his lieutenant, Paladino asked one Local 29 individual inside the lot to go out to the sidewalk, then he saw Mrs. Hastings and approached her and asked her what was happening. (T-3 pp. 19-23, 31).

After talking with Hastings, Paladino, with Hastings following, approached Kraemer and Wagner and told them to get off County property and go out to the sidewalk. [26/] (T-2 p. 36, T-3 p. 14).

After Paladino spoke to the Local 29 personnel that morning, they left the area. However, Kraemer decided after that incident that the morning was not the best time to solicit signatures resulting in Local 29's return to that location on a series of afternoons and lunch hours at which time they did solicit and obtain signatures. (T-1 p. 44). Kraemer admitted that Local 29 was not interfered with by County police during its subsequent visit to the lot. (T-1 p. 45).

In addition, DiPaola testified regarding the use of County parking lots, and he indicated that use of the parking lots for solicitation or any purpose other than its intended use was prohibited. (T-3 pp. 113-114). He testified that the purpose of that rule was to prevent impediments to the flow of traffic (T-3 p. 115), and he indicated that walking in the parking lots was dangerous. (T-3 pp. 118-119). Finally, DiPaola indicated that anyone wishing to use the parking lots had to obtain permission from the

Freeholders. (T-3 pp. 114-115).

Overpeck Golf Course September 1982

At noontime in mid-September 1982, Wagner went to the Overpeck Golf Course, a County facility, and approached the maintenance shed which contained a lunchroom. (T-2 pp. 58-59). He intended to talk to employees and distribute literature, and post information on the lunchroom bulletin board. (T-2 p. 40). Local 1 officials, i.e. shop stewards, did have such access.

But shortly after Wagner arrived at that location the manager of the Golf Course, Mr. Geary, told him he had no right to be on the premises and that he would call the police if he didn't leave. (T-2 p. 40). Wagner informed Geary that he had a right to post information on the lunchroom bulletin board but Geary disagreed. (T-2 p. 40). At that point Geary escorted Wagner off the premises.

Mosquito Commission Incidents September 23 and 30, 1982

In mid-September 1982 Wagner contacted County Labor Counsel, Mike Ryan, and requested that Local 29's access rights to County facilities be clarified. Wagner indicated that Ryan agreed with him that Local 29 should have access to cafeterias, lunchrooms and bulletin boards in County facilities, and that they did have the right to speak to County employees before and after work and during lunchtime and other non-working breaks. [27/] (T-2 pp. 43-45). The record shows that Local 1 had such access rights.

Thereafter, on September 23, 1982, Kraemer and certain Local 29 supporters appeared at the County Mosquito Commission Building between 4:00 and 4:30 p.m. in order to talk to the employees. (T-1 p. 34). The employees finish their workday at 4:30 p.m. Arthur Safranek, Superintendent of the Mosquito Commission, observed representatives of Local 29 talking to employees in the kitchen area of

the building during that time, but he neither called the police nor ordered Local 29 to leave. (T-2 pp. 103-104, 108).

However, shortly after Local 29 personnel had arrived a County police officer, Paul Kohl, arrived at the scene after being dispatched there by his superior officer. Kohl approached a supervisor of the Mosquito Commission and asked why an officer had been requested and the supervisor indicated that there were union representatives on the property. (T-3 p. 46).

Kohl then approached Kraemer and advised him that unauthorized personnel were not permitted at that location because of the chemicals and equipment, and he asked them to leave, and he directed them to that portion of Jerome Avenue controlled by the Borough of Paramus which was approximately one-quarter mile away from the building. 28/ (T-1 p. 34, T-2 p. 101, T-3 p. 47). Local 1 officials were not removed from the area. At that point, Local 29 representatives left the area.

In the afternoon of September 30, 1982, Local 29 returned to the Mosquito location, and Wagner testified that he was standing about 100 to 150 yards away from the building on the access road (T-2 p. 60) handing out literature to employees driving trucks. (T-2 p. 46).

Shortly thereafter Patrolman Kohl arrived on the scene and was followed by a group of employees and Superintendent Safranek. Kohl advised Wagner that the area was restricted to authorized personnel and he ordered Wagner to leave under threat of arrest. (T-2 p. 47, T-3 p. 50).

Wagner told Kohl that he had a right to be there and he had cleared it with the County counsel, but Kohl indicated he was unaware of any permission, and stated that he was ordered to remove

them from County property. (T-2 pp. 47-48). Wagner was then directed to a location off County property and approximately one-quarter of a mile from the building. [29] (T-2 pp. 48, 78). Once again Local 1 officials were not removed from the area.

Lunchroom - Police Maintenance Garage September-October 1982

At noontime in late September or early October 1982, Kraemer went to the lunch area of the police maintenance garage and began talking to a group of employees. (T-1 pp. 22-23, 32-33). Within a few minutes Robbie Hale, a Local 1 shop steward, appeared, and in a loud manner, told Kraemer he had no right to be there and he threatened to call County police. (T-1 p. 23). Hale told Kraemer that Mrs. Hastings told him that they were not allowed on County premises. (T-1 pp. 23, 50).

Kraemer testified that he told Hale that Mr. Ryan had granted Local 29 access to the employees during breaktimes, but Hale responded that he didn't care what Ryan said and he ordered Kraemer off the premises. (T-1 pp. 23 and 50).

Kraemer indicated that since the employees were becoming threatened by Hale's remarks he left the premises. [30] (T-1 p. 50).

Road Department Incident

In late September 1982 (sometime after September 23, 1982) (T-1 p. 33), Kraemer went to the County Road Department Yard and explained to certain supervisors that he wanted to talk to employees at the end of the workday, or at lunchtime, to solicit signatures for an election effort. (T-1 p. 24).

The supervisors however removed them from the location and told them they would not have access to the employees. (T-1 p. 24). Local 1 does have access to that facility. Kraemer indicated that

he and his group then left the Road Department Yard and went to the gate entrance to that facility and solicited employees at that location. (T-1 p. 52).

Department of Public Works

Local 29 alleged that the County denied them access to the Public Works building. However, no evidence was presented to support that contention.

County Parking Lot - Ridgewood Avenue October 4, 1982

On October 4, 1982 County Police Officer, Uwe Malakas, was dispatched to the entrance of the County parking lot at the County Medical Examiners Building on Ridgewood Avenue in Paramus. The dispatcher told him to:

> Investigate the activity of unauthorized union business and to see if it posed any traffic hazard or interference with normal business at that location. (T-5 p. 98).

Malakas arrived at that location at approximaely 3:00 p.m. and observed two or three people standing in the road entrance to the parking lot stopping vehicles, and talking to the drivers and distributing leaflets. (T-5 pp. 92-93). Malakas noted that the stopped vehicles were causing an obstruction to other vehicles trying to enter the lot, and he instructed the people to leave because they were interfering with the flow of traffic, and because they were unauthorized to be conducting union business on that property. (T-5 pp. 94-95).

David Forbes, the Local 29 organizer at the scene, admitted that some cars did stop and others pulled over to get a leaflet. 31/ (T-6 pp. 58-59).

Malakas did tell them to leave the County property and

move to the sidewalk across the street. (T-5 p. 102). Malakas later filed a police report concerning the incident, Exhibit CP-5.

Additional Incidents

In addition to alleging several specific incidents of violations of the Act, Local 29 alleged that the County violated the Act by denying Local 29 access to the employees anytime on County property. As evidence of such a violation Local 29 developed the following facts.

The Juvenile Detention Center

Charles Lagos, the Deputy County Administrator, testified that the Juvenile Detention Center was a facility for children who were being detained by court order. He indicated that access to the building is restricted out of necessity because of the nature of the facility. (T-2 pp. 116-117). However, Local 1 officials do have access to the facilities.

Both Wagner and Kraemer testified about their attempts to contact or solicit employees at that facility. Wagner indicated that in September 1982 he attempted to enter the facility and the receptionist, after checking with her supervisor, told him he could not enter. At that point he stood near the entrance to the facility and distributed literature. (T-2 pp. 48-49).

Wagner appeared at that location a second time and attempted to distribute literature near the building entrance, but two individuals ordered them to leave and threatened to call the police. (T-2 p. 49).

Kraemer testified that when he asked to use the lunchroom in the Juvenile Detention Center to talk to employees before or

after work he was told to leave the facility. (T-1 p. 24). In another attempt to gain access to that building to talk to employees, Kraemer testified that a Local 1 shop steward told the receptionist not to allow them in the building or he would call the police. (T-1 p. 46).

The Conklin Home

Lagos testified that the Conklin home was another detention facility for disturbed children. He indicated that children actually resided there and access to the building was restricted out of necessity. (T-2 p. 115). Once again, however, Local 1 officials have not been denied access to that facility.

Kraemer indicated that when he attempted to inquire of the Conklin receptionist whether he could talk to employees in a non-working area, a Local 1 shop steward harassed them and threatened to call the police if they did not leave. (T-1 p. 22).

Department of Engineering

Kraemer testified that in attempting to talk to employees at the Department of Engineering a receptionist (who was told by her supervisor) told him he was denied access to employees either before or after work or during lunchtime. (T-1 pp. 25-27).

Mailboxes, Bulletin Boards, Employee List

Finally, Kraemer testified that Local 29 was denied access to the County's internal mail system and bulletin boards (T-1 p. 27), and Wagner indicated that he was denied a list of County employees. (T-2 p. 49). Local 1 does have access to the bulletin boards, but there was no showing that Local 1 has access to the mail system, or that it received a list from the County.

5. Findings of Fact CO-83-149-62 Original Charge

Local 29 alleged that despite the filing of the instant RO Petition the County continued to negotiate with Local 1 and eventually agreed to a new collective agreement covering the blue collar unit.

Local 1 admitted that it continued to negotiate with the County subsequent to the filing of the RO Petition (Exhibit C-5), and the County did not deny the allegation.

6. Findings of Fact CO-83-149-62 - Amended Charge

Facts were presented concerning two issues raised in the amended charge.

The Gallagher Incident January 1983

George Gallagher was vice president of Local 1 in January 1983 and held (and still holds) the position of Chief Stationary Engineer for the County. As Chief Stationary Engineer Gallagher works from 7:00 a.m. to 3:00 p.m. and is responsible for maintaining the heat and hot water and certain air conditioning systems in the County buildings. Gallagher holds a blue seal boiler license and is the foreman or leadman of approximately twelve stationary firemen who hold black seal licenses and actually operate the boilers. (T-5 pp. 19-23, 40). As foreman, Gallagher is not responsible for hiring, reviewing or evaluating stationary firemen, nor does he assign their work, arrange the shifts, nor tell them what to do, or train new stationary firemen. (T-5 pp. 26-35, 46, 51-55). He indicated that since stationary firemen are licensed they already know what to do, and he merely makes sure they are operating properly and that any repairs are properly completed.

(T-5 pp. 50, 54, 57). Gallagher does have access to a County car and truck, and is permitted to take the car home at day's end. (T-5 p. 72).

On January 5 and 6, 1983, between 3:00 and 4:30 p.m., Gallagher borrowed Mrs. Hastings' car and delivered the petitions contained in Exhibit CP-4 to certain County employees who were Local 1 shop stewards at various locations including the Mosquito Commission and the Road Department. (T-5 pp. 81-82). The petitions sought support for Local 1 rather than Local 29. Gallagher did indicate that at the Road Department the employees approached him and signed the petition. (T-5 p. 83). Once distributed, Gallagher did not collect the petitions, rather, they were returned to the union office. 32/ (T-5 p. 110).

The Oltar Issue

In 1982 Supervisor Linardi recommended Jeff Oltar for promotion. However, after a time when the promotion was not forthcoming Oltar filed a grievance with Local 1 shop steward John Battaglia in August 1982 concerning the matter (T-4 p. 18). In January 1983 Oltar questioned Battaglia about the status of the grievance and Battaglia indicated he would check with Gallagher who, in addition to being Local 1 vice president, was also grievance chairperson.

Oltar then spoke to Gallagher concerning the grievance and Gallagher indicated he lost his copy of the grievance. (T-4 pp. 21-22). One week later Oltar gave Gallagher a copy of the grievance. 33/

7. Findings of Fact CU-83-62 - Chief Stationary Engineer

George Gallagher, the Chief Stationary Engineer, testified

that he works from 7:00 a.m. to 3:00 p.m. 40 hours a week and is responsible for maintaining heat and hot water for County buildings. He is not involved in the hiring, evaluation, or training of the stationary firemen over whom he is foreman, nor does he assign their work or determine their shifts. (T-5 pp. 31-36, 46-52). He testified that he does not perform several job functions listed in his job description, Exhibit RU-3, because stationary firemen are required to perform those functions. (T-5 p. 59).

The facts show that it is Gallagher's job to make sure that the boiler systems are operating properly and providing the necessary heat and hot water to the County buildings. On an average day he travels between the various boiler rooms and observes the operation. (T-5 p. 25). If repairs are necessary he requests the necessary parts and oversees the repair of the machinery to insure proper installation. (T-5 p. 57).

County Personnel Director, Walter Babcock, testified that Gallagher is only a leadman and is not a supervisor within the meaning of the Act and is not involved in the hiring process. (T-6 pp. 122-123). He also indicated that James O'Dowd, the Director of Property Maintenance, is Gallagher's supervisor and is the individual responsible for making effective recommendations. (T-6 p. 125).

Babcock also testified that although the title of Chief Stationary Engineer had at one time been included in the blue collar unit, that said title was actually removed from that unit by agreement as early as 1974 as a way to resolve the extensive amount of overtime pay related to the title. [34/] (T-6 pp. 126-128; T-7

pp. 18-24). A review of Exhibit J-1A shows that said title is not included in the list of titles currently included in the existing blue collar unit.

8. Findings of Fact RO-83-61

The facts with respect to the issues and titles raised by Local 29 are as follows:

Part-Time Issue

Walter Babcock, County Personnel Director, testified that part-time employees who work less than 20 hours per week and holding titles included in the blue collar unit have been included in that unit and have been negotiated for by Local 1. (T-6 p. 91). The facts show that part-time employees receive, on a proportional basis, the same salary, vacation and sick days as full-time unit employees (T-6 p. 80), and, although they do not receive any health longevity, or terminal leave benefits, they do receive holidays, jury leave, funeral leave, maternal leave, military leave, personal leave and injury leave which are all benefits enumerated in Exhibit J-1A, the blue collar collective agreement. 35/ (T-6 pp. 72-78, 109-110).

The record also reveals that the instant part-time employees have a continuity of employment, and that either full dues or the agency shop fee is deducted from their salary and the money forwarded to Local 1. (T-6 p. 80, T-7 pp. 5-7, 15).

Juvenile Detention Officer and Senior Juvenile Detention Officer

These titles are currently included in J-1A under the titles of Detention Guard Children's Center, and Senior Security Guard, respectively. 36/

Individuals holding these titles work at the County Juvenile Detention Center which is a facility for incarcerating juvenile delinquents. Other than the ability to read, write and speak English, there are no specific educational requirements for these positions, and their primary function is to supervise and guard the juvenile residents in their day-to-day activities. The invididuals holding these titles wear casual civilian clothing and are not authorized to wear uniforms, badges, or to carry weapons. (T-7 pp. 47-48).

Examples of their work include transporting the residents to court, participating with residents in recreational activities, supervising housekeeping duties, as well as preventing illegal or unauthorized activity. Individuals holding these titles work a 40-hour week either from 7:00 a.m.3:00 p.m. or 3:00 p.m.11:00 p.m.

The evidence shows that the "Senior" position is merely a progression step from the Juvenile Detention Officer, and both titles have the same responsibilities.

Youth Group Worker and Senior Youth Group Worker

Individuals holding these positions are required to hold a four-year college degree with a major in sociology or psychology or related fields (Exhibits C-10 and C-11). Although the evidence shows that the degree is always required, individuals with majors in other areas have been hired. (T-7 pp. 94-96).

The responsibilities of the titles primarily involve supervising juveniles with behavioral problems (but not juvenile delinquents) under the juvenile in need of supervision program (JINS) at the Conklin Home facility. The individuals in these

titles plan, conduct and participate in individual and group programs, attempt to interest the residents in a variety of activities, and, although they are not intended to be professional counselors, they do assist residents in resolving problems by using counseling techniques. 37/ In addition, they prepare reports and keep records of their activities.

Employees in these titles fall within the County Youth Services Department and work 40 hours per week on either a 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. shift. 38/ They dress casually, and frequently take the residents to functions outside the facility.

The "Senior" position is merely a progression step from the Youth Service Worker position and has the same responsibilities.

Children's Supervisor

Individuals in this position perform a function similar to that of a traditional babysitter. They work 40 hours per week on either a 7:00 a.m. to 3:00 p.m. or 3:00 p.m. to 11:00 p.m. shift at the Conklin Home facility. They are responsible for caring for young children of which the County has temporary custody. Other than a high school diploma, there are no other educational requirements. (Exhibit C-12).

Adult Day Care Worker

Individuals in this position are responsible for caring for and interacting with senior citizens. They work 40 hours a week and attempt to engage senior citizens in social or recreational programs. There are no specific educational requirements for the position although one year experience is required. (Exhibit C-20).

Recovery Assistant (Detox Unit) and Senior Recovery Assistant (Detox Unit)

The primary responsibility of both titles is to assist in the caring for and rehabilitation of alcoholics ("clients") by acquainting clients with the dangers and problems facing alcoholics, with the nature of alcoholism as a disease, and by encouraging treatment for the disease. (Exhibits C-13 and C-14). Neither position requires more than a high school diploma, and employees in these positions wear casual clothes and work 40 hours per week on the 12:00 a.m.-8:30 a.m., 8:00 a.m.-4:30 p.m., or 4:00 p.m.-12:30 a.m. shift. (T-8 pp. 17, 20). Although the "Senior" position is specifically listed in the blue collar contract, the Recovery Assistant title is not specifically listed in any contract.

The Senior Recovery Assistant title is a progression step above the Recovery Assistant title. The Coordinator of the detoxification unit, William Gallagher, does consider recommendations by the "Senior" with respect to hiring or discipline of Recovery Assistants. (T-8 pp. 21-26). However, Gallagher gives equal weight to the opinions and positions of the Recovery Assistants, (T-8 pp. 26, 53), and ultimately reaches his own conclusions regarding hiring and discipline. [39/] In addition, Gallagher does not call the "Seniors" into hiring interviews on every occasion (T-8 p. 40), and merely calls them in on a consultation basis. (T-8 p. 21).

Supervising Recovery Assistant (Detox Unit)

The facts show that this title is not and has not been included in the blue collar unit, but is actually included in the white collar unit set forth in Exhibit J-2A. [40/]

In the hierarchy of the detoxification unit this title is above the Senior Recovery Assistant and just below the Coordinator. The employee holding this title is responsible for overseeing the work of the Recovery Assistants and Seniors as well as the detoxification program itself.

Neither the County nor Local 1 filed RO or CU petitions alleging that this title should be removed from the white collar unit and placed in the blue collar unit.

Principal Engineering Aide and Principal Engineering Aide and Construction Inspector

Employees holding these positions are leadmen on a three-man surveying team which surveys property, checks the grading of slopes and embankments, and stakes out roadways and drainage structures by running center lines. Although these employees do some paperwork and office work, they primarily work in the field wearing work clothes. (T-8 p. 88). They work 40 hours per week, 8:00 a.m. to 4:30 p.m. with a half-hour lunch. Although the Principal Engineering Aide title requires a high school dimploma plus two years' experience (Exhibit C-16), the other title only requires two years' experience (Exhibit C-17).

Employees in both titles prepare reports for Principal Engineers, and participate with those Engineers in formulating necessary calculations (T-8 p. 101). However, contrary to the wording in both job descriptions, neither title is responsible for drafting or tracing work. (T-8 p. 93).

In addition to the above duties the Principal Engineering Aide and Construction Inspector is responsible for inspecting build-

ings and other types of construction work to insure that the proper materials are used and that the particular project was built according to specifications.

Senior Construction Inspector

The employee in this position takes the lead over other inspectors in inspecting buildings and other construction to insure compliance with specifications and material. He works 40 hours per week, 8:00 a.m.-4:30 p.m., and is required to have six years of experience or a college degree or engineers or architect license. (Exhibit C-24). This employee works out of an office which is a mobile home near the construction site. He occasionally wears a tie and jacket while performing his work, and he works directly with the architect and with blueprints. (T-8 p. 146).

Storekeeper and Senior Storekeeper

Employees in these positions work in the County storeroom checking deliveries and shipments, checking inventory, unpacking merchandise, and loading and unloading material from storeroom shelves. (Exhibit C-18). There are no educational requirements for the position, the employees wear work clothes, and they work 40 hours per week 8:00 a.m. to 4:30 p.m.

The "Senior" position is merely a progression step above Storekeeper. 41/

Senior Stock Clerk

This position is not included in J-1A, rather, it is specifically included in both J-2A and C-7 (the white collar unit). Neither the County nor Local 1 filed any petition seeking to include this title in the blue collar unit.

Photographer

The individual in this position does all the photographic work for the County police and for the Identification Bureau in the County Jail. He photographs individuals who are arrested by County Police and detained in the County Jail, as well as taking photographs of crime scenes and victims of crime. He develops all of his own photographs and orders all of the necessary equipment and chemicals for that process. (Exhibit C-21).

The employee in this position works 40 hours per week and is required to have one-year photographic experience.

Communications Technician

The employee in this position maintains and repairs police radios and is required to have an FCC radio license (Exhibit C-23). He wears work clothes and works in the police maintenance garage 40 hours a week from 8:00 a.m.-4:30 p.m.

Communications Officer

The employee in this position performs a function similar to that of a civilian police dispatcher. She works in the Identification Bureau of the County Sheriffs office receiving and disseminating information via the police communications systems including radio dispatching, use of a teletype machine, and use of a central communications computer to hook up with NCIC. (Exhibit C-22). This employee wears casual civilian clothes, and works 40 hours a week on a shift schedule which may include Saturday or Sunday. Although a high school diploma is required for this position, work experience may be substituted for that requirement.

ANALYSIS

CO-83-96-55 and CO-83-100-56

Both the County and Local 1 committed numerous violations of the Act by unlawfully interfering with the organizational rights of certain employees, and the organizational rights of Local 29. The County violated N.J.S.A. 34:13A-5.4(a)(1) and (2), and Local 1 violated N.J.S.A. 34:13A-5.4(b)(1) as set forth in the following incidents.

The Gangemi/Sipala Incidents

On July 6, 1982 Gangemi was required to attend a meeting on work time by his supervisor, Frank Linardi, an agent of the County, at which Local 1 President, Agnita Hastings, and others were present. Although Hastings argued that said meeting was intended merely to ascertain whether Gangemi was distributing authorization and designation (A & D) cards for Local 29 on work time, the undersigned does not credit that explanation for two reasons. First, when Hastings initially spoke to Linardi she said she wanted to know whether Gangemi "was actually getting people to sign cards for another union." She did not ask if it was on work time during that conversation. Second, if Hastings' real intent had been to find out "when" cards were signed, both she and Linardi should have ended the meeting with Gangemi as soon as he indicated, early in the meeting, that the cards were signed before or after but not during work time.

Instead, and despite Gangemi's explanation as to when cards were signed, both Hastings and Linardi thereafter made comments to Gangemi unlawfully misrepresenting the status of the law

regarding the distribution and collection of cards which had the effect of unlawfully coercing and harassing him, and they threatened him with police action and job loss for his activity. Given the captive nature of the meeting for Gangemi, and given the remarks by Hastings and Linardi, the undersigned concludes that the very nature of the meeting was an intent by Hastings, and acquiescence by Linardi, to interrogate Gangemi regarding his union activity on behalf of Local 29.

The law is well settled, both before this Commission and particularly in the private sector, that it is a violation of the Act (and the N.L.R.A.) for an employer or a rival union to interrogate employees regarding their union activity and for threatening job loss for distributing A & D cards. See In re Township of Jackson, P.E.R.C. No. 81-76, 7 NJPER 31 (¶12013 1980); In re Cape May City Bd/Ed, P.E.R.C. No. 80-37, 5 NJPER 411 (¶10214 1979); Sambo's Restaurant, Inc., 247 NLRB No. 122, 103 LRRM 1181 (1980); Operating Engineers and Local 965 (Elcon Pipeliners), 247 NLRB 203, 103 LRRM 1167 (1980); Great Plains Beef Co., 241 NLRB 948, 101 LRRM 1128 (1979); Tennessee Shell Co. Inc., 212 NLRB No. 24, 86 LRRM 1704 (1974); Loray Corp., 184 NLRB No. 57, 74 LRRM 1513 (1970); and Priced-Less Discount Foods, Inc., 157 NLRB 1143, 61 LRRM 1505 (1966), enforced 405 F.2d 67, 70 LRRM 2007 (6th Cir. 1968).

Furthermore, the particular remarks by Hastings and Linardi to Gangemi were violations of the Act even if the meeting itself was lawfully based. Both Hastings and Linardi told Gangemi that pursuant to PERC rules, and the contract, it was illegal to distribute and solicit A & D cards prior to September 1, 1982.

Although it was primarily Hastings who stated this alleged "PERC rule," Linardi did not attempt to independently ascertain whether such a rule existed, and he in fact reiterated the rule to Gangemi, and at the very least, he gave the impression that he agreed with Hastings. Thus, he is equally responsible for misrepresenting such a rule to Gangemi.

In fact, no such rule exists. Hastings may have been confused about N.J.A.C. 19:11-2.8(c)(2) which designates the 30-day period between 90 and 120 days prior to the expiration of a contract as the appropriate time to file a representation petition. However, N.J.A.C. 19:10-1.1 clearly provides that A & D cards which are signed and dated within six months prior to the filing of a petition are normally accepted as proof of a showing of interest. Since the earliest a petition could have been filed in this matter was September 2, 1982, then Local 29 had the right to begin soliciting signatures as early as March 2, 1982. Nevertheless, without checking further as to the law regarding A & D cards, Hastings and Linardi told Gangemi it was illegal to solicit cards at that time, thereby materially misrepresenting the status of the law.

Those remarks alone had a devastating effect on Gangemi and on his right to solicit cards, and on the organizational rights of Local 29, because as a direct result of those remarks, Gangemi believed it was illegal to pass out cards since he believed Hastings was correct as to the rule. Gangemi subsequently did not solicit any more cards, and he in fact destroyed the cards he had collected.

Hastings went even further than misrepresenting the law. She threatened Gangemi with suspension and arrest for his actions.

Gangemi had every right to assume that Hastings would attempt to carry out that threat in violation of 34:13A-5.4(b)(1) of the Act. See Washington Beef Producers, 264 NLRB No. 155, 112 LRRM 1268 (1982); Operating Engineers Local 965, supra; Steelworkers Local 14997 (LaPorte Plastics Corp.), 244 NLRB 492, 102 LRRM 1164 (1979); and Great Plains Beef Co., supra.

In addition, Linardi also subsequently threatened Gangemi with discipline for soliciting cards by telling him, "he could get in trouble for doing it," thereby violating 34:13A-5.4(a)(1) of the Act. Steelworkers Local 14997, supra; Tennessee Shell Co., supra; and Loray Corp., supra.

All of these remarks directly affected Gangemi's decision not to solicit any more cards for Local 29, and to destroy the 67 cards he had collected. Based upon Hastings' and Linardi's remarks, Gangemi thought passing out cards was illegal, he was afraid he would be arrested and would go to jail for doing it, and he was afraid other employees would get in trouble for signing the cards. As a result, Gangemi, acting out of fear for his job, destroyed the cards at his first opportunity. The argument advanced by the County and Local 1 that they were not responsible for the destruction of the cards because Gangemi did not contact Wagner prior to destroying the cards, and because neither Linardi nor Hastings literally told him to destroy the cards, is without merit. Gangemi was acting out of fear and emotion generated by Linardi and Hastings and he reacted spontaneously to destroy the evidence of what he was made to believe was illegal conduct, soliciting cards.

The Administrative Law Judge's (ALJ) findings adopted by

the NLRB (Board) in Steelworkers Local 14997, supra, provides excellent support for the findings herein. In that case employees were circulating a petition to remove the union president, and the president told the employees that, "anyone who signed the petition would probably get in trouble and possibly lose her job." With regard to that remark the Board (ALJ) held:

> Although [the president] did not say that she personally would take action to cause trouble or job loss for petition signers, I conclude that the fair import of her remarks was that such consequences might befall those who signed the removal petition, and that her stature as local union president and a subject of the petition lent considerable impact to her statement. Whether or not she meant that the company might take such action independently of union suggestion is irrelevant because she did not so state and there is no evidence that [the employees] so understood it. There was no burden on the employees to ponder or investigate precisely what [the president] meant by what she said. The statement on its face warned them of possible retaliation for engaging in the intraunion activity...I am persuaded that employees hearing [the president's] statement could and would reasonably conclude that retaliation for petition signing would be set in motion by those against whom the petition was directed. [The president's] comment was, in my view, an implied threat of reprisal calculated to discourage signing the petition, and restraining and coercing employees in the exercise of their rights....244 NLRB at 493.

As a result of the above language the undersigned finds that Gangemi had the right to conclude that Hastings and Linardi would carry out the threats made to him at the July meeting, and that those threats were calculated to discourage Gangemi in the exercise of the rights guaranteed to him by the Act. 42/

Based upon the above discussion the undersigned finds that the County, through its supervisor Linardi, violated subsection 5.4 (a)(1) of the Act, and Local 1, through its President Hastings, violated subsection 5.4(b)(1) of the Act, by interrogating, inter-

fering with, harassing, coercing, and threatening Thomas Gangemi in the exercise of the rights guaranteed to him by the Act, and by materially misrepresenting the status of the law, and by causing the destruction of 67 A & D cards for Local 29. In addition, the County, through Linardi, violated subsection 5.4(a)(2) of the Act by interfering with the formation of an employee organization by Local 29, and by giving Gangemi the impression that the County supported the actions of Local 1 and its President Hastings. 43/

The result with respect to Sipala's meeting with Linardi and Hastings is slightly different. Sipala was not required nor even requested to appear at the meeting, rather, he voluntarily requested to speak with Linardi and Hastings. Moreover, once in the meeting, it was Sipala who initially questioned Linardi and Hastings rather than the reverse. Consequently, the undersigned does not find that either the County or Local 1 unlawfully interrogated or threatened Sipala. However, since Hastings convinced Sipala that it was illegal to distribute Local 29 A & D cards whether on work time or not prior to September 1, and that those cards already collected were null and void, she materially misrepresented the law to him which had the effect of unlawfully interfering with and coercing Sipala in his right to distribute, sign and collect such cards. Thus, Local 1, and Hastings, once again violated subsection 5.4(b)(1) of the Act.

Similarly, the County violated subsection 5.4(a)(1) and (2) of the Act regarding the Sipala incident because Linardi was present during that meeting and did not effectively nullify or divorce the County from the remarks made by Hastings to Sipala.

Local 1 Meeting July 6, 1982

For the same reasons set forth above the County and Local 1 violated the Act regarding this incident. Local 1 violated 5.4(b)(1)of the Act because Hastings interfered with and coerced a group of employees by materially misrepresenting to them that the Local 29 cards were illegal, void, and could not be signed before September 1. Pursuant to Steelworkers, supra, it was reasonable for the employees to believe Hastings and to therefore cease any activity on behalf of Local 29.

The County violated 5.4(a)(1) and (2) of the Act because it interfered with the employees and with the formation of an employee organization and because it assisted Local 1 by permitting, or at the very least because it acquiesced in permitting, Hastings to hold that meeting and make those remarks while the employees were on work time. Since the employees were on work time they were a captive audience , and pursuant to the cases cited hereinabove, they had every right to believe that the County authorized, agreed with, and supported Hastings' remarks.

Subsequent Harassment of Gangemi

Since there was no evidence presented to support the allegation that Gangemi was harassed by either or both the County or Local 1 in August or September 1982, that element of the Charge(s) is dismissed.

The DiPaola Meeting

The meeting between DiPaola, Wagner, Forbes and Hastings began by Hastings informing DiPaola about what she believed to be the "30 day rule" regarding the obtaining of A & D cards and the

filing of petitions, and she also told DiPaola that she assumed that the County would find that Local 29 had no right to be inside any building to solicit employee interest. 44/ DiPaola agreed that Local 29 had no right to be in County buildings or talk to County employees. 45/ As a result of these actions both the County, through DiPaola, and Local 1, through Hastings, once again violated the Act.

Local 1, through Hastings, violated 5.4(b)(1) by interfering with the right of Local 29 to solicit employee interest and talk to employees during the open period, by materially misrepresenting the law to DiPaola which had the desired effect of preventing Local 29's access to the employees. The County, through DiPaola, violated 5.4 (a)(1) and (2) of the Act by preventing Local 29 reasonable access to its employees -- particularly during the open period for filing representation petitions which began on September 2, 1982. In so doing the County unlawfully interfered with Local 29's organizational rights, and it also unlawfully assisted Local 1 in its efforts to prevent access to Local 29. In effect, DiPaola unlawfully established an on the spot broad no solicitation-no access rule.

Hastings made the same mistake in this and the Gangemi incidents. She had the right in the Gangemi incident, for example, to ask the County to ascertain whether cards were being signed on work time, and she had the right in the DiPaola incident to ascertain County policy on access. However, in both incidents Hastings went beyond a mere ascertaining of information, rather, she took the offensive and persuaded the County to unlawfully restrict

access to Local 29 and to threaten Gangemi.

The County also made the same mistake twice. Rather than check the status of the PERC law with its counsel before making any decisions and comments, both Linardi and DiPaola automatically accepted Hastings' version of the law and acted upon it. That was their mistake. Even if neither Linardi nor DiPaola actually intended to violate the Act by their comments, the import of their remarks certainly had the effect of interfering with, coercing, harassing and unlawfully discouraging Local 29 and several employees in the exercise of their organizational rights. The Commission and the courts have held that intent is not necessary to establish a violation of 5.4(a)(1) of the Act. See In re N.J. College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1979); In re N.J. Sports & Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Textile Workers v. Darlington Mfg. Co., 380 U.S. 263, 58 LRRM 2657 (1965); and, Soule Glass and Glazing Co. v. NLRB, 107 LRRM 2781 (5th Cir. 1981). 46/

The legality of broad no solicitation rules, which, in effect, is what DiPaola created, and general access rules, has been extensively litigated in the private sector, and by certain states in the public sector, but has not been extensively litigated before this Commission.

Beginning with Republic Aviation Corp. v. NLRB, 324 U.S. 793, 16 LRRM 620 (1945), the U.S. Supreme Court held that rules prohibiting employees from soliciting employee interest in non-work areas during non-work time were invalid. It established that employees could solicit other employees during lunch time and other break times when it did not disrupt the work place. Subsequently

in NLRB v. Babcock & Wilcox, 351 U.S. 105, 38 LRRM 2001 (1956), the Supreme Court held that a private employer could prohibit access to its premises by non-employee organizers as long as other reasonable channels of communication to the employees were available. In the facts of that case the Court prohibited distribution of union literature in the company parking lot because other means of communication -- contacting employees at their homes -- existed. Although it restricted access in that case, the Court went on to indicate that private employers could not always totally prohibit non-employees from contacting employees on the employers' premises. The Court held:

> This is not a problem of always open or always closed doors for union organization on company property....Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other. The employer may not affirmatively interfere with organization; the union may not always insist that the employer aid organization. But when the accessibility of employees makes ineffective the reasonable attempts by non-employees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize. 38 LRRM at 2004.

In a recent decision, Montgomery Ward & Co. v. NLRB, 111 LRRM 3021 (7th Cir. 1982), the court applied the Babcock & Wilcox test as to whether a no-solicitation rule applied to non-employee organizers was invalid. That test required a showing either of discrimination or of difficulty of alternative union access to invalidate such a rule. The Court in Montgomery Ward did find that the employer violated the law because it discriminated against non-employee union organizers by enforcing a rule preventing such non-

employees from entering an otherwise public cafeteria.

The facts of that case show that the Company prevented non-employee organizers from meeting with employees during non-work time in a cafeteria which was open to the public. The Court found that Montgomery Ward's rule was overbroad, partly because it discriminated against non-employees' access to non-working areas open to the public, and partly because there was no showing that the union's presence in the cafeteria prevented or disrupted business operations. 47/ The Court in Montgomery Ward stated its own test:

> In each case the Board [NLRB] must strike the appropriate balance between organizational and employer rights in the particular industry to which each no solicitation rule is applicable....111 LRRM at 3025.

Public sector labor relations agencies in New York, Pennsylvania and California have also recognized the right of access to employees for organizational purposes. See County of Erie, 13 PERB 3167 (¶3105 (NY) 1980); In re Montgomery County Geriatric & Rehabilitation Center, 13 PPER 461 (¶13242 (PA) 1982); and, San Ramon Valley Unified School Dist., 5 NPER 175 (05-13184 (CA) 1982). The Montgomery County case involved the right of solicitation for employees similar to Republic Aviation, supra, and the Erie County and San Ramon Valley matters involved rights of non-employee access.

This Commission has not had the opportunity to directly consider the validity of no solicitation rules, but it has formulated a policy of requiring equal access to competing organizations for organizational purposes during the open period. In re Union County Reg. Bd/Ed, P.E.R.C. No. 76-17, 2 NJPER 50 (1976); and, In re Elizabeth Bd/Ed, P.E.R.C. No. 83-66, 9 NJPER 21 (¶14010 1982).

In Union County the Commission endorsed the legality of exclusive access clauses which give an incumbent union exclusive access to an employer's bulletin boards and internal mail facilities. However, the Commission in that case held that despite the existence of an exclusivity clause, once a timely representation petition is filed, or during an open period when such a petition could be filed, a public employer could not treat employee organizations differently in the competition for a unit of employees. The Commission further held that during this time period if the incumbent organization were permitted access to the facilities for communication with the employees, the employer must permit the challenging organization the same access. The Commission held:

> It cannot be denied, however, that the exclusive use provisions do grant the incumbent Associations an advantage over any challenging organization in the ability to keep the employees apprised of their activities. During the insulated period of a contract this limited advantage is consistent with the interests already discussed. However, once a timely representation petition is filed or during an open period when such a petition could be filed, the interests of the individual employees in being able to freely choose their representative will outweigh the need for stability. If an incumbent is permitted the use of the employer's facilities for communication with the employees, the employer will have to make provisions to allow the challenging group access to the facilities. The potential for abuse in the exclusive use of the facilities is obviously enhanced during such periods. Additionally, the requirement of strict neutrality by the employer during such periods shifts the balance against exclusivity. 2 NJPER at 53.

At the very minimum, Union County establishes that during the open period Local 29 had every right to access to the employees on an equal basis with Local 1. When combining the Babcock & Wilcox and Montgomery Ward decisions with Union County it becomes apparent

that the County, through DiPaola, violated the Act by expressing a broad no solicitation rule against Local 29, particularly during the open period.

The U.S. Supreme Court in a recent decision, Perry Education Assn. v. Perry Local Educators' Assn., ____ U.S. ____, 112 LRRM 2766 (1983), approvingly cited Union County (at note 11) in upholding the constitutionality of exclusive access clauses in public sector labor relations. In addition, that Court, in somewhat of a parallel to Babcock & Wilcox, discussed the right of access to public property. The Court held that the right of access to public property depends upon the character of the property in question. Where the public property is open and available to the public for communication it cannot be unreasonably restricted. The Court held:

> In these quintessential public forums, the government may not prohibit all communication activity. For the state to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end. The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication. 112 LRRM at 2769.

However, the Court added that not all public property is available for communication purposes.

> Public property which is not by tradition or designation a forum for public communication is governed by different standards....[T]he First Amendment does not guarantee access to property simply because it is owned or controlled by the government....[T]he state, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. 112 LRRM at 2770.

The Court, in upholding the denial of access to certain non-public areas of otherwise public property, considered the reasonableness of the restrictions and the availability of other forms of access to communication on the public property.

When Perry is evaluated with Union County and Montgomery Ward, it becomes obvious that the County violated Local 29's access rights in the DiPaola incident as well as several incidents discussed below. While meeting with DiPaula, Wagner merely requested the right to talk to employees during their lunch time (or break time) in the cafeteria. The evidence shows that the Administration Building and the cafeteria are open to the public, and there was no compelling reason advanced by the County to deny Wagner's request. Thus, the County's no soliciation rule conceived by DiPaola on the spot was being applied to Local 29 discriminatorily in violation of Montgomery Ward and Perry, and was overbroad because it did not appear to provide any other means of access to the employees, and because it was designed to protect Local 1.

The undersigned believes that this case presents the perfect opportunity for the Commission to broaden its holding in Union County by enunciating a policy favoring solicitation for organizational purposes (including solicitation for A & D cards) by employees and non-employees both before and during the open period. Pursuant to the cases cited herinabove, the undersigned recommends a policy permitting solicitation for organizational purposes by employees and non-employees during non-work time in non-work areas before and during the open period. 48/ This does not mean, however, that prior to the open period a challenging organization will be permitted

access to mailboxes or bulletin boards which are covered by an exclusive access clause. It only means that employee or non-employee organizers should have the right to meet with and solicit support from employees during non-work times and places.

Van Saun Park Incident

Since the undersigned has already determined that Officer O'Grady arrived at the Park and requested a permit from Wagner prior to Hastings asking him to remove the people, the County did not violate the Act by removing Wagner and the group of employees. That aspect of the Charge against the County should be dismissed.

The undersigned finds that the only reason O'Grady removed the people from the Park was because they had not secured a permit. There was no showing that the permit requirement was applied discriminatorily, and a permit appears to be a reasonable requirement pursuant to Perry. Although Local 29 argued that a clerk at the permit office told them a permit was unnecessary, the undersigned finds that excuse unacceptable. There was no showing that the clerk had the authority to waive the permit.

Dismissing this aspect of the Charge against the County, however, should not be interpreted as a finding that Local 29 did not have a right to conduct such an organizational meeting in the Park. Quite the contrary. The Supreme Court in Perry made it clear that parks are a public forum.

> In places which by long tradition or by government fiat have been devoted to assembly and debate, the rights of the state to limit expressive activity are sharply circumscribed. At one end of the spectrum are streets and parks which "have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 515 (1939) at 112 LRRM pp. 2769-2770.

The undersigned is merely finding that it was not violative of the Act for O'Grady to remove Local 29 from the Park because it had no permit. If Local 29 did have a permit it would have every right to use the Park for the meeting it intended to conduct.

Despite dismissing this aspect of the Charge as to the County, the undersigned finds that Local 1, through Hastings' comments at the Park, did violate 5.4(b)(1) of the Act. Her remarks to Wagner and the employees gathered there tended to interfere with, harass, and discourage the employees in the exercise of their right to meet with Local 29. Although it was not appropriate for Local 29 to use the Park at that time because they had no permit, it was not "illegal" for the employees to assemble with Local 29, and the undersigned believes that the employees could certainly have believed from her remarks that it was illegal to meet with Local 29. See Steelworkers, supra.

Memo About the County Parks

The memo posted by the County, or its agents, in County parks was a violation of 5.4(a)(1) and (2) of the Act for two reasons. First, the memo was posted during the open period and denied to Local 29 equal access to the parks and use of park bulletin boards, and favored Local 1, all of which is a clear violation of the Union County equal access rule. Second, the undersigned finds that pursuant to Perry and Montgomery Ward, an attempt to prevent Local 29 from using the parks, which are public forums, was discriminatorily based, and violates First Amendment rights. It would therefore be illegal to prevent Local 29 from using the parks even prior to the open period once it had complied with reasonable permit requirements. 49/

Since there was no showing that Local 1 or its agents were responsible for the memo, no violation of the Act was committed by Local 1 with respect thereto.

Solicitation and Organizing in the County Parking Lots

The undersigned finds that neither the County nor Local 1 violated the Act concerning the removal of Local 29 from County parking lots on September 23 or October 4, 1982. Regarding the County, the uncontradicted evidence by DiPaola was that solicitation of any kind -- by anyone -- in the parking lots was prohibited, partly because the lots were dangerous, and, partly to prevent a disruption in the flow of traffic. Based upon that evidence the undersigned finds that the parking lots do not meet the "public forum" definition discussed in Perry, and that pursuant to that decision, the County had a compelling and rational interest in preventing solicitation in those lots. 50/ In addition, since solicitation in the lots is denied to all, the rule does not appear to be discriminatorily based.

The evidence for the need for the no-solicitation rule in the lots comes from this very case. The facts show that Local 29 representatives or supporters interfered with the flow of traffic on both September 23 and October 4 by stopping cars at the entrances thereby blocking the ingress to and egress from the lots. Blocking the ingress to and egress from parking lots is not protected activity. 51/ Although Local 29 representative Kraemer testified that cars were only pausing, or momentarily stopping, the undersigned finds that even that conduct interfered with the flow of traffic and is not protected.

Regarding Local 1, there was no evidence that Hastings unlawfully interfered with Sergeant Palodino's intent to remove Local 29 supporters from the lots or that she made comments having a coercive effect on any employees.

The undersigned's recommendation to dismiss this aspect of the Charge, however, is at least partially based upon the availability to Local 29 of alternative means of communication to the employees. Those alternatives may include meetings in the County parks, use of cafeterias or lunch areas in the County facilities which are available to the public, and the ability to solicit employees going to and from work at the entrances and exits to County buildings and facilities. 52/ In addition, Local 29 has the right, pursuant to Union County (or should have had the right), to use bulletin boards and other communication facilities available to Local 1 during the open period.

Overpeck Golf Course Incident

For many of the reasons set forth hereinabove, the County, through its agent Geary, violated 5.4(a)(1) of the Act by preventing Wagner from meeting with employees during their lunch time, and from preventing him from posting literature on the bulletin board. Wagner's request was made during the open period, consequently, Geary's actions violated Union County. In addition, Wagner had the right to talk to the employees on their lunch hour. See San Ramon Valley, supra.

The Mosquito Commission Incidents

The facts show that on September 23, 1982 Kraemer and certain Local 29 supporters appeared at and inside the Mosquito

Building prior to the end of the workday. The evidence further shows that unauthorized personnel were restricted from that facility because of the presence of hazardous chemicals and equipment. Given those facts the undersigned finds that when Patrolman Kohl removed Local 29 supporters from the facility he did not violate the Act. First, Local 29 had no right to attempt to solicit employees during work time. Second, the County had a compelling interest to keep unauthorized personnel out of and reasonably away from that facility. However, the undersigned believes it was a violation of 5.4(a)(1) for the County to require Local 29 to relocate approximately one-quarter mile away from the Mosquito Building. As the Court in Babcock & Wilcox and Perry indicated, a balancing of the employer's interest and the union organizational rights must be made to determine the appropriate action.

The undersigned believes that Local 29 could have been closer to the building (about 300 feet away) and the County's interests would still have been protected.

There is a similar result in the September 30 incident. On that day Wagner was about 100 to 150 yards from the Mosquito Building when Kohl required him to move totally out of the area. It was not a violation of the Act for Kohl to prevent Wagner from soliciting the employees in question because he was soliciting employees while they were working (driving trucks), but it was a 5.4(a)(1) violation to prevent him from staying at that location where he may have been able to solicit employees going to and from work. 53/

Police Maintenance Garage Incident

The undersigned finds that Local 1, through its agent,

shop steward Robbie Hale, violated 5.4(b)(1) of the Act by preventing Local 29 from meeting with the employees during non-work time. Hale was acting as an agent of Local 1 in that he was following Hastings' orders to him when he disrupted Local 29's meeting and threatened Kraemer which had the effect of preventing Local 29 from being able to meet with the employees. Hale's remarks clearly had the effect of discouraging the employees in the exercise of their right to meet with Local 29 representatives. If Hale believed the meeting was unauthorized, he should have checked with management.

Road Department Incident

For the reasons and cases set forth above the County violated 5.4(a)(1) of the Act by denying Local 29 access to the employees during non-work times. 54/

Department of Public Works

Absent proof that the County denied access at this location the allegation is dismissed.

Juvenile Detention Center and Conklin Home

Under the Perry rationale the County has every right to restrict non-employee access to these facilities. The Juvenile Detention Center is a jail or holding facility for juvenile delinquents, and the Conklin Home, although not a detention facility, is not readily open to the public. The County has reasonable and compelling interests in keeping non-employees out of both of these facilities. Consequently, it was not a violation of the Act for the County to restrict Local 29's non-employee access to those buildings. However, the County's right to keep non-employees out

of these facilities must be balanced against Local 29's Union County access rights to mailboxes and bulletin boards in those facilities. If Local 1 is permitted to use the mailboxes and bulletin boards for organizational and election campaign purposes during the open period, then Local 29 must have the opportunity to use those facilities for the same purpose. 55/

Although non-employees may not be permitted in these facilities, they should be allowed to solicit employees going to and from work at the entrance to the respective buildings. The facts show that Wagner was ordered to leave the entrance area at one time, but that evidence is insufficient to establish a violation of the Act because the people in question were not identified.

Finally, Local 1 did not violate the Act when its shop steward(s) caused the receptionist(s) to prevent non-employee access to those facilities since those facilities are closed to the general public.

Department of Engineering Incident

There is insufficient independent evidence to prove that an official agent of the County unlawfully denied access to Local 29 at this facility. Kraemer's testimony is insufficient to establish that an agent of the County denied access to Local 29 at this location.

Mailboxes, Bulletin Boards, List

Pursuant to Union County it was a violation of 5.4(a)(1) for the County to restrict Local 29's access to bulletin boards, and to refuse to provide Local 29 with a list of employees during the open period. However, the evidence did not establish that

Local 29 was unlawfully denied use of any internal mailboxes during the open period.

Pattern Violations

In addition to -- but based upon -- the above specific violations by both the County and Local 1, the undersigned finds that the County violated 5.4(a)(1) and (2) and Local 1 violated 5.4(b)(1) of the Act by engaging in a pattern of conduct calculated to interfere with Local 29's organizational efforts, and discouraging the employees in the exercise of their rights on behalf of Local 29. However, the undersigned does not believe that the County or Local 1 "conspired" to commit any of the acts found to be violations herein.

CO-83-149-62

Negotiations During the Pendency of the Petition

The facts are undisputed that Local 1 and the County continued to negotiate over and in fact reached a new blue collar collective agreement after the filing of RO-83-61 herein. Hearing Examiner Alan Howe enjoined the implementation of that agreement on January 7, 1983 [56/] in application of the Commission's policy established in In re Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (1981), which requires an employer to remain neutral in the face of a question concerning representation (QCR).

In Middlesex County the employer, just as in the instant case, negotiated a new agreement with the incumbent union during the pendency of a valid petition raising a QCR. The Commission found that the employer's actions violated 5.4(a)(1) and (2) of the Act and it said:

> Whenever an employee must decide between two rival unions in an election process, it is essential that that process not be marred by any behavior having a substantial potential to disrupt an employee's ability to clearly and objectively make an assessment as to choice of representation. 7 NJPER at 267.

The Commission also held that:

> An employer facilitates the chances for one labor organization to become the majority representative of the employees over another, by recognizing and treating that organization as such.... It is very possible that an employee could be swayed by the fact that his employer had already executed an agreement with one of the organizations currently running for election, to the detriment of the rival union. 7 NJPER at 267.

The Middlesex County decision was established in accordance with basic labor law principles formulated by the NLRB in Midwest Piping Co. Inc., 63 NLRB 1060, 17 LRRM 40 (1945), as modified by Shea Chemical Corp., 121 NLRB 1027, 42 LRRM 1486 (1958). In Midwest Piping it was found to be a violation for an employer to recognize one of two or more competing unions after a representation petition had been filed, and in Shea Chemical it was found to be a violation for an employer to negotiate an agreement with an incumbent union until after a valid QCR had been resolved. In adopting the Shea Chemical policy the Commission, in Middlesex County, required a finding that "a real question concerning representation" existed in order to prevent negotiations between the employer and the incumbent union. 57/

The undersigned is satisfied that the instant RO Petition meets the Middlesex County "real QCR" test as evidenced, at least in part, by the unlawful actions of the County and Local 1 to

diminish Local 29's organizational efforts. Therefore, the County did violate 5.4(a)(1) and (2) of the Act by negotiating and reaching a new blue collar agreement with Local 1. However, the County and Local 1 argue that Middlesex County should not be applied, and in fact should be reversed, because the NLRB, in a split decision in RCA Del Caribe, Inc., 262 NLRB No. 116, 110 LRRM 1369 (1982), reversed Midwest Piping and Shea Chemical. 58/

The majority in RCA enhanced the pre-existing doctrine of giving the incumbent union the presumption of majority status thereby affording it an advantage over a challenging organization. The Board in that case further held that employer neutrality would be enhanced by requiring the employer to continue negotiating with the incumbent union because it would preserve the status quo. 59/

In strongly worded dissents to RCA, however, Chairman Van DeWater and Member Jenkins argued that the Midwest Piping and Shea Chemical policy should continue. Van DeWater, for example, argued that the Act (NLRA) does not immunize an incumbent from challenges to its majority status, and that to require an employer and an incumbent union to negotiate in the face of a QCR tends to lock employees into a situation which they would otherwise have a right to change. He also relied upon U.S. Supreme Court language which held that:

> Once an employer has conferred recognition on a particular organization it has a marked advantage over any other in securing the adherence of employees, and hence in preventing the recognition of any other. N.L.R.B. v. Pennsylvania Greyhound Lines, Inc., 303 U.S. 261, 267, 2 LRRM 599 (1938), at 110 LRRM p. 1372. 60/

Member Jenkins in a direct attack to RCA argued:

> This new policy will have the effect of converting a representation election into a ratification vote, and, instead of enhancing stability of collective bargaining, as the majority argues, I believe it will merely enlarge employers' potential for influencing such elections, exploiting the differing self-interests of unions and employees and dictating the terms of such pre-election collective bargaining agreements. 110 LRRM at 1373.

It has long been the policy in New Jersey that the Commission will look to NLRB decisions, as well as decisions from other State labor agencies, in determining its own policies. Lullo v. Int'l Assoc. of Firefighters, 55 N.J. 409 (1970); and, Galloway Twp. Bd/Ed v. Galloway Twp. Assoc. Ed. Sec., 78 N.J. 1, 9 (1978). However, neither our Legislature nor our Supreme Court have required that we follow NLRB policy.

The undersigned has considered the RCA holding as well as the holding in Middlesex County and strongly recommends that the RCA doctrine be rejected and that the policy enunciated in Middlesex County be reconfirmed. RCA is bad law. It destroys rather than enhances the requirement for employer neutrality in the representation setting by, in part, giving the employees the impression that it favors the incumbent union, and, potentially, by placing the challenging union in the position of competing against a new collective agreement which could be intentionally structured to give the incumbent union the advantage.

The instant case represents the perfect example. Had the County complied with Middlesex County the employees would not have been expecting any particular economic settlement. However, by reaching an agreement with Local 1 which provides for a reasonable economic package, Local 29 is placed at a disadvantage because

it must now campaign against what is a known and expected quantity to the employees.

Moreover, the Board's argument in RCA that the incumbent union is entitled to an "advantage," is absurd. Once a valid and timely petition is filed the unions should be treated equally. That was the very intent of Union County, supra. In fact, the incumbent union is already provided with an advantage during the time known as the insulated period. That is the 90-day period (60 days in the private sector) prior to the expiration of an existing agreement and becomes operable if no valid petition is filed within the 30-day period before the beginning of the 90-day period. The insultated period gives the incumbent union the advantage of trying to reach a new agreement during a time which is free from the filing of petitions. But if a valid timely petition is filed, then the insulated period will not be operable and the employer must treat all labor organizations equally.

If the Commission rejects RCA it will not be the first time a public sector agency has rejected that decision. In Chartiers-Houston School District, 14 PPER 122 (¶14055 1983), the Pennsylvania Labor Relations Board (PLRB) rejected RCA and reconfirmed its prior holding in Commonwealth of Pennsylvania (Pa. Liquor Control Board), 10 PPER (¶10031 1979) wherein it established that an unfair practice is committed if an employer continued to negotiate with an incumbent union during the pendency of a QCR. In Chartiers-Houston the PLRB held:

> To permit continued bargaining between the public employer and one of two rival unions after a valid petition for representation has been filed might well be interpreted by the employees as indicating

> employer approval of one organization over another thereby according prestige to and encouraging membership in that employee organization. The employee's freedom of choice is enhanced by allowing a vote for a representative under conditions of strict neutrality, unpressured by benefits and concessions obtained or promises made in negotiations between a public employer and one of the two employee organizations involved in the representation proceeding. 14 PPER at 123.

Based upon the above discussion the undersigned is convinced that the County violated 5.4(a)(1) and (2) of the Act by negotiating and reaching a new blue collar agreement with Local 1 after the RO Petition was filed, and it is recommended that any implementation of said agreement be permanently enjoined at least until the representation issue is resolved.

The Gallagher Incident

In its amendment to CO-83-149-62 Local 29 alleges that the County violated the Act by permitting George Gallagher, who was alleged to be a supervisor, to use a County vehicle to collect signatures for Local 1. The facts simply to not support that allegation and that aspect of the Charge is dismissed. First, Gallagher is not a supervisor within the meaning of the Act, he does not hire, fire or effectively recommend the same. He merely serves as foreman for the boiler room operations. Second, Gallagher was not using a County vehicle when he solicited names, and third, Gallagher was not on his working time when he distributed the material.

The Oltar Issue

In CO-83-149-62, as amended, Local 29 also alleged that Gallagher threatened Jeff Oltar because of his support for Local 29.

The only support for that allegation provided by Local 29 was double hearsay from Oltar that Battaglia told him that Gallagher made certain comments. Oltar's testimony in this regard is unreliable and it is therefore recommended that this aspect of the charge be dismissed.

RO-83-61

The argument by the County and Local 1 that the entire RO Petition filed herein should be dismissed because of an inadequate showing of interest, or in the alternative that the amended RO Petition filed on October 20, 1982 should be dismissed because it was untimely filed and because it seeks a unit different than the original Petition, is without merit. With regard to the first issue, N.J.A.C. 19:11-2.1 provides that the Director of Representation shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack. As the Director's agent for that purpose in this matter, the undersigned is satisfied that the showing is adequate. However, the undersigned believes that even if the showing were lacking, the nature and extent of the unfair practices committed in this matter justify a finding that stringent showing requirements be waived. See Loray Corp, supra. 61/

Regarding the amended Petition, the undersigned finds that that Petition merely clarified the initial Petition, and was not intended either as a new petition or as a petition for a larger unit. Consequently, the undersigned finds that the RO Petition and its amendment were validly and timely filed.

The Part-time Issue

Contrary to Local 29's assertion, the record shows that

regular part-time employees working less than 20 hours per week in titles otherwise included in the unit, have been and are included in the blue collar unit. The existing collective agreement, J-1A, shows that several benefits set forth in that agreement are enjoyed by part timers working less than 20 hours per week. In addition, union dues or an agency fee is deducted from such part-time employees and forwarded to Local 1. Consequently, employees in such positions are included in the instant unit.

Remaining Titles

Local 29 argued that the remaining titles are inappropriate for inclusion in the blue collar unit because they are white collar, or professional, or supervisory in nature, or a combination of the above. Blue collar employees are generally involved in some form of manual or physical labor, they perform their work in the field or at least outside an office environment, and they are not required to have more than, or even as much as, a high school education. White collar employees perform work that generally involves greater mental or intellectual skills, they are more likely to work in an office environment, and they may have a higher educational requirement. The above factors, as well as other community of interest factors, were considered in deciding the placement of the following titles.

Juvenile Detention and Senior Juvenile Detention Officer

Employees in these positions act as guards for juvenile delinquents, however, unlike correction officers or police, they do not carry weapons, they are not required to have specific training, they wear no uniforms, and there is no educational require-

ments. The undersigned believes that these individuals are clearly blue collar employees involved in manual and physical endeavors rather than in mental or intellectual endeavors. Consequently they are appropriate for continued inclusion in the blue collar unit.

Youth Group and Senior Youth Group Workers

The undersigned believes that although these titles are not professional, they are white collar in nature. 62/ Unlike the Juvenile Detention Officers whose primary purpose is to provide a physical presence, the purpose of the Youth Group Workers is to assist troubled juveniles in resolving or dealing with their problems by participating with them in a variety of programs and activities. That work overwhelmingly involves the use of mental and intellectual skills, and of equal importance is that these jobs require a four-year college degree with the emphasis on sociology or psychology. A blue collar position just does not require such a degree requirement. The fact that the employees in these titles work 40 hours per week rather than the 32-1/2 hours worked by employees in the County white collar unit is not enough, standing alone, to justify leaving these titles in the blue collar unit. Consequently, it is recommended that these titles be removed from the blue collar unit. 63/

Children's Supervisor and Adult Day Care Worker

Both of these titles are blue collar in nature and should remain in the blue collar unit. Both positions involve the physical caring for other people but require no advanced training or educational background. Although the Adult Day Care Worker is

a hybrid position encompassing blue and white collar attributes such as assisting in the physical care of the elderly as well as providing mental stimulation for the elderly, the undersigned believes that said title is more blue collar in nature because the overall duties involve more physical than intellectual skills. The Children's Supervisor is not a hybrid position since it predominantly involves the physical caring for children.

Recovery Assistant and Senior Recovery Assistant

These titles, particularly the Recovery Assistant, are also a hybrid title involving blue and white collar attributes. The blue collar items are those requiring the physical caring for intoxicated people. The white collar items involve a multifaceted process of attempting to aid the clients toward rehabilitation. The undersigned believes that the primary purpose of the positions is to assist in the rehabilitation of alcoholics by conferring with the affected individuals and by arranging for their treatments. The employees in these titles do not need an advanced education, but they nonetheless make reports and keep records on the clients. The undersigned believes that their work is more white collar than blue collar in nature, and is comparable to the functions performed by the Youth Group Worker. 64/ Consequently, these titles should be removed from the blue collar unit.

Supervising Recovery Assistant

This title is not appropriate for inclusion in the blue collar unit for the same reasons discussed in the analysis of the preceding titles, and because this title was last included in the white collar unit. Although the title is not listed in the current

white collar agreement, Exhibit C-7, the undersigned believes that said title is more appropriate for inclusion in that unit than in the blue collar unit.

Principal Engineering Aide and Principal Engineering Aide and Construction Inspector

These titles are predominantly blue collar in nature and should remain in the blue collar unit. Although the positions require a combination of physical and intellectual effort, the individuals primarily work in the field with other blue collar employees, they wear work clothes, and do not have advanced degrees. Contrary to their job descriptions, they do not perform any drafting or tracing work, since there are professional engineers with degrees who perform the primary engineering work.

Senior Construction Inspector

Unlike the preceding titles, the Senior Construction Inspector is predominantly a white collar employee. Although he physically inspects construction work in the field, he has a permanent office assigned to him and primarily works in his office and prepares and files all of his paperwork. He has far greater requirements than the Principal Engineering Aide, he often wears a tie and jacket in the performance of his job, and he works primarily with professional employees. Therefore, this title should be removed from the blue collar unit.

Storekeeper and Senior Storekeeper

These titles are unquestionably blue collar titles and should remain in the instant unit. The employees in question wear work clothes and perform manual rather than intellectual work.

Senior Stock Clerk

This title is already included in the most recent white collar agreement and there was no official petition by the County or Local 1 to remove this title from that agreement. Consequently, said title is not currently eligible for inclusion in the blue collar unit.

Photographer

This title is more appropriate for placement in the white collar rather than the blue collar unit. The individual in question performs traditional photographic work including the use of a variety of cameras, taking and developing pictures, and ordering supplies. One year of specialized experience and considerable knowledge of photography and related areas is required. The employee takes pictures both inside and outside buildings, but his primary work location is in the County Jail facility where he has his own darkroom. Although his work obviously involves a combination of manual and intellectual work, the undersigned believes that it is more white collar and more intellectual in nature. This work cannot be performed without considerable training in photography and has, at least, equivalent -- if not greater -- advanced technical requirements than a secretary operating a typewriter or more complex machinery. Therefore, this title should be removed from the blue collar unit.

Communications Technician

This is a blue collar title. His work is almost entirely manual in nature, and unlike the Photographer, he wears work clothes and works in the garage. The title should remain in the blue collar unit.

Communications Officer

This title is equivalent to a civilian dispatcher and/or a secretary and is therefore white collar in nature. She works in an office environment and her work requires intellectual as well as manual skills similar to those of a secretary. In In re Twp. of Manalapan, D.R. No. 80-34, 6 NJPER 241 (¶11117 1980), the Commission found that an employee who performed clerical and dispatching duties was a white collar rather than a blue collar employee. See also Lake Worth Utilities Authority, 6 FPER 390 (Florida PERC) (¶11264 1980). Consequently, this title should be removed from the blue collar unit.

CU-83-62

The undersigned has already determined in CO-83-149-62 that the Chief Stationary Engineer was not a supervisor within the meaning of the Act. In addition, the undersigned finds that said title is blue collar rather than white collar in nature and shares a community of interest with the employees in the existing blue collar unit. The title is otherwise appropriate for inclusion in the blue collar unit, except that since the title was mutually excluded from the unit in the past, a CU petition is not normally the appropriate vehicle by which that title can now be placed in that unit.

In In re Clearview Reg. H.S. Bd/Ed, D.R. No. 78-2, 3 NJPER 248 (1977), the Commission defined the difference between CU and RO petitions and set forth various uses of a CU petition. Subsequently, in In re Wayne Bd/Ed, D.R. No. 80-6, 5 NJPER 422 (¶10221 1979), aff'd P.E.R.C. No. 80-94, 6 NJPER 54 (¶11028 1980),

the Commission created a test to be applied to determine whether a CU petition was appropriate in a specific instance to include a title in a unit. That test included a determination of whether or not there had been a mutual intent (between the parties) to include (or exclude) the title in the unit. The Commission indicated that absent mutual intent to include the title a QCR existed and a CU petition would be dismissed. Only an RO petition would then be appropriate.

In the instant case there's no doubt that the Chief Stationary Engineer title was removed from the unit and consequently, the instant CU Petition would not normally be the appropriate vehicle by which to place the title in the unit. However, the undersigned recommends that Wayne not be applied in this case for the following reason. One argument for requiring an RO rather than a CU petition to add a previously mutually excluded title into a unit is to preserve the right of the employee(s) to choose or reject union representation by the conduct of a secret ballot election thereby preventing the employer, and/or a labor organization, from forcing employees to be represented. In the instant matter a secret ballot election to determine whether George Gallagher, Chief Stationary Engineer, would like to be included in the existing blue collar unit would serve no purpose. First, since only one employee would be voting on that issue secrecy of his ballot could not be maintained. Second, since Gallagher is now Chairman of the Board of Local 1, and since Local 1 filed the CU Petition, it is obvious that Gallagher would vote to be included in the unit.

The undersigned believes that in this particular case the

Act will be better served by preventing the inevitable delay that an RO filing on this title would create, by permitting the Chief Stationary Engineer title to be accreted to the blue collar unit through the CU Petition. 65/

Since the undersigned has enjoined and refused to give effect at this time to the new agreement negotiated between the County and Local 1 covering the blue collar unit, and since the previous blue collar contract, Exhibit J-1A, has expired, then pursuant to Clearview and Wayne the Chief Stationary Engineer title can be placed in the blue collar unit immediately and would be entitled to vote in any election. However, placement of that title in the unit at this time does not mean that the affected employee is immediately entitled to all the terms and conditions of employment set forth in J-1A. See In re Union County Reg. Bd/Ed, D.R. No. 83-22, 9 NJPER 228 (¶14106 1983). To the contrary, the majority representative of the blue collar unit will merely have the right to negotiate on behalf of that title and the entire unit once the QCR raised by RO-83-61, herein, is resolved.

CONCLUSIONS OF LAW

CO-83-96-55

A. The County violated N.J.S.A. 34:13A-5.4(a)(1) and (2) by engaging in a pattern of conduct which unlawfully interfered with Local 29's attempt to organize the blue collar unit, and by:

1. Interfering with, harassing and coercing Thomas Gangemi in the exercise of his right to solicit and collect A & D cards for Local 29, through the actions of supervisor Frank Linardi who unlawfully interrogated him, threatened him, and who caused him

to destroy A & D cards.

2. by interfering with Anthony Sipala in the exercise of his right to support Local 29 by engaging in conduct that prevented him from distributing and collecting A & D cards.

3. by permitting Local 1 President Hastings to hold a meeting on work time at which time she made remarks adversely affecting the right of employees to sign A & D cards for Local 29.

4. by the actions of County Administrator DiPaola in unlawfully denying Local 29 reasonable access to blue collar employees during non-working time in the cafeteria of the Administration Building.

5. by the posting of a notice in County parks during the open period which unlawfully restricted Local 29's access to the parks and to bulletin boards in the parks for organizational purposes. 66/

6. by unlawfully denying Local 29 reasonable access to bulletin boards at the Overpeck Golf Course and access to employees at the Golf course during non-working time. 67/

7. by unlawfully denying Local 29 a list of employees.

8. by unlawfully denying Local 29 the opportunity to solicit employee interest within a reasonable proximity to the Mosquito Commission building.

9. and, by unlawfully denying Local 29 reasonable access to employees on non-working time at the County Road Department (Zabriskie Street).

B. The County did not violate N.J.S.A. 34:13A-5.4(a)(1) and (2) by

1. removing Local 29 from the Van Saun Park since it failed to comply with permit requirements.

2. by removing and preventing Local 29 from soliciting employees at the entrances to (and inside) County parking lots in order to prevent any impairment in the flow of traffic.

3. by preventing Local 29 from soliciting employees inside or less than 300 feet from the Mosquito Commission.

4. by the removal of Local 29 from the Police Maintenance Garage since a Local 1 shop steward, rather than the County, was responsible for the removal.

5. by preventing Local 29 from gaining access to the employees inside the Juvenile Detention Center and the Conklin Home since those buildings are not readily accessible to the public.

C. The County did not violate N.J.S.A. 34:13A-5.4(a)(3) because no employees were discriminated against with regard to their tenure of employment. That aspect of the Charge should therefore be dismissed.

CO-83-149-62

A. The County violated N.J.S.A. 34:13A-5.4(a)(1) and (2) by unlawfully negotiating with and reaching a collective agreement with Local 1 regarding the blue collar unit after the filing of the instant RO Petition.

B. The County did not violate N.J.S.A. 34:13A-5.4(a)(1) and (2) by:

1. the actions of George Gallagher who distributed petitions on behalf of Local 1.

2. nor was it responsible for any threats to Jeff Oltar

regarding his activity on behalf of Local 29. The entire amendment to CO-83-149-62 should therefore be dismissed.

CO-83-100-56

A. Local 1, through its President Agnita Hastings, violated N.J.S.A. 34:13A-5.4(b)(1) by engaging in a pattern of conduct which unlawfully interfered with Local 29's attempt to organize the blue collar unit by:

1. interfering with, harassing and coercing Thomas Gangemi in the exercise of his right to solicit and collect A & D cards for Local 29 through the actions of Agnita Hastings who unlawfully interrogated him, threatened him, materially misrepresented the law to him and who caused him to destroy A & D cards.

2. by interfering with Anthony Sipala in the exercise of his right to support Local 29 by materially misrepresenting the law to him which unlawfully prevented him from distributing and collecting A & D cards.

3. by interfering with the rights of employees to sign A & D cards for Local 29 through the unlawful statements of Agnita Hastings to a group of employees.

4. by interfering with the right of Local 29 to have access to the County Administration building to talk to employees on non-work time through the unlawful statements of Agnita Hastings to County Administrator Eugene DiPaola.

5. by interfering, through the unlawful statements of Agnita Hastings, with the right of employees to meet with Local 29.[68/]

6. by interfering with the right of Local 29 to have reasonable access to employees on non-work time at the Police Main-

tenance Garage through the actions of Local 1 shop steward Robbie Hale who unlawfully restricted their access.

B. Local 1 did not violate N.J.S.A. 34:13A-5.4(b)(1) by:

1. The presence and actions of Agnita Hastings at the County parking lot on September 23, 1982 when Local 29 organizers were removed from the lot, and,

2. by the actions of Local 1 shop stewards at the Juvenile Detention Center and the Conklin Home when Local 29 organizers were prevented from gaining access to those buildings.

C. Local 1 did not violate N.J.S.A. 34:13A-5.4(b)(2) since it did not interfere with the County's right to select its own representative for negotiations. That Charge should be dismissed.

RO-83-61 and CU-83-62

Pursuant to N.J.A.C. 19:11-5.1 a secret ballot election should be conducted in the unit that is set forth in the following Recommended Order.

RECOMMENDED ORDER

Accordingly, for the reasons set forth hereinabove, it is hereby recommended that the Commission ORDER that:

A. Respondent County shall CEASE and DESIST from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by

a) interrogating and threatening Thomas Gangemi and causing him to destroy Local 29 A & D cards;

b) denying Local 29 reasonable access to blue collar employees and certain of its facilities on non-work time in non-work areas;

c) by denying Local 29 reasonable access to bulletin boards in County facilities and a list of employees during the open period, and,

d) by negotiating with and reaching a new collective agreement with Local 1 covering blue collar employees after the filing of the instant RO Petition by Local 29.

2. Dominating or interfering with the formation, existence or administration of any employee organization, particularly by

a) denying Local 29 access to employees and facilities while permitting the same to Local 1, and

b) by negotiating and reaching a new blue collar agreement with Local 1 after the filing of the RO Petition by Local 29.

B. Respondent County shall take the following affirmative action:

1. Immediately permit Local 29 non-employee organizers the opportunity to meet with employees in non-work areas on non-work time in facilities where the County's operations are not disrupted. Where the employer's facilities cannot be made available for non-employee access because of the private, sensitive, or hazardous nature of the facility, the County shall permit Local 29 organizers to place themselves at a reasonable proximity to those facilities to solicit employees going to and from work.

2. The County shall permit Local 29 access to all bulletin boards (and internal mail systems) that are also made available to Local 1. 69/

3. The County shall provide Local 29 (and Local 1) a list

of employees in the blue collar unit, including job title and home address, within five (5) days from receipt of a written request by Local 29 for such a list.

4. The County will refuse to implement or give effect at this time to the new blue collar collective agreement negotiated with Local 1 after the filing of the instant RO Petition. The County will maintain the status quo ante by continuing to implement only the terms and conditions of employment set forth in Exhibit J-1A.

5. The County shall post in all places where notices to employees are customarily posted, copies of the attached notices marked as Appendix "A" and Appendix "B." Copies of said notices, on forms to be provided by the Commission, shall be posted immediately upon receipt thereof (particularly at the County Administration Building, the Mosquito Commission, the Road Department--Zabriskie Street, the Police Maintenance Garage, the Department of Engineering, the Juvenile Detention Center and the Conklin Home), and, after being signed by the designated representative of each Respondent,[70/] they shall be maintained by the County for at least thirty (30) consecutive days thereafter. Reasonable steps shall be taken by the County to insure that such notices are not altered, defaced or covered by other materials.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the County has taken to comply herewith.

C. Respondent Local 1 and its President Agnita Hastings shall CEASE and DESIST from:

1. Interfering with, restraining or coercing employees

in the exercise of the rights guaranteed to them by the Act, particularly, by

a) interrogating and threatening Thomas Gangemi and causing him to destroy Local 29 A & D cards,

b) materially misrepresenting the law to employees causing them to cease their activities on behalf of Local 29.

c) materially misrepresenting the law to the County causing it to deny access to Local 29.

D. Respondent Local 1 shall take the following affirmative action:

1. Agnita Hastings shall sign Appendix "B," and she and Local 1 shall cooperate with the County in the posting of Appendices "A" and "B" in all places and for the period of time set forth above. Local 1 shall take reasonable steps to insure that such notices are not altered, defaced or covered by other material.

2. Notify the Chairman of the Commission within twenty (20) days of receipt what steps Local 1 has taken to comply herewith.

E. A secret ballot election shall be conducted among eligible County blue collar employees within thirty (30) days after the completion of the 30-day posting of Appendices "A" and "B." The unit shall Include: All blue collar employees employed by the County of Bergen including foreman and employees in the following departments: General Services, Sheriff's Office, County Police Department, Department of Public Works, Mosquito Commission, Public Safety Education, County Jail, Child Welfare Department, and Animal Shelter Department. The unit shall also specifically include the Juvenile Detention Officer, Senior Juvenile Detention Officer,

Children's Supervisor, Adult Day Care Worker, Principal Engineering Aide, Principal Engineering Aide and Construction Inspector, Storekeeper, Senior Storekeeper, Communications Technician, Chief Stationary Engineer, Agency Aide, and Chauffeur, and it shall include all other titles listed in Exhibit J-1A Schedule A which are not specifically excluded herein and which were not the subject of these proceedings. Finally, the unit shall also include all regularly employed part-time employees holding titles which are included in the unit whether they work more or less than twenty (20) hours per week.

The unit shall Exclude: All white collar employees; and, all managerial, confidential, police, and supervisory employees within the meaning of the Act; all seasonal, temporary, and per diem employees; and all employees in the Sanitary Landfill Department and all employees of Bergen Pines Hospital. The following titles are specifically excluded: Youth Group Worker, Senior Youth Group Worker, Recovery Assistant (Detox), Senior Recovery Assistant (Detox), Supervising Recovery Assistant, Senior Construction Inspector, Senior Stock Clerk, Photographer, Communications Officer, Alcoholism Counselor, Graduate Nurse, Graduate Nurse Narcotics, Graduate Nurse Penal Institution, Supervisor of Nurses, Teacher, Teacher Juvenile Facilities, and Recreation Program Administrator, and all other County employees.

Any employee holding the title of Investigator Public Works shall vote subject to challenge.

Only those employees of the County occupying included titles are eligible to vote in the election. They shall vote as to

whether they wish to be represented for the purpose of collective negotiations in the above-described unit by Local 29, or Local 1, or whether they wish no representation.

Arnold H. Zudick
Hearing Examiner

DATED: June 8, 1983
Trenton, New Jersey

Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We, the County of Bergen, hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act in that:

WE WILL NOT interrogate or threaten Thomas Gangemi or any employee concerning their union activity,

WE WILL NOT deny Local 29 access to employees and facilities at reasonable times and places,

WE WILL NOT deny Local 29 the right to use bulletin boards and internal mailboxes which are available to Local 1,

WE WILL NOT discourage employees from signing cards for Local 29 or otherwise supporting Local 29,

WE WILL NOT give effect at this time to the new blue collar agreement negotiated with Local 1 after the RO Petition was filed, and,

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the exercise of their rights.

WE WILL NOT dominate or interfere with the formation, existence or administration of any employee organization in that:

WE WILL NOT directly or indirectly give assistance, support or preferential treatment to Local 1 by preventing Local 29 from gaining access to the employees and facilities in non-work areas during non-work times.

COUNTY OF BERGEN
(Public Employer)

Dated _____ By _____
Eugene DiPaola (Title)
County Administrator

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.

Appendix "B"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We, Local 1 and President Agnita Hastings hereby notify the blue collar employees of the County of Bergen that:

WE WILL NOT interfere with, restrain or coerce the employees in the exercise of the rights guaranteed to them by the Act in that:

WE WILL NOT interrogate or threaten Thomas Gangemi or any employee concerning their union activity.

WE WILL NOT materially misrepresent the law so as to cause employees to cease their organizational efforts on behalf of Local 29,

WE WILL NOT take action to cause the County to deny Local 29 reasonable access to employees and County facilities particularly during non-work time in non-work areas.

WE WILL NOT in any other manner interfere with, restrain or coerce blue collar employees in the exercise of their right to choose or refrain from choosing their majority representative.

LOCAL 1, NEW JERSEY EMPLOYEES LABOR UNION

Dated _____ By _____ (Title)

Agnita Hastings
President, Local 1

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.

FOOTNOTES

1/ The Petition in RO-83-61 indicated that Council 5, N.J. Civil Service Association was the majority representative of the existing blue collar unit. However by submission of a collective agreement, Exhibit J-1A, and its attachment, Exhibit J-1B, Local 1 has demonstrated that it is the successor to Council 5 and has been recognized as such by the County in J-1B.

2/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this Act."

3/ These subsections prohibit employee organizations, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act; (2) Interfering with, restraining or coercing a public employer in the selection of his representatives for the purposes of negotiations or the adjustment of grievances."

4/ The hiatus between hearing dates occurred because those dates were selected by mutual agreement between the parties in an effort to accommodate all schedules.

5/ The Petition of October 4, 1982 set forth the following unit description: All blue collar workers in the following departments: General Services Administration, Public Works, Mosquito Control, Child Welfare, Jail, Police, Sheriff, Public Safety and Education, (the contractual unit) and the recently established Animal Shelter.

Excluded: Managerial executives, confidential employees, professional employees, police and fire employees, part time employees, seasonal employees, temporary employees and all others.

6/ The recognition clause in J-1A is as follows:

ARTICLE 1 - Recognition and Definitions:
The County hereby recognizes the Association as the exclusive representative of the employees in the negotiating unit of all "blue collar" employees employed by the County of Bergen including foremen and employees in the following departments: General Services, Sheriff's Office, County Police Department, Department of Public Works, Mosquito Commission, Sanitary Landfill, Public Safety Education, County Jail and Child Welfare Department; but excluding Policemen and Supervisors and all employees of Bergen Pines County Hospital attached hereto as Schedule A is a list of all titles covered by this Agreement. (Schedule "A" is too long to set forth herein.)

7/ The amended Petition of October 20, 1982 set forth the following unit description: Included All blue collar workers in the following departments: General Services Administration, Public Works, Mosquito Control, Child Welfare, Jail, Police, Sheriff, Public Safety Education, and the Animal Shelter.

Excluded Managerial executives, confidential employees, professional employees, police and fire employees, part time employees, seasonal employees, temporary employees, supervisors, white collar employees, and all others.

8/ Local 29 argued that the following titles were inappropriate for inclusion in the blue collar unit: Agency Aide, Adult Day Care Worker, Alcoholism, Counselor, Chauffeur, Children's Supervisor, Communications Officer, Communications Technician, Graduate Nurse, Graduate Nurse Narcotics, Graduate Nurse Penal Institution, Investigator Public Works, Juvenile Detention Officer, Photographer, Principal Engineering Aide and Construction Inspector, Principal Engineering Aide, Recreation Program Administrator, Recovery Assistant Detox Unit, Senior Recovery Assistant, Senior Stock Clerk, Senior Construction Inspector, Senior Juvenile Detention Officer, Senior Storekeeper, Senior Youth Group Worker, Storekeeper, Supervising Recovery Aide, Supervisor of Nurses, Teacher, Teacher Juvenile Facilities, and Youth Group Worker.

In addition to those specific titles, Local 29 argued that all part-time employees who worked less than 20 hours per week in otherwise appropriate titles were nevertheless inappropriate for inclusion in the unit.

9/ The parties agreed that the employees in the Sanitary Landfill Department should be excluded from the blue collar unit, but that the employees in the Animal Shelter Department should be included in the unit. The parties also agreed that seasonal employees and temporary and per diem employees should be excluded from the unit. (Transcript ("T") - 7 pp. 1-4).

Finally, the parties agreed to dispose of certain specific titles as follows:

A. The following titles should be included in the unit: Agency Aide and Chauffeur. (T-8 p. 84)

B. The following titles should be excluded from the unit: Alcoholism Counselor, Graduate Nurse, Graduate Nurse Narcotics, Graduate Nurse Penal Institutions, Recreation Program Administrator, Supervisor of Nurses, Teacher, Teacher Juvenile Facilities. (T-8 p. 85)

C. The following (unoccupied) title should vote subject to challenge if an election is directed: Investigator Public Works. (T-9 p. 3)

10/ Both the County and Local 1 may have consented to an election if Local 29 agreed to the inclusion of most of the disputed titles. The parties attempted to settle the matter, but settlement could not be reached.

11/ Pursuant to N.J.A.C. 19:11-2.8(c)(2), the timely period for filing the instant RO Petition was during that 30 day period which fell between 90 and 120 days prior to the expiration of the blue collar agreement (J-1A) which expired on December 31, 1982. The Director of Representation determined that the timely period in application of that rule was from September 2, 1982 through October 4, 1982.

Local 1 argued that since the amendment to the RO Petition was filed on October 20, 1982 that said amendment was untimely.

12/ The titles now in dispute are the specific titles listed in Note 8 minus those specific titles the parties disposed of in Note 9.

In order to further clarify the matter the undersigned Hearing Examiner held on April 22, 1983, T-8, pp. 82-84, that all titles included in J-1A Schedule A that were not disputed by Local 29 would remain in the blue collar unit.

13/ Certain specific, but not all of the, allegations of CO-83-96-55 are paraphrased as follows:

A. On September 14, 1982 the County refused Local 29 access to employees in the County Administration Building.

B. On September 29, 1982 the County's attorney refused to give Local 29 a list of blue collar employees.

C. On July 6, 1982 the County threatened an employee for collecting cards for Local 29 and ordered destruction of the same.

D. On September 9, 1982 County Police prevented Local 29 from using Van Saun Park to meet with employees and to collect cards.

E. Local 29 organizer was prevented from speaking to employees.

F. On September 23, 1982 and October 4, 1982 Local 29 organizers were prevented from talking to employees on the County Parking Lot.

G. On September 23, 1982 and September 30, 1982 Local 29 organizers were given no access to County employees at the Mosquito Commission Building.

H. On September 28, 1982 a representative of Local 29 was not permitted to talk to employees at the Road Department, or at the Police Maintenance Garage.

I. On Sepgember 29, 1982 Local 29 representatives were not given access to employees at the Department of Public Works.

14/ The amendment to CO-83-96-55 alleged several specific violations but not all of which are paraphrased as follows:

A. That the County in collusion with Local 1 unlawfully prevented Local 29 from soliciting authorization cards.

B. On July 6, 1982 employees Gangemi and Sipala were threatened and management demanded the destruction of authorization cards.

On July 6, 1982 Local 1 President Hastings held a union meeting on work time (3 p.m.) with County permission concerning organizing.

C. In September 1982, Gangemi was harassed and threatened if he continued to be active for Local 29.

D. On September 23, 1982 Local 29 representatives were ordered from a County parking lot under threat of arrest.

E. On September 14, 1982 County Administrator DiPaola would not recognize the Local 29 organizing campaign.

15/ Certain specific but not all of the allegations of CO-83-100-56 are paraphrased as follows:

A. Local 1 in collusion with the County unlawfully prevented Local 29 from soliciting authorization cards.

B. On July 6, 1982 Agnita Hastings, President of Local 1, threatened employees Gangemi and Sipala with organizing illegally for Local 29 and demanded the destruction of authorization cards.

C. On July 6, 1982 Hastings held a union meeting on work time (3:00 p.m.) with County permission, stating it was illegal to sign a petition or cards prior to September 1, 1982, and cards signed prior thereto were illegal.

D. On September 10, 1982 Hastings ordered a Local 29 representative out of the County Park where he was attempting to talk to employees after the work day.

E. On September 23, 1982 Hastings interfered with Local 29's attempt to talk to employees in the County's parking lot.

F. On September 14, 1982 Local 1 convinced County Administrator DiPaola to deny Local 29 access to County employees.

16/ The specific allegation in CO-83-149-62 is paraphrased as follows:

That the County negotiated and reached a new agreement with Local 1 after the filing of the RO Petition thus failing to maintain a neutral posture between Local 29 and Local 1.

Local 29 had requested interim relief regarding this Charge and a hearing was held on that issue on January 6, 1983 before Commission Hearing Examiner Alan Howe. The Hearing Examiner issued his decision on January 7, 1983, In re County of Bergen, I.R. No. 83-12, 9 NJPER 91, (¶14049 1983), and granted interim relief and enjoined the implementation of the newly negotiated agreement between Local 1 and the County based upon the Commission's previous determination in In re Middlesex County (Roosevelt Hospital), P.E.R.C. No. 81-129, 7 NJPER 266 (1981).

17/ Certain specific but not all of the allegations in the amendment to CO-83-149-62 are paraphrased as follows:

A. That the County permitted a supervisor to visit work sites on working time and in a County vehicle to solicit signatures for Local 1.

B. On March 4, 1983 the County permitted 120 employees time off to demonstrate for Local 1.

The undersigned Hearing Examiner dismissed this allegation on the record on March 30, 1983, T 5 p. 128.

C. That the County through Supervisor Gallagher threatened employee Oltar for supporting Local 29.

18/ The recognition clause of the white collar unit contract (Exhibit C-7) is as follows:

Article 1 - Recognition and Definitions:
The County hereby recognizes the Union as the exclusive representative of the employees in the negotiating unit of all "white-collar" employees employed by the County of Bergen, but excluding all employees of the Bergen Pines County Hospital, Park Commission, and employees of the Bergen County Superintendent of Elections and employees of the Bergen County Welfare Board, as well as craft workers, police and supervisors. Attached hereto as Schedule A is a list of all titles presently covered by this Agreement. (Schedule A of the white-collar contract is not included herein.)

19/ The undersigned found Gangemi and Sipala to be credible witnesses and specifically credits their testimony regarding Hastings' comments concerning the illegality of the authorization cards. Gangemi, in particular, answered the questions in such a manner as to reflect his gut reaction to the meeting with Linardi and Hastings. For example, Gangemi could not hide the fear and emotion he felt as a result of that meeting.

20/ Exhibit RE-1 contains Article V, Section 7 of the Park Rules and Regulations which provides as follows:

Article V
Amending Section 7. Meetings, Exhibitions, Parades, Racing, etc. of Bergen County Park Commission Rules & Regulations Governing the Use of Parks and Park Areas
Section 7a.
Groups of 25 or more persons shall not occupy any park grounds for picnics or parties without a permit from the Bergen County Park Commission. No person, without a permit, shall occupy any camp, or erect any structure, stand, tent or platform, hold any meeting, perform any ceremony, make a speech, address or harangue, exhibit to the public any dramatic performance or the performance in whole or in part of any interlude, tragedy, comedy, opera, ballet, play, farce, minstrelsy, dancing, entertainment, motion picture, circus, juggling, rope walking or any other acrobatics; engage in any parade, drill, maneuvers or civil or other procession; or run or race any horse or other animal, or, being in a vehicle, race with another vehicle or horse, whether such race be founded on any stake, bet or otherwise.

21/ Testimony concerning the Park incident varies. Wagner stated that there were 50 or 60 people in his group, and that Hastings arrived first, spoke to him and the group, and then O'Grady arrived and that she then spoke to him. However, O'Grady testified that he arrived first, that there were somewhere in between 20 and 30 people in the group, and that he then spoke to Wagner and that Hastings arrived thereafter. Hastings on cross-examination admitted that O'Grady arrived

first. (T-6 p. 15). The undersigned credits O'Grady's testimony as to the size of the group and as to when he arrived. He seemed more certain of the timing of the events than Wagner did, and his police report, Exhibit RU-2, which was written the day of the incident does not contradict his testimony.

However, the undersigned still credits Wagner's testimony regarding the comments by Hastings. Hastings did not actually deny that she ordered the employees out of the Park, she said only that she didn't "think she did" (T-6 p. 15). In addition, O'Grady's and Wagner's recollection of what Hastings said to O'Grady are similar enough that it justifies a finding that Wagner's recollection of what Hastings said to him was accurate.

22/ Both Wagner and Forbes attributed these remarks to Hastings. DiPaola acknowledged that Hastings said that what Local 29 was doing was incorrect (or illegal)(T-3 p. 133), and Hastings admitted that she had made that statement but didn't know whether she made it that day (T-6 p. 13). Since Wagner was more certain of what Hastings said, his testimony is credited.

23/ DiPaola testified that he asked Wagner if there was a 30-day period and that Wagner admitted that there was (T-3 p. 100). He then indicated that he asked Wagner and Forbes if the 30-day period was coming or transpired and that they acknowledged that it "had" (T-3 p. 129). But DiPaola later testified that Wagner didn't tell him that that date, September 14, was already the open period. Rather, DiPaola said that Wagner said that they were "out" of the period at the moment, but DiPaola still didn't know whether the 30-day period was coming or had ended. (T-3 p. 130).

As a final indication of his confusion over the incident DiPaola testified that when the parties left his office he, "really didn't know what the hell was going on, but they seemed to be happy." (T-3 p. 131). Consequently, the undersigned cannot credit DiPaola's recollection of that discussion with Wagner.

24/ DiPaola essentially denies making such a statement and testified that Wagner agreed that he would stop organizing or talking to employees (T-3 pp. 101, 129-133). Howver, the undersigned credits Wagner's recollection of what was said since DiPaola seemed very confused as to what was really happening regarding the entire meeting.

25/ Once again, since DiPaola (and Hastings) were more confused as to what DiPaola said to Wagner, the undersigned credits Wagner's testimony on that incident.

26/ Wagner testified that Paladino threatened to put him in jail if he didn't leave the property (T-2 pp. 36-37), and Kraemer testified that Paladino ordered him off the sidewalk and into the street. However, the undersigned credits Paladino's testimony regarding what he told Wagner and Kraemer. (T-3 p. 14).

27/ Since the County offered no evidence to rebut this information, the undersigned credits Wagner's testimony as to the conversation with Ryan.

28/ Safranek also testified that the Mosquito Commission Building was only ten feet away from that part of Jerome Avenue which was a County road. (T-2 p. 100).

29/ Although Wagner said that he was directed to a location two-thirds of a mile from the Mosquito Commission, the undersigned credits Safranek's testimony which estimates the location at about 1500 feet (T-2 p. 101), and Kohl's testimony which estimates the location at about one-quarter of a mile. (T-3 p. 47).

30/ The undersigned credits Kraemer's testimony on this issue since there was no contradictory evidence.

31/ Forbes did admit that some cars pulled over and others stopped momentarily, and that many cars slowed down. (T-6 p. 58). Consequently, the undersigned credits Malakas' testimony that some vehicles stopped by Forbes were obstructing other vehicles attempting to come into the lot.

32/ County employee Jeff Oltar testified that when Gallagher was distributing the petitions in January 1983 he (Gallagher) said he was a supervisor. The undersigned does not credit that testimony to show whether Gallagher is a supervisor within the meaning of the Act. Rather, that determination will be made based upon whether Gallagher actually hires, fires, or effectively recommends within the meaning of the Act.

The undersigned does credit Gallagher's testimony regarding his responsibilities as foreman since there was no reliable evidence to the contrary.

33/ The Charge alleged that Gallagher, as supervisor, threatened Oltar by telling him he would not be promoted because he supported Local 29. In attempting to establish that allegation Oltar testified that Battaglia told him (Oltar) that Gallagher told him (Battaglia) that Gallagher would not help Oltar because he (Oltar) supported Local 29. (T-4 pp. 21-22). Gallagher denied making that comment. (T-5 p. 125).

The undersigned cannot credit this alleged comment by Gallagher. That testimony by Oltar as to what Battaglia told him that Gallagher said, was double hearsay and is not reliable. The undersigned is not aware of any reason why Battaglia could not have been called by Local 29, and there is no independent credible evidence to support the comment attributed to Gallagher.

34/ The evidence shows that the individual who preceded Gallagher in the title of Chief Stationary Engineer was on a fixed salary schedule in 1974, and certainly in 1976 (T-7 pp. 23-24),

and that Gallagher was placed on the fixed salary schedule in August 1979 when he obtained that title. (T-7 pp. 19-24). Babcock testified that the fixed salary schedule was for titles not included in any negotiations unit and for which salaries were set, not negotiated (T-7 pp. 20-24). The undersigned notes that since no evidence was presented to contradict Babcock's testimony it is fully credited.

35/ There are numerous references in J-1A as to whether part-time employees will or will not get certain benefits in the agreement. For example, Longevity, Article 7, and health benefits, Article 8, are limited to part timers working 20 or more hours per week. However, sick leave, Article 11(4) provides for sick leave to all part timers on a proportional basis, and military training leave, Article 8(d) grants such leave to all part timers on the same basis as full-time employees.

36/ Although the current titles are different than the titles listed in J-1A, the evidence shows that they are the same, and involve the same duties and responsibilities. Consequently, the job descriptions, Exhibit C-8 and C-9, are accurate. (T-7 p. 43).

37/ The record demonstrates that neither Youth Group Workers nor "Seniors" are intended to be engaged in extensive counseling nor in traditional individual counseling of the residents. (T-7 pp. 91-93, 118). Nevertheless, the facts do show that individuals in these positions utilize counseling techniques when talking to and interacting with the residents.

38/ The Judiciary of Bergen County do not supervise these titles nor have they claimed an interest in these titles, consequently, the County and not the Judiciary is the public employer of these positions (T-7 pp. 85-86, 115).

39/ Gallagher indicated that when a Senior Recovery Assistant makes a recommendation regarding a Recovery Assistant he calls in the Recovery Assistant and discusses the problem with him/her (T-8 p. 24), and then meets with both the Senior and the Recovery Assistant and gives each of them equal weight in discussing the problem (T-8 p. 26). Gallagher then decides how to handle the matter.

40/ Exhibit J-2A is the agreement for the white collar unit which expired on December 31, 1982. Exhibit C-7 is the new white collar agreement effective January 1983 through December 1984, and that agreement does not list the Supervising Recovery Assistant in the list of included titles.

41/ The Senior Storekeeper position is currently vacant.

42/ See also Superior Wood Products, Inc., 145 NLRB No. 80, 55 LRRM 1042 (1964), where the Board held in a representation case that the employees could reasonably believe that the union was in a position to carry out its threat.

43/ The County did not violate subsection 5.4(a)(3) of the Act because no action was ever taken against Gangemi. That allegation and element of the Charge is therefore dismissed.

In addition, although Linardi agreed to the Gangemi meeting, that was not evidence of a conspiracy and the undersigned will recommend dismissal of the allegation of collusion between Local 1 and the County.

44/ Prior to the actual meeting with DiPaula, Hastings had encountered Wagner and Forbes talking to an employee and she asked (or insisted) that they speak with DiPaola. Neither the County nor Local 1 violated the Act with respect to this portion of the facts. The County did not stop Local 29 from talking to the employee involved, however, the undersigned is not even convinced that the employee was on break time rather than work time. Hastings didn't violate the Act even if she insisted that they accompany her to see DiPaola since Wagner and Forbes voluntarily accompanied her to DiPaola's office.

45/ Although DiPaola thought that there was an "agreement" with Wagner that he should not solicit employees at that time, Wagner denies any agreement was made and the undersigned credited Wagner's testimony. See notes 23, 24 and 25 herein. The undersigned finds that DiPaola did intend to discourage and prevent Local 29's organizational attempts.

46/ Intent and animus are required to prove 5.4(a)(3) violations of the Act. In re Borough of Haddonfield Bd/Ed, P.E.R.C. No. 77-36, 3 NJPER 71 (1977); and In re Cape May City Bd/Ed, P.E.R.C. No. 80-87, 6 NJPER 45 (¶11022 1980).

47/ For a similar case with a similar result see Marshall Field & Co., 98 NLRB 88, 29 LRRM 1305, modified on other grounds and enforced 200 F.2d 375, 31 LRRM 2073 (7th Cir. 1952).

48/ The undersigned recognizes that certain reasonable restrictions may be placed on the right to solicit employees on public property. See Perry, supra. For example, it is unnecessary for non-employees to have the right to solicit for A & D cards earlier than six months prior to the start of the open period since cards signed earlier than that are not normally accepted.

49/ Since the memo in question prevented the use of park bulletin boards during the open period it violated Union County. However, if the County and Local 1 had an exclusive access clause covering those bulletin boards it could prevent Local 29, or any rival union, from using those boards prior to the open priod, but it could not prevent them from otherwise meeting in the parks.

50/ It is noted that if the County had a practice of generally permitting individuals and groups to solicit employees in the parking lots, then those lots could be considered public forums. However, the evidence does not support such a finding herein.

51/ Picketers have been enjoined from blocking the ingress and egress to parking lots. See Four Ten Restaurant v. Hotel & Restaurant Employees Local 942, 105 LRRM 2358 (Wash. Ct. App. 1979); and, Congreso de Uniones Industriales de Puerto Rico (National Packing Co.), 237 NLRB 1406, 99 LRRM 1110 (1978).

52/ A finding that the parking lots in this case are not available for solicitation by labor organizations should not be considered as a rule that all government-owned lots are prohibited for that purpose. See note 50 hereinabove. The determination should be made on a case by case basis.

53/ The undersigned must caution Local 29 to only attempt to solicit employees while on non-work time. Any attempt to solicit employees on work time -- such as in these incidents -- is unprotected.

Moreover, although Local 29 may normally have a right to be at a location within a reasonable distance from the Mosquito Building, and may solicit employees going to and coming from work, if they block the ingress and egress to that facility then their activity would be unprotected.

54/ However, this decision is based upon the fact that the County presented no evidence to deny the allegation, or to show that a compelling and material basis existed to restrict access to Local 29. If such a compelling basis exists it may be sufficient to allow Local 29 to have access to the employees only at the gate entrance to the garage.

55/ Even if Local 29 is permitted to use the mailboxes and bulletin boards in these two facilities that does not mean a non-employee must be the one to post the material. Local 29's rights in this regard could still be preserved even if someone else posts the material.

56/ See In re County of Bergen, I.R. No. 83-12, 9 NJPER 91 (¶14049 1983).

57/ When it adopted Shea Chemical, supra, the Commission in Middlesex County, supra, also specifically rejected the approach by the Court in NLRB v. Swift & Co., 294 F.2d 285, 48 LRRM 2699 (3rd Cir. 1961). That Court had suggested a two-prong test that had to be met before implementing the Shea Chemical policy. The test included a requirement to show substantial evidence of a real QCR, and a requirement to show that the employer had a reasonable basis for believing that the incumbent union no longer represented a majority. The Commission rejected that test because it favored the incumbent organization by imposing an unreasonable burden on the challenging organization.

58/ See also Bruckner Nursing Home, 262 NLRB No. 115, 110 LRRM 1374 (1982), which was a companion case to RCA and in which the Board held that it could still be a violation of Midwest Piping for an employer to recognize a labor organization that does not have a majority of employee support.

59/ In Telautograph Corp., 199 NLRB 892, 81 LRRM 1337 (1972), the Board applied the Midwest Piping and Shea Chemical policy to decertification petitions and held that an employer could not continue negotiating with the incumbent union once such a petition was filed. However, in application of the RCA doctrine, the Board, two months later in Dresser Industries, 264 NLRB No. 145, 111 LRRM 1436 (1982), reversed Telautograph Corp. for the same reasons set forth in RCA.

60/ Van DeWater also pointed out that in Linden Lumber Div., Summer & Co. v. N.L.R.B., 419 U.S. 301, 87 LRRM 3236 (1974), the Court approved of the Midwest Piping policy. He further pointed out at 110 LRRM p. 1372 note 22, that in order to explain why bargaining must be (or was) suspended after a petition is (or was) filed the election notice could explain that the law requires the temporary suspension of bargaining until the employees have made their choice.

61/ In view of the pervasive nature of the violations herein the undersigned believes it would be an undue and unreasonable burden for Local 29 to be required to obtain additional showing if same were lacking. Rather, the preferred remedy is the direction of an election. See Loray Corp., supra.

62/ Educational requirements alone do not justify a finding that Youth Group Workers are professional employees. They do not have the same requirements as social workers or counselors who probably are professional employees.

63/ Whether these titles will now be placed in the white collar unit is between the County and Local 1.

64/ The fact that the Youth Group Worker needs a four year degree and that Recovery Assistants do not, does not negate the latters' white collar attributes. One need not possess a college degree to be classified a white collar employee -- such as a secretary. Rather, the intellectual nature of the position is more important. The Recovery and Senior Recovery Assistants perform work which is more intellectual than physical in nature.

65/ The undersigned recommends that the refusal to implement Wayne herein be limited to the facts of this case. Wayne should still be applied particularly when two or more employees would be involved in an election.

66/ In addition to petitioning to represent the blue collar employees in Bergen County, Local 29 filed RO-83-33 on September 13, 1982 seeking to represent employees of the Bergen County Park Commission, a separate employer. Apparently, Local 29's organizing efforts for the Park Commission employees occurred during the same time period that it was organizing for the County employees. As a result, organizing incidents with respect to RO-83-33 may have become confused with the incidents in RO-83-61 herein.

However, neither the County nor Local 1 proved that the incidents complained of by Local 29 concerned the Park Commission rather than the County.

For example, there was no evidence by the County that the memo posted in Garfield Park concerned only Park Commission employees and had no effect on County blue collar employees. Consequently, the undersigned must assume that the Memo was at least partially intended to prevent Local 29 from meeting with blue collar employees. Thus it is a violation of the Act. See Union County, P.E.R.C. No. 76-17, supra, and Perry, supra.

67/ In its post-hearing brief the County argued, for the first time, that the Overpeck Golf Course incident concerned the Park Commission rather than the County. However, since the County did not prove that assertion the undersigned has no alternative but to find that denial of access at that location was a violation. Of course, in the election campaign to follow herein there would be no need to give Local 29 access to the Golf Course employees if they are really Park Commission employees.

68/ This item concerned Hastings' remarks to Wagner and employees at the Van Saun Park meeting. The undersigned is not suggesting that Hastings could not tell the employees they could not meet in the Park without a permit, rather, the undersigned finds that her comments had an intimidating effect which tended to interfere with employee rights to meet with Local 29 at all.

As discussed in note 66 above, it is noted that the Van Saun Park incident may have involved only Park Commission employees. However, Local 1 did not prove that point, consequently, the undersigned must believe that at least some -- or perhaps all -- of the employees present at that meeting were County blue collar employees.

69/ Local 29 only has the access right to bulletin boards available to Local 1 for the blue collar unit. If certain boards are available to Local 1 for the white collar unit, and are used only for white collar employees, then those boards need not be made available to Local 29. However, if an otherwise white collar board is used -- even in part -- for blue collar employees it must be made available to Local 29. Finally, the key word here is "availability." Just because Local 1 may not use a board otherwise made available to it for the blue collar unit, does not mean that Local 29 can be prevented from using that board.

70/ The undersigned recommends that the Commission Order that Appendix "A" be signed by Eugene DiPaola, and Appendix "B" be signed by Agnita Hastings.