

P.E.R.C. NO. 86-15

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Public Employer,

-and-

DISTRICT 1199J, NUHHCE, AFL-CIO,

Petitioner,

-and-

Docket No. RO-85-9

MORRIS COUNCIL #6, NJCSA,

Intervenor,

-and-

C.W.A., AFL-CIO,

Intervenor.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission, finds that the Morris County Board of Social Services is the public employer of the employees at Morris View Nursing Home and remands the case to the Director of Representation for the holding of a representation election concerning these employees as soon as possible.

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MORRIS COUNCIL #6, NJCSA,

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C.W.A., AFL-CIO,

Intervenor.

Appearances:

For the Public Employer, Edward R. Horan, Director of  
Labor Relations

For the Petitioner, Oxfeld, Cohen & Blunda, Esqs.  
(Nancy Iris Oxfeld, of Counsel)

For Intervenor, Communications Workers of America  
(Steven P. Weissman, of Counsel)

For Intervenor, Morris Council #6, NJCSA, Morris &  
Hantman, Esqs. (Allen Hantman, of Counsel)

DECISION AND ORDER

On August 2, 1984, District 1199J, National Union of  
Hospital and Health Care Employees, AFL-CIO ("District 1199J) filed  
a Petition for Certification of Public Employee Representative with

the Public Employment Relations Commission. District 1199J seeks to represent a unit of all part-time and full-time non-supervisory employees working at the Morris View Nursing Home. These employees are currently represented by Morris Council #6, NJCSA ("Council #6") as part of a unit of non-supervisory employees of the County of Morris ("County").

District 1199J contends that employees working at the Morris View Nursing Home should be removed from the County-wide unit and allowed to vote for their own representative since the Morris County Board of Social Services, not the County, is allegedly their employer.<sup>1/</sup> The Communications Workers of America, AFL-CIO ("CWA") has intervened and has taken the same position. Council #6 has also intervened, and asserts that the County is the employer of Morris View Nursing Home employees and accordingly the petition should be dismissed.

The County's position is that a representation election should be held expeditiously.

On November 29, 1984, a Notice of Hearing was issued. On February 5, 6 and 7, 1985, hearing officer Stuart Reichman conducted a hearing.<sup>2/</sup> The parties examined witnesses and introduced

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<sup>1/</sup> District 199J initially also alleged that Council #6 had failed to represent them adequately. This allegation was later withdrawn.

<sup>2/</sup> The hearing had been scheduled for a week earlier, but was  
(Footnote continued on next page)

exhibits. They filed post-hearing briefs by May 29, 1985.

On June 17, 1985, the Hearing Officer issued his report and recommended decision. H.O. No. 85-12, 11 NJPER \_\_\_\_ (¶ \_\_\_\_ 1985). He concluded that the Morris County Board of Social Services, not the County, was the public employer of non-supervisory employees working at the Morris View Nursing Home. He accordingly ordered a secret ballot election among such employees, with professional employees being given an option of being included in a unit with non-professional employees.

The Hearing officer served his report on all parties and advised them that exceptions were due by July 1, 1985. No exceptions have been filed.

Pursuant to N.J.S.A. 34:13A-6(f), the full Commission has delegated authority to me to decide this case.

I have reviewed the record. The Hearing Officer's findings of fact (pp 3-16) are accurate. I adopt and incorporate them here. I add the following facts. Only one-third of the funding from Morris View Nursing Home comes from the Morris County Board of Chosen Freeholders; the rest of the funding comes from the federal and State sources. Further, the County may not veto line items in the budget of the Board of Social Services, even though it may

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postponed because of the parties' scheduling conflicts. In addition, a fourth day of hearing was scheduled, but later cancelled. Council #6 informed the Hearing officer that it would not call any more witnesses.


suggest changes. The Board of Social Services must establish minimum and maximum salary ranges for Morris View employees and submit these figures to the Civil Service Commission.

Under all the circumstances of this case, I accept the Hearing Officer's recommendation and find that the Morris County Board of Social Services is the public employer of employees at the Morris View Nursing Home. I adopt his analysis and add the following observation. N.J.S.A. 44:4-26.26 provides for the creation of a county welfare house (here stipulated to be Morris View Nursing Home) for the permanent maintenance and relief of the poor. This statute further provides that the County Welfare Board (here stipulated to be the Board of Social Services) "shall have charge of all matters relating to the government, discipline, contracts and fiscal concerns of the welfare house." Pursuant to these statutes, the Morris County Board of Social Services operates the nursing home. The Civil Service Commission has designated the Board of Social Services as the appointing authority and the Board consequently makes all personnel decisions including promotions (from a separate list) and discipline. The Board must also establish minimum and maximum salary ranges for the submission to the Civil Service Commission. While the Board of Chosen Freeholders may diminish the amount of requested appropriations, the Board of Social Services may spend appropriated money as it sees fit and in any event receives two-thirds of its funding from other sources. The County Counsel has issued an opinion that the Board of Social

Services is the employer of these employees, and the County has not contested that opinion or District 1199's and CWA's contention here that the Board of Social Services is the employer; indeed the County seeks a speedy representation election. While Council #6 represented these employees for eight years in a County-wide unit before this petition was filed, that placement was never contested before and the County has sought approval from the Board of Social Services for the negotiators it selects and the terms they negotiate. Under all these circumstances, I am persuaded that the Morris County Board of Social Services is the employer. I accordingly accept the Hearing Officer's recommendation that a representation election, with a professional option, be conducted.

ORDER

The Morris County Board of Social Services is the public employer of the employees at Morris View Nursing Home. The case is remanded to the Director of Representation for the holding of a representation election, with a professional option, as soon as possible.

  
James W. Mastriani  
Chairman

DATED: Trenton, New Jersey  
July 8, 1985

H.O. No. 85-12

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

In the Matter of

COUNTY OF MORRIS,

Public Employer,

- and -

DISTRICT 1199J, NUHCE,  
AFL-CIO,

Docket No. 'R0-85-9

Petitioner,

- and -

Morris Council #6, NJCSA,

Intervenor

- and -

C.W.A., AFL-CIO,

Intervenor.

SYNOPSIS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission seeking to sever employees at Morris View Nursing Home from the county-wide unit on the grounds that the Morris County Board of Social Services is the employer and not the County of Morris. Applying the "control of labor relations test", the Hearing Officer found the Board of Social Services to be the employer of Morris View Nursing Home employees. The Hearing Officer found that the County of Morris' control over budget, while significant, is not an overriding consideration in the identification of the employer. Accordingly, the Hearing Officer recommended that an election be directed in order to permit eligible employees at Morris View Nursing Home an opportunity to choose whether they wish to be represented in collective negotiations.

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



H.O. No. 85-12

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

In the Matter of

COUNTY OF MORRIS,

Public Employer,

- and -

DISTRICT 1199J, NUHHCE,  
AFL-CIO,

Docket No. R0-85-9

Petitioner,

- and -

MORRIS COUNCIL #6, NJCSA,

Intervenor

- and -

C.W.A., AFL-CIO,

Intervenor.

Appearances:

For the Public Employer  
Edward R. Horan, Director of Labor Relations

For the Petitioner  
Oxford, Cohen & Blunda  
(Nancy Iris Oxford, of counsel)

For the Intervenor  
Communications Workers of America  
(Steven P. Weissman, of counsel)

For the Intervenor  
Morris Council #6,  
New Jersey Civil Service Association  
Morris & Hantman  
(Allen Hantman, of counsel)

HEARING OFFICER'S REPORT  
AND RECOMMENDATION

On August 2, 1984, District 1199J, National Union of Hospital and Health Care Employees, AFL-CIO (hereinafter "1199J") filed a timely petition for Certification of Public Employee Representative, accompanied by an adequate showing of interest, with the Public Employment Relations Commission (hereinafter "Commission"). District 1199J seeks to sever all regular part-time and full-time employees employed at the Morris View Nursing Home (hereinafter "Morris View") from a county-wide unit of employees represented by Morris Council #6, New Jersey Civil Service Association (hereinafter "Morris Council #6"). District 1199J contends that severance of Morris View employees from the county-wide unit is appropriate for the following two reasons: (1) The Board of Social Services is the employer, not the County of Morris, and (2) Morris Council #6 has failed to provide responsible representation to employees working at Morris View.<sup>1/</sup>

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<sup>1/</sup> In a letter dated April 29, 1985, District 1199J advised the me that it no longer wished to pursue its claim that Morris View employees should be severed from the county-wide unit on the grounds that Morris Council #6 failed to provide responsible representation. Accordingly, that issue is not considered in this decision.

Pursuant to N.J.A.C. 19:11-2.7(a), Morris Council #6 has been granted intervenor status in the instant matter on the basis of its collective negotiations Agreement with the County of Morris (hereinafter "County") which expired December 31, 1983. Morris Council #6 takes the position that the existing county-wide unit, which includes employees at Morris View, constitutes the most appropriate unit. Morris Council #6 argues that it has not failed in its duty to provide responsible representation to all unit employees, including those serving at Morris View. Morris Council #6 takes the position that the County is the actual employer of Morris View employees and not the Board of Social Services.

On September 5, 1984, the Communication Workers of America, AFL-CIO, (hereinafter "CWA") filed a timely request for intervenor status, supported by an adequate showing of interest, pursuant to N.J.A.C. 19:11-2.7(a). In its petition, the C.W.A. alleges that the Morris County Board of Social Services is the employer of Morris View employees and not the Morris County Board of Chosen Freeholders.

The County has taken no definitive position regarding the Petition and has essentially remained neutral throughout the proceeding. In its May 23, 1985 letter in lieu of brief, the County urged the Commission to conduct an election at Morris View as promptly as possible.

Pursuant to a Notice of Hearing dated November 29, 1984, hearings were scheduled before me on January 28, 29 and 30, 1985.

In light of scheduling conflicts on the part of several of the parties, the hearing was rescheduled to February 5, 6 and 7, 1985 in Newark, New Jersey, at which time all parties were given an opportunity to examine and cross-examine witnesses, and to present evidence.<sup>2/</sup> The parties filed post-hearing briefs.<sup>3/</sup>

2/ An additional day of hearing scheduled for February 27, 1985 was postponed at the request of Council #6. All parties agreed to the adjournment. The purpose of the February 27, 1985 hearing date was to (1) provide Council #6 with the opportunity to proffer additional documentary submissions, if any, and to hear argument on any objection to the receipt of such submissions into evidence, and (2) to proceed with additional testimony concerning the "responsible representation" issued raised by District 1199J. Subsequently, it came to my attention that the fourth day of hearing might be unnecessary since there was some indication (albeit unconfirmed) that Council #6 did not intend to call additional witnesses. Thus, only the matter of the proffer of documentary evidence appeared to remain. Consequently, in correspondence dated March 19, 1985 I requested Council #6 to provide me and each of the parties with any additional documents it wished to move into evidence by March 22, 1985. In the event that Council #6 wished to offer additional testimonial evidence or a dispute arose regarding the admissibility of any proffered document, I set May 6, 1985 as the date the hearing would reconvene. Council #6 did not respond to my March 19, 1985 letter. Furthermore, during informal conversations regarding the further processing of this matter, Council #6 indicated that it was yet uncertain as to whether it would call additional witnesses concerning the "responsible representation" issue on May 6, 1985.

Consequently, in an attempt to expedite this proceeding, on April 22, 1985, I advised Council #6 that in order to ensure that the May 6, 1985 hearing date was necessary, I would require it to make an offer of proof regarding its need for additional witnesses. I also directed Council #6 to furnish any additional documentary proffers by April 26, 1985. On April 26, 1985, I received a letter from Council #6 advising that it had no additional witnesses and simultaneously submitting additional documentary materials which were moved into evidence as IM-7 without objection.

3/ I established a briefing schedule which required the parties to submit their briefs in this matter on or before May 24, 1985. All parties, except District 1199J, filed timely briefs. District 1199J filed its brief on May 29, 1985.

FINDING OF FACTS

Upon the entire record, the Hearing Officer finds the following facts:

1. The County of Morris is a public employer within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq., (hereinafter "Act") and is subject to its provisions. (1T6:3T2).<sup>4/</sup>

2. District 1199J, National Union of Hospital and Health Care Employees, AFL-CIO, Morris Council #6, New Jersey Civil Service Association and the Communication Workers of America, AFL-CIO, are employee organizations within the meaning of the New Jersey Employer-Employee Relations Act and are subject to its provisions. (1T6; 3T2).

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<sup>4/</sup> Transcript designations are as follows: "1T1" refers to the transcript dated February 5, 1985, page 1; "2T1" refers to the transcript dated February 6, 1985, page 1; and "3T1" refers to the transcript dated February 7, 1985.

3. Since 1976, Morris Council #6 has been the majority representative representing employees at Morris View Nursing Home as part of its county-wide unit. (1T7; 3T3).

4. Morris View Nursing Home is owned by the County of Morris and operated by the Board of Social Services. (3T4). It is established and operated in accordance with the statutory authority granted to Freeholders pursuant to N.J.S.A. 44:4-1 et seq. (3T25; 3T48). The five individuals serving on the Board of Social Services are appointed by the Board of Chosen Freeholders (hereinafter "Freeholders"). Two Freeholders sit on the Board of Social Services. Morris View has approximately 370 chronically ill patients who range in ages from 18 to over 100 years old. (3T5; 3T111). Morris View patients are medically indigent and eligible for Medicaid. (3T112).

5. Morris View is managed by the "Board of Managers". (3T6). The Board of Managers is comprised of the same individuals serving on the Board of Social Services. (3T6). Each month the Board of Social Services conducts a business meeting. Immediately following the conclusion of the monthly meeting, the Board of Social Services reconvenes for the purpose of conducting a separate meeting regarding Morris View. (3T6). The minutes indicate that it is the Morris County Board of Social Services which conducts the regular

monthly meetings for Morris View. (See IC-1 through IC-24). Consequently, it is clear that in relation to Morris View, the Board of Managers and the Board of Social Services are the same body, performing the same function (N.J.S.A. 44:4-26).<sup>5/</sup> (3T56). Accordingly, on the basis of the testimony elicited in the hearing, I find the managing body of Morris View to be the Board of Social Services.

6. In the instant matter, the applicable statutory scheme is contained in Title 44 of the New Jersey Statutes. Pursuant to Title 44, the Freeholders have the authority to establish what is referred to in the statute as the "county welfare house."<sup>6/</sup> Title 44:4-20 provides the Freeholders with the authority to establish the County Welfare Board.<sup>7/</sup> The Board of Social Services is a corporate entity with, among other things, the power to sue and be sued and make by-laws. Title 44:4-26 gives the Board of Managers (Board of Social Services) "charge of all matters relating to

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<sup>5/</sup> The CWA asserts in its brief that the Board of Managers is the employer of Morris View employees. This position is contrary to the petition it filed requesting intervenor status and the position it took during the hearing. (3T30) In any event, as a less than 30% intervenor pursuant to N.J.A.C. 19:11-2.7(a), the CWA does not have standing to seek a unit different from that sought by the petitioner. N.J.A.C. 19:11-2.7(b).

<sup>6/</sup> The parties stipulated that Morris View is the "county welfare house." (3T120).

<sup>7/</sup> The parties stipulated that the "County Welfare Board" and the "Board of Social Services" are the same entity. (3T120).

the government, discipline, contracts and fiscal concerns of the welfare-house as appropriated by the chosen freeholders, and shall make such rules and regulations as may be necessary for carrying out the purposes of such welfare-house." Additional provisions of Title 44 provide for "appropriations for the expenditure of money..." to be subject to the approval of the Freeholders (44:4-29); the Board to "certify all bills and accounts including salaries and wages..." to the Freeholders who "shall make payment out of the appropriations therefore..." (44:4-30); the "...board shall fix the salaries of the director of welfare and such other officers, assistants and employees within the limits of the appropriation made by the [freeholders]" (44:4-35); and so forth.

7. The Board of Social Services is responsible for approving all personnel decisions. (3T67). As the Civil Service Appointing Authority (3T51-52; 3T116), the Board of Social Services oversees the hiring, firing and disciplining of employees. (3T7). As the result of a decision to add 51 beds at Morris View, the Board of Social Services decided to obtain the services of an Occupational Therapist on a part-time basis. (3T8). Board of Social Services took steps to hire additional nursing staff in order to alleviate a nursing shortage which existed particularly on weekends. (3T10). Further, the Board of Social Services appoints the Administrator of the nursing home. (3T69).

8. The Administrator reports to the Board of Social Services and is authorized to sign the various Civil Service



personnel action forms on its behalf. (3T111; 3T116-117). Such personnel actions include the day-to-day hiring, disciplining and terminating employees at Morris View. Moreover, the Administrator is responsible for ensuring that the daily work schedule is maintained. (3T65).

9. While the Administrator is authorized to initiate disciplinary actions against employees, such actions would be reviewed by the Board of Social Services. (3T10). For example, two Morris View employees were dismissed for strike related activity. (3T11). The two employees appealed their termination to the Department of Civil Service and were successful in having their dismissal overturned. It was the Board of Social Services which decided to appeal the Civil Service determination to the Appellate Division of Superior Court. (3T11).<sup>8/</sup>

10. Morris View employees are included on the same Civil Service promotional list as other Division of Welfare employees employed by the Board of Social Services. All other County employees included in the county-wide unit are included on a different Civil Service promotional list. (3T51-52).

11. Morris View's Administrator recently developed a new employee handbook. (3T61). The Board of Social Services reviewed

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<sup>8/</sup> Cliff v. Morris County Bd. of Social Services, 197 N.J. Super 307 (App. Div. 1984).

the handbook and approved its implementation. (3T62). The handbook was not reviewed or approved by the Board of Chosen Freeholders. (3T62; 3T67).

12. The Board of Social Services is involved in the establishment of Morris View employee salary levels. The Board of Social Services has passed resolutions adopting the minimum and maximum salary levels for Morris View employees included in the county-wide unit and submitted such salary information to the Department of Civil Service. (3T7). It has also established salary levels for non-organized employees at Morris View such as physicians and the chaplan. (3T12-13). Further, as previously mentioned, the Board of Social Services has acted to modify nursing salaries in order to ensure proper nursing staff coverage on weekends. (3T9).

13. The Morris View budget is initially prepared by its Administrator and his staff. (3T112). The budget for fiscal year 1985 is first submitted to the budget subcommittee of the Board of Social Services and then to the full Board of Social Services. Upon approval by the Board of Social Services the budget is presented to the County Administrator and County Treasurer. The budget is reviewed by a budget subcommittee of the County Board of Chosen Freeholders. (3T113). The Freeholders' budget subcommittee has made specific line-item recommendations on the Morris View budget. (3T113-114). The budget, with the modifications recommended by the Freeholders budget subcommittee incorporated therein, is again

reviewed with Morris View department heads and then resubmitted to the full Board of Social Services for adoption. The budget is finally forwarded to the Board of Chosen Freeholders for their final approval and incorporation into the overall County budget.

(3T115). While it is not completely clear whether the County has authority to make line-item changes in the Morris View budget,<sup>9/</sup> there is no question that if the Board of Chosen Freeholders disagrees with a particular element, it simply reduces or eliminates funding by the amount of the item to which it objects in the overall Morris View budget. Freeholder Scerbo succinctly summarized the relationship between the Freeholders and Morris View by testifying that the County maintains control of the various County governmental entities because it possesses the ultimate authority over funding. Scerbo stated that if the Freeholders do not agree with something Morris View or the Board of Social Services wishes to do, they will simply not fund it. (3T18; 3T72-73; 3T108). Consequently, the budget process in the County operates in a manner that, in effect,

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<sup>9/</sup> Celeste Kalina, Director of the Board of Social Services and Chief Executive Officer of Morris View, testified that the Board of Chosen Freeholders does not have the authority to change the budget submitted by Morris View; but merely has authority to refuse to fund the budget. (3T18). However, John Merrigan, Administator of Morris View, testified that specific line item changes were, in fact, made in the Morris View budget pursuant to "certain recomenations or suggestions" made by members of the Board of Chosen Freeholders. (3T114).

results in the Freeholders providing Morris View with what is essentially a lump sum appropriation which, conceivably, may differ from the amount of County funding sought by Morris View in its budget request. While Morris View must operate within the funding level provided by the County, it may expend the money appropriated as it sees fit. (3T72-73). Only the Freeholders have authority to raise revenue by increasing taxes. (3T74).

14. Employees at Morris View are covered by the County-wide Agreement which expired on December 31, 1980. (R-1). Application of the Agreement results in the Morris View employees enjoying the same terms and conditions of employment as other county employees with the only exception being special provisions which only apply to Morris View employees in recognition of its around-the-clock, 7-day per week operation. (3T36; 3T50-51; 3T75).

15. The Recognition Article of the Agreement and the Memorandum of Agreement extending the Agreement indicate that the parties to the Agreements are the Board of Chosen Freeholders and Morris Council #6. Some dispute exists with regard to whether the Freeholders have authority to unilaterally enter into a labor Agreement affecting terms and conditions of employment at Morris View without first obtaining the Board of Social Services' approval of the Agreement's terms. (See IC-2).

16. By resolution dated February 23, 1983 (R-1), the Freeholders approved a Memorandum of Agreement which extended the

Agreement to December 31, 1983. The Memorandum of Agreement was negotiated by Edward R. Horan, the County's Director of Labor Relations and Chief Negotiator. This Memorandum was not presented to the Board of Social Services until February 24, 1983. (IC-2). The Memorandum was signed by Mr. Horan for the County and Ms. Betty Lesovsky, President of Council #6, for the Association. While Freeholder Scerbo testified that upon the execution of a contract between the Freeholders and another party, such contract was legally binding upon the Freeholders, and while the Memorandum was not presented to the Board of Social Services for its review and approval until after the Freeholders passed a resolution adopting it, the evidence also shows that the process utilized in the formation of the Memorandum was not in conformance with the understanding between the Board of Social Services and the Freeholders. The minutes of February 24, 1983 (IC-2), indicates that a representative from the Board of Social Services was supposed to have been apprised of all negotiations sessions in order to have the opportunity to attend same. However, with regard to the Memorandum, the Board of Social Services' representative was not advised of any of the negotiations sessions which were conducted and, consequently, never attended the sessions. (IC-2). Ultimately, the Board of Social Services passed a resolution adopting the terms of the Memorandum of Agreement. (3T45; IC-2).

17. Some years ago, the Freeholders asked various County Boards and Commissions to authorize the County's negotiator to act

as its spokesperson as well. The Freeholders perceived that by having all employees covered by a standard labor agreement with the same benefits and terms and conditions of employment, they could reduce conflict among employees and employee representatives which might result from different conditions of employment. The Freeholders believed that by conducting such "unified" negotiations they would achieve certain efficiencies and economies. (3T75-76). Prior to approximately 1975, John Harper was the County's negotiator and negotiated the county-wide agreements which covered employees at Morris View. (3T59). Since 1975, Edward R. Horan has served as the County's chief negotiator. (3T35; 3T59). The Board of Social Services has specifically agreed to take part in the negotiations conducted by the County and has approved each negotiator designated by the County to be the chief spokesperson at the negotiations. However, the Board of Social Services has never relinquished the authority to review and approve the terms of any Agreement. (3T7; 3T32-33; 3T49-50; 3T59). Accordingly, it is clear that the Board of Social Services could have opted to employ a different negotiator from that of the County.<sup>10/</sup>

18. The Grievance Procedure contained in the Agreement between the County and Morris Council #6 has four steps. (R-1).

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<sup>10/</sup> Indeed, in at least two instances political subdivisions of Morris County -- the County Library and Morris County College -- utilize a negotiator other than Mr. Horan. (3T81-82).

Employees may utilize the grievance procedure in matters involving disputes arising out of the interpretation of the Agreement and as a means to appeal disciplinary actions. (3T61). The third step of the grievance procedure provides for the Freeholders to review disputed matters and render determinations thereon. (3T99-100). Other than its role in the grievance procedure, the Freeholders are not involved in matters such as hiring, firing, disciplining, scheduling or promoting employees at Morris View. (3T95-97). Freeholder Scerbo testified that the County Counsel issued an opinion to the Freeholders that the operation of Morris View was the responsibility of the Board of Social Services, and, consequently, the Freeholders should not get involved in its operation. (3T107-108). The County Counsel advised the Freeholders that the Board of Social Services has final authority to establish terms and conditions of employment for Morris View employees. (3T106).

19. On August 3, 1981, a strike occurred at Morris View. (3T107). Notwithstanding the fact that the Board of Social Services has its own attorney, the law suit seeking to enjoin the strike was brought by the Freeholders. (3T98-99). The strike was limited to employees at Morris View and did not involve other employees included in the county-wide unit. Cliff v. Morris County Board of Social Services, 197 N.J. Super at 311.

20. On March 21, 1985, the Freeholders issued a press release indicating that it had approved a 12% salary increase

effective March 4, 1985 for nurses at Morris View. (IM-7). On March 22, 1985, Morris Council #6 filed an unfair practice charge (Docket No. CO-85-244) against the County of Morris alleging various violations of the Act. Coupled with the filing of its unfair practice charge, Council #6 applied for and, on April 2, 1985, the Commission Designee granted a temporary restraining order prohibiting the County from implementing the 12% wage increase. Subsequently, the Commission was required to seek an order from the Chancery Division of Superior Court enforcing its temporary restraining order against the County. Thereafter, the County filed an interlocutory appeal and a motion to stay the Commission's interim relief order in the Appellate Division of Superior Court. During the course of all of these legal proceedings, it was the Freeholders who were named as Respondent/Defendant. While it may appear that it was the Board of Chosen Freeholders which granted the 12% wage increase to Morris View nurses (IM-7), it may be implied from Horan's Certification, filed with the Commission in response to the unfair practice charge, that the Board of Social Services, at a minimum, was aware of the action and concurred in it.

#### ANALYSIS

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

(c) the term "employer" includes an employer and any person acting, directly or indirectly, on behalf of or in the interest



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

In undertaking an analysis of which entity is the employer, it is evident that such determination must appropriately be made in the context of collective negotiations.

The Commission has had numerous opportunities to consider the issue of identification of the employer, or who is the public employer, and has had occasion to rely upon the rationale developed by the National Labor Relations Board and the Federal Courts. Lullo v. International Assn. of Fire Fighters, 55 N.J. 409 (1970). The private sector approach is to determine which entity, in fact, exercises substantial control over the labor relations and personnel determinations affecting involved employees. See, Howard University, 224 NLRB No. 44, 92 LRRM 1249 (1976); We Transport and Town Bus Corp., 214 NLRB No. 91, 87 LRRM 1745 (1974); Herbert Harvey, Inc. v. NLRB, 424 F.2d 777, 72 LRRM 2213 (1969). Thus, in order to ascertain employer status, one must focus upon who generally controls the hiring, firing, work schedules, promotions, discipline, performance evaluations, vacation, hours of work,

scheduling, wages, benefits, funding and expenditures. The Commission has adopted and applied the above-listed indicia of employer status in public sector cases in this State. See, In re Ocean County Prosecutor, D.R. No. 82-29, 8 NJPER 60 (¶ 13024 1981); In re Bonnie Bray Child Care Counselors Assn., D.U.P. No. 80-7, 5 NJPER 457 (¶ 10231 1979); Newark Housing Development and Rehabilitation, D.R. No. 80-2, 5 NJPER 328 (¶ 10175 1979); In re Bergen County Freeholders Bd. v. Bergen County Prosecutor, D.R. No. 78-34, 4 NJPER 104 (¶ 4047 1978), P.E.R.C. No. 78-77, 4 NJPER 220 (¶ 4110 1978), aff'd 172 N.J. Super 363 (App. Div. 1980); In re Mercer Freeholder Bd. and Mercer County Prosecutor, P.E.R.C. No. 78-77, 4 NJPER 220 (¶ 4110 1978), aff'd. 172 N.J. Super 411 (App. Div. 1980); In re Mercer County Superintendent of Elections, D.R. No. 78-37, 4 NJPER 147 (¶ 4069 1978), aff'd P.E.R.C. No. 78-78, 4 NJPER 221 (¶ 4111 1978); In re Passaic County Board of Chosen Freeholders, D.R. No. 78-29, 4 NJPER 8 (¶ 4006 1977); In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER 350 (1977); and In re ARA Services, Inc., E.D. No. 76-31, 2 NJPER 112 (1976).

In applying the "control of labor relations test" to the facts present in the instant matter, it is readily apparent that the responsibility for the effectuation of the labor relations and personnel programs lies with the Board of Social Services. The facts plainly indicate that it is the Board of Social Services which hires, fires, disciplines, evaluates performance, sets the work

schedules, determines the number of hours an employee will work (full or part-time), promotes, and administers the vacation program for Morris View employees. As the Civil Service Appointing Authority, the Board of Social Services approves and signs the Civil Service forms concerning the hiring, firing, discipline and promotion of employees. The Board of Social Services appoints the nursing home administrator. Further, the Board of Social Services unilaterally sets the salary level of non-organizaed employees and retains specific authority to approve and adopt the negotiated Agreement which sets the wages for the organized employees at Morris View.

Council #6 contends that Morris View employees should remain in the county-wide unit since they enjoy the same wages benefits and other terms and conditions of employment as other County employees. Moreover, it is argued that the County is the employer because it negotiates the collective agreements applicable to Morris View. Additionally, Council #6 asserts that the County maintains a significant role in contract administration by hearing and deciding grievances and disciplinary matters at the final administrative step of the grievance procedure prior to binding arbitration.

In In re Ocean County Prosecutor, supra,<sup>11/</sup> a similar argument was raised. In that case petitions for Certification of Public Employee Representative were filed by two employee organizations wherein they sought to sever the clerical employees working in the Prosecutor's Office from the county-wide unit in which they had been included on the grounds that the Prosecutor, and not the County, was the employer. Subsequently, an additional petition was filed by a third employee organization claiming that the County was the employer. The County and the Prosecutor jointly took the position that only the County was the employer. In discussing the case, the Director of Representation said:

It appears from the positions expressing opposition to the Petitions, particularly as expressed by the County and the Prosecutor in their joint statement, that in employment relations activities the Prosecutor's Office functions in the same manner as any other County department, and consistent with County employee relations policy. The County and the Prosecutor list 17 facets of personnel activities and focus attention on the role of the County's employee relations department in these areas. It is submitted

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<sup>11/</sup> While it is clear that all of the cases involving the identification of the employer of employees in the Prosecutor's Office may be distinguished on the basis of the particular legal structure affecting the funding of the Prosecutor's office (See, N.J.S.A. 2A:158-7, saved from repeal N.J.S.A. 2C:98-3. See Also N.J.S.A. 2A:157-18 and 19), the rationale applied to the factual circumstances extant in those cases is certainly applicable.

that the Prosecutor conforms his employment relations activities to the policy and review of the County as administered by the employee relations department, in such areas as, inter alia, employee selection and evaluation, employee discipline, promotional action and approval, contractual fringe benefit administration and personnel assignments. In their concluding analysis, the County and the Prosecutor state:

\* \* \*

History of bargaining clearly support the position of the employer on this matter.

The employee relations system that operates in the County of Ocean is the same for all departments and since the County Prosecutor's office is a department of the County of Ocean, the Ocean County Board of Freeholders, as the employer, should continue to be the employer in the broad county-wide unit of all secretarial and clerical employees and should continue to be the bargaining agent for this employer/employee relationship.

OPEIU, in its statement, asserts:

William McGinnis, labor representative for the Prosecutor's office and for Ocean County stated that these employees are employed by the County of Ocean, not by the Prosecutor's Office. To substantiate this claim, Mr. McGinnis points out that hiring, firing, promotions, salary scales and employer/employee relations are handled by the Ocean County Employee Relations Department. Also, transfers and bidding may be done from the Prosecutor's Office or vice versa. Clearly the employment conditions are dictated by the County, not the Prosecutor's Office. Furthermore, Mr. McGinnis stated that the Prosecutor's Office does not and will not handle such matters and grant any recognition. Id. at 62.

After commenting on the particular legal structure applicable to the funding of the Prosecutor's operation, the Director stated:

Notwithstanding the statutory independence of the Prosecutor's Office, it is not surprising that the Prosecutor may desire to harmonize his employee relations policies with those of the County as well as to integrate these functions through the employment relations arm of the County. However, the undersigned has not been referred to any authority, either statutory or decisional, which compels the Prosecutor to delegate or subjugate his authority to the County in personnel matters. In the absence of such a submission the undersigned cannot conclude, against weight of given statutory and decisional law, that the Prosecutor's conformance to County policies and that his utilization of the Employment Relations Department as a conduit for Civil Service and other personnel actions, indicates that his ultimate legal authority can in any way be diminished by the County.  
Id.

Council #6 argues that the history of the collective negotiations relationship in this matter also supports its position that the County of Morris is the employer of the employees at Morris View. Consistent with the Ocean County Prosecutor case, Morris Council #6 points out that the facts in the instant matter indicate that in terms of certain employment relations activities, Morris View has been functioning in the same manner as other County departments and consistent with overall County employee relations policy. The County's employee relations office has historically conducted the negotiations affecting Morris View employees. The Freeholders are able to interpret and administer the contract

through its role in the grievance procedure. Many of the same benefits and other terms and conditions of employment are shared by Morris View and other County employees.

However, also consistent with the Ocean County Prosecutor case is the fact that no authority has been cited which would compel the Board of Social Services to delegate or subjugate its authority to the County in personnel and labor relations matters. Indeed, unlike the Ocean County Prosecutor, which nonetheless was ultimately found by the Director of Representation to be the employer of the clerical employees in his office, the Board of Social Service has long been responsible for the hiring, firing, disciplining, promoting, etc., of Morris View employees. Moreover, the statutory scheme established pursuant to Title 44, while not the equal of the statutory scheme applicable to a county prosecutor, is clearly supportive of the degree of independence and control exercised by the Morris County Board of Social Services in personnel and labor relations matters.

Council #6 has pointed to the Freeholder's control over Morris View's budget in support of its argument that the County is the employer. It is clear from the statutory scheme of Title 44 and the testimony elicited during the hearing in this matter that the Freeholders have ultimate control over the level of funding. While the Freeholders may not have line-item veto authority, there is no

question that if they do not approve of an expenditure proposed in Morris View budget, they merely reduce the amount of money appropriated for Morris View by the amount of the contested expenditure. Clearly, control of the "purse-strings" is a very significant matter in the context of collective negotiations and is highly relevant in the identification of the employer. The Commission has previously considered the issue of the source of funding in regard to the identification of the employer.

In In re Bergen County Prosecutor, supra, and In re Mercer County Prosecutor, supra, the Commission said the following:

In determinations relevant to the identifications of public employer status, the undersigned has observed that the determination of the source of funding does not necessarily result in the identification of the employer for the purposes of collective negotiations. Rather, reliance is placed upon identifying the level of authority which exercises substantial control over labor relations affecting the concerned employees. See, In re Cape May County Guidance Center, [supra] and In re Passaic County Board of Chosen Freeholders, [supra]. Accordingly, while fiscal control granted to the counties can be an important factor in determining which authority exercises substantial control over labor relations, this factor must be considered in context with other factors traditionally utilized to identify employer status. Id at 4 NJPER 107.

The Commission went on to note the following:



The report to the Governor and Legislature preceding the Legislature's passage and adoption of the New Jersey Employer-Employee Relations Act, Chapter 303, Laws of 1968 anticipated that the identification of a public employer would not necessarily correlate to the body exercising fiscal control. The Report stated:

Collective negotiations can be effective in public employment despite the fact that executive bodies often lack final authority to determine matters of wage, salaries, and working conditions, and are limited to making recommendations to chief executives and legislators. Id. at 108, quoting, Final Report to the Governor and the Legislature of the Public and School Employee's Grievance Procedure Study Commission, January 9, 1968.

Thus, it is clear that the funding source, while significant, only constitutes one of the elements considered in determining the identity of the employer. Where the other indicia of control over the personnel and labor relations functions identify an entity different from the entity controlling funding, it is the former, rather than the latter, which must be designated the employer. See, In re Cape May County Guidance Center, supra; In re Passaic County Board of Chosen Freeholders, supra; In re ARA Services, Inc., supra.

Accordingly, pursuant to the analysis set forth above, I recommend that the Board of Social Services be deemed the employer of employees at Morris View Nursing Home and that a secret ballot election be directed in order to determine whether they wish to be

represented for the purposes of collective negotiations, or whether they wish no representation.

#### RECOMMENDATIONS

On the basis of the entire record herein, and for the reasons set forth above, I recommend the following:

1. That the Board of Social Services is the public employer of the employees at Morris View Nursing Home.
2. That a secret ballot election be directed in order to permit all regular full and part-time employees<sup>12/</sup> at Morris View

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12/ In correspondence dated March 1, 1985 the CWA advised the parties of its position that in the event an election is ordered in this matter, a professional option election should be conducted. Investigation indicates that professionals had not previously been afforded an opportunity to vote in a professional election. Pursuant thereto, I directed the County to compile and serve upon the parties a listing of professional employees at Morris View. I invited the parties to review the County's list of professionals and directed them to indicate any dispute they had with the list. I also asked the parties to set forth their positions regarding the conduct of a professional option election, noting that if they did not respond by the return date established, I would assume they had no objection to a professional option. In a letter dated April 29, 1985, District 1199J took the position that a professional option election is appropriate. The County of Morris and Council #6 submitted no position. The CWA disputed two (2) titles on the County's list involving a very small number of employees. Consequently, I recommend that a professional option election be conducted in this matter. The votes of employees in disputed professional titles can be handled through the Commission's regular challenge ballot procedure.

Nursing Home who are presently included in the county-wide unit an opportunity to vote as to whether they wish to be represented by one of the employee representatives party to this proceeding, or whether they wish no representation.

Respectfully Submitted

  
Stuart Reichman, Hearing Officer

Dated: June 17, 1985  
Trenton, New Jersey