

E.D. NO. 76-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF JERSEY CITY,
Public Employer,

-and-

LOCAL 2266, A.F.S.C.M.E., AFL-CIO,
Petitioner,

Docket No. CU-154

-and-

LOCAL 245, JERSEY CITY PUBLIC
EMPLOYEES, INC.
Intervenor,

-and-

LOCAL 246, JERSEY CITY PUBLIC
EMPLOYEES, INC.
Intervenor.

SYNOPSIS

The Executive Director finds that employees in two disputed titles - Supervising Clerks and Recreation Center Directors - are not supervisors within the meaning of the Act and, therefore, that the Petitioner cannot represent those employees in its supervisory unit. The Petitioner had filed exceptions to the Hearing Officer's Report and Recommendations regarding the status of the Recreation Center Directors but the Executive Director finds those exceptions to be without merit and unsupported in the record.

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DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the composition of a unit represented by the Petitioner, a hearing was held on February 28, April 10 and 23, 1975 before Joel G. Scharff, Hearing Officer of the Commission, at which all parties were given the opportunity to present evidence, to examine and cross-examine witnesses, and to argue orally. No post hearing briefs were filed. The Hearing Officer issued his Report and Recommendations, attached hereto and made a part hereof, on July 10, 1975. Timely exceptions were filed by Local 2266, A.F.S.C.M.E., AFL-CIO ("Petitioner") July 18, 1975 and that organization also submitted a supplementary letter dated July 30, 1975.

The undersigned has carefully considered the entire record, the Hearing Officer's Report and Recommendations, and the exceptions and, on the basis of the facts in this case, finds:

1. The City of Jersey City ("City") is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

2. Local 2266, A.F.S.C.M.E., AFL-CIO ("Petitioner"), Local 245, Jersey Public Employees, Inc. ("Local 245"), and Local 246, Jersey City Public Employees, Inc. ("Local 246") are employee representatives within the meaning of the Act and are subject to its provisions.

3. The Petitioner, claiming to represent employees in the titles "Supervising Clerk" and "Recreation Center Director", seeks to clarify a recognized unit of all non-uniformed, supervisory personnel employed by the City. Local 245 and Local 246 contest the Petitioner's claim, asserting that they represent "Recreation Center Directors" and "Supervising Clerks", respectively, within their own negotiating units. In the investigatory stage of this proceeding, the City took the position that Recreation Center Directors were included in the unit represented by Local 245 and that Supervising Clerks were included in the unit represented by Local 246. However, at the hearing, the City assumed a neutral posture. Therefore, there is a question concerning the composition of the unit represented by the Petitioner and the matter is properly before the undersigned for decision.

The Hearing Officer identified three major issues in this matter. First, was there express or implied intent to include Recreation Center Directors in the Petitioner's unit? Second, are Recreation Center Directors supervisors within the meaning of the Act? Third, are Supervising Clerks supervisors within the meaning of the Act? He found the answers to each of these questions to be negative.

No exception to the finding regarding Supervisory Clerks was taken and the undersigned adopts that finding for the reasons cited by the Hearing Officer.

The Petitioner excepted to the finding that Recreation Center Directors, of whom there are approximately eleven, are not supervisors within the meaning of the Act, contending that Recreation Center Directors can effectively recommend discharge and discipline and claiming that Recreation Center Directors both direct and assign all of the work of the Recreation Leaders. Petitioner further claims that the Civil Service job description of Recreation Center Directors as well as the Recreation Center Manual indicates that Recreation Center Directors have supervisory responsibilities. In addition, Petitioner claims that these Directors have a great deal of autonomy and have complete control of their centers similar to that exercised by school principals who were found to be supervisors in West Paterson Board of Education and West Paterson Education Association, P.E.R.C. No. 77 (1973). Finally, Petitioner asserts in its exceptions that it was the intent of the City and the Petitioner to include Recreation

Center Directors in Petitioner's supervisory unit.

A careful review of the records fails to support the contention of the Petitioner that Recreation Center Directors are supervisors within the meaning of the Act, i.e., that they have the power to hire, fire, discipline or to effectively recommend the same.

While the Personnel Director of the City testified that a Recreation Center Director can recommend discipline and even discharge, there is no evidence that Recreation Center Directors in fact have made any such recommendations, effective or ineffective. He testified that he was unaware of a Recreation Center Director ever having suspended a Recreation Leader or having recommended discipline of a Recreation Leader.

One witness called by the Petitioner claimed that he had effectively recommended the discipline and discharge of employees but it developed, upon further examination, that the witness was serving in a capacity somewhat above that of a Recreation Center Director when he had made such recommendations. He also testified that, as a Recreation Center Director, he had not fired anybody and he stated that there had been one instance in which he had directed an employee to get to work on time. That incident does not constitute either discipline or an effective recommendation of discipline in the judgment of the undersigned.

Neither the Civil Service job description nor the Recreation Division Manual, which the City contends was replaced

in 1968 or 1969 by the adoption of official City rules, establish that Recreation Center Directors are supervisors within the meaning of the Act. The record contains no evidence to support the claim that Recreation Center Directors exercise the necessary authorities over other employees. Even grievances are taken to Recreation Supervisors who are above Recreation Center Directors, according to the Petitioner's witness, and there is no evidence that Recreation Center Directors evaluate other employees. While they do assign other employees, as found by the Hearing Officer, that does not make them supervisors within the meaning of the Act.

Additionally, a sworn statement from the Director of Human Resources which includes the Division of Recreation and which states, in response to a question from a representative of the Petitioner, that Recreation Center Directors can effectively recommend disciplinary action, is not supported in the record. The Director was not called to testify and his conclusionary statement is simply unsubstantiated.

The record supports the findings and recommendations of the Hearing Officer regarding the nonsupervisory status of Recreation Center Directors and the undersigned adopts those findings of fact and conclusions of law that Recreation Center Directors are not supervisors within the meaning of the Act.

It is pertinent to note, however, that this finding does not mean that the Petitioner represents no supervisory employees in the Division of Recreation. The recognition clause

of the recently expired agreement between the City and the Petitioner excludes Division Directors from the unit but the record indicates that there are two titles within that Division below the Director but above Recreation Center Directors who are apparently included in the unit: Assistant Superintendents (two) and Recreation Supervisors (four).

The record indicates that the three units concerned in this proceeding - Petitioner's supervisory unit, Local 245's non-supervisory blue and white-collar unit, and Local 246's non-supervisory blue-collar unit - were all created subsequent to the enactment of the New Jersey Employer-Employee Relations Act. Therefore, there is no basis - nor is it claimed by the Petitioner - for a finding of established practice, prior agreement or special circumstances which would permit representation by the Petitioner of a mixed unit of supervisors and nonsupervisors.

The remaining exception relates to the intent of the parties. While the record does not clearly establish what the parties intended regarding the unit placement of Recreation Center Directors and while it is recognized that there is some evidence to support Petitioner's claim that the City and the Petitioner intended to include Recreation Center Directors in the Petitioner's unit, the undersigned does not believe that this matter turns on the intent of those two parties or the desires of these employees. Even if it were clear that those parties had intended to include Recreation Center Directors in the Petitioner's unit - and this is by no means clear in this record e.g. the employees

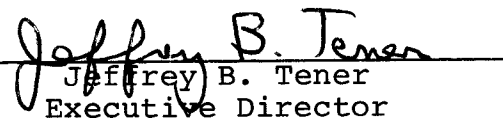
receive benefits accorded to the employees in Local 245's unit - that would not be dispositive.

Petitioner's unit is a unit of supervisory employees and the Act precludes the Petitioner from representing nonsupervisors in that unit absent exceptional circumstances neither found nor claimed in this proceeding. The obligation of the Commission is to clarify the disputed unit to insure the existence of an appropriate unit. Thus, this matter turns on the supervisory status of the Recreation Center Directors.

The exceptions regarding the supervisory status of Recreation Center Directors and all other exceptions of the Petitioner have been found to be without merit.

Based upon the above, the undersigned finds and determines that neither Supervising Clerks nor Recreation Center Directors are supervisors within the meaning of the Act and that the Petitioner is precluded from representing employees in those titles in the disputed unit. The supervisory unit represented by the Petitioner in this proceeding is hereby clarified to exclude those titles.

BY ORDER OF THE EXECUTIVE DIRECTOR



Jeffrey B. Tener
Executive Director

DATED: Trenton, New Jersey
February 9, 1976

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LOCAL 246, JERSEY CITY PUBLIC EMPLOYEES, INC. lb/

Intervenor

Appearances

Martin R. Pachman, Esquire
City of Jersey City

Michael J. Herbert, Esquire
Local 2266, A.F.S.C.M.E., AFL-CIO

John E. O'Brien, Secretary
Anthony P. Peduto, Esquire
Local 245, Jersey City Public Employees, Inc.

E. Perry Rabbino, Esquire
Local 246, Jersey City Public Employees, Inc.

la/ and lb/ The caption is hereby amended to correspond to the correct names of the Intervenor as stipulated by the parties at T 2/28, P. 6-7. Transcript references reflect dates of testimony and page references.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A petition was filed with the Public Employment Relations Commission on October 1, 1974, by Local 2266, A.F.S.C.M.E., AFL-CIO, requesting a clarification of unit. Local 245, Jersey City Public Employees, Inc., and Local 246, Jersey City Public Employees, Inc. have sought to intervene in the proceedings.^{2/} Pursuant to a Notice of Hearing dated January 30, 1975, a hearing was held before the undersigned Hearing Officer on February 28, 1975, in Newark, New Jersey; and pursuant to further notices of April 3, 1975 and April 17, 1975, continuances of such hearing were held on April 10, 1975, and April 23, 1975, before the undersigned Hearing Officer in Newark and in Trenton, New Jersey, respectively, at which time all parties were given an opportunity to examine and to cross-examine witnesses, to present evidence, and to argue orally.^{3/} All parties were notified of the conclusion of the hearings and given the opportunity to file briefs before the Hearing Officer; however, no party submitted a brief. Upon the entire record in this proceeding, the Hearing Officer finds:

(1) The City of Jersey City is a Public Employer within the meaning of the Act and is subject to the provisions of the Act.

(2) Local 2266, A.F.S.C.M.E., AFL-CIO ("Petitioner"), Local 245, Jersey City Public Employees, Inc. ("Local 245"), and Local 246, Jersey City Public Employees, Inc. ("Local 246"), are employee representatives within the meaning of the Act.

^{2/} Locals 245 and 246 qualify as intervenors in this clarification proceeding, having alleged that the personnel involved herein are covered by their respective contracts.

^{3/} Both the Public Employer and Local 246 concluded their presentations on February 28, 1975 and withdrew their appearances for the conclusion of hearings (T 2/28, P. 88,89).

(3) The Petitioner, claiming to represent employees in the titles "supervising clerk" and "recreation center director," seeks to clarify a recognized unit of all non-uniformed, supervisory personnel employed by the City.^{4/} Local 245 and Local 246 contest the Petitioner's claim, asserting representation status over recreation center directors and supervising clerks, respectively, within their own negotiating units.^{5/} The City originally took the position that

4/ The most recent agreement between Local 2266 and the City, covering the calendar years 1974 and 1975, contains the following recognition clause:

The City of Jersey City hereby recognizes Local 2266A, as the exclusive representative for the purposes of collective negotiations of all non-uniformed, supervisory personnel employed by the City of Jersey City.

This unit presently excludes the following:

1. Department Directors
2. Administrative Secretaries, or in the absence thereof, the Administrative Clerk for each Department
3. All Division Directors
4. The Budget Director
5. All employees of the Office of the Mayor
6. City Controller/Assistant Municipal Treasurer
7. The Payroll Supervisor
8. Management Analyst Staff
9. Senior and Principal Personnel Technicians
10. All employees in the Department of Law
11. All uniformed employees of the Department of Public Safety

5/ The recognition clause of Local 245's currently effective agreement with the City (Calendar 1974-1975) reads as follows:

- A. The City hereby recognizes Local 245 as the collective negotiations agent for all non-supervisory blue and white collar employees in the Department of Public Works, including the following divisions: Auto services, sanitation, streets and sewers; engineering; forestry; facilities maintenance, and the water division, except for water meter readers therein, as well as employees within the Division of Human Resources in the Parks and Recreation Section. Excluded from this bargaining unit shall be all employees statutorily excluded by Chapter 303 of the Laws of 1968.

The recognition clause of Local 246's currently effective agreement with the City (Calendar 1974-1975) reads as follows:

- A. The City hereby recognizes Local 246 as the collective negotiations agent for all non-supervisory blue collar employees in the following named departments: Department of Administration; Department of Finance; Department of Personnel; Department of Law (non-professional employees only); Department of Public Safety (non-uniformed employees only); Department of Human Resources (except Parks & Recreation); Department of Community Development, and the Office of the City Clerk.
- B. Excluded from this bargaining unit shall be all employees statutorily excluded by Chapter 303 of the laws of 1968, as well as employees within other currently recognized or certified bargaining units within the City of Jersey City.

recreation center directors were included in the unit represented by Local 245,^{6/} and that supervising clerks were included in the unit represented by Local 246.^{6/} However, at hearing, the City assumed a neutral posture.^{7/} Inasmuch as there is a question concerning the composition of the unit represented by the Petitioner (Local 2266), the matter is appropriately before the Commission.

BACKGROUND

A brief discussion of the representative histories of Locals 245, 2266, and 246 is helpful in placing the present petition into perspective.

LOCAL 245

On July 27, 1970, pursuant to a Commission decision (P.E.R.C. No. 43), Local 245 was certified^{8/} as the exclusive representative of City employees "in the unit of all white-collar and blue collar employees in the Department of Public Works, excluding craft employees, professional employees and supervisors within the meaning of the Act,..."^{9/}

LOCAL 2266

Pursuant to a petition filed before the Commission by Jersey City Supervisors Local 2265, A.F.S.C.M.E., AFL-CIO, seeking to represent all supervisors employed by the City of Jersey City, a hearing was held on April 6, 1972, at which the parties stipulated agreement towards the recognition of a supervisory unit, specifying certain job titles that the unit would include but not necessarily be limited. (Transcript of Proceedings In the Matter of City of Jersey City and Jersey City Supervisors Local 2265, A.F.S.C.M.E., AFL-CIO, Docket No. RO-372, April 6, 1972).^{10/} On May 31, 1972, the City and Local 2266,^{11/} entered into a

^{6/} February 3, 1975 letter to Commission investigating agent Carl Kurtzman from Wellington Davis, Jersey City Director of Personnel.

^{7/} T 2/28, P.22

^{8/} Certification was stayed by the Superior Court, Appellate Division until May 4, 1971. See P.E.R.C. No. 63.

^{9/} P.E.R.C. No. 43, P. 13

^{10/} The undersigned has before him no evidence as to the titles agreed to be within the supervisory unit.

1972-1973 contract by which Local 2266 was recognized as the exclusive bargaining agent for City employees "within the bargaining units and classifications therein as recorded by the New Jersey Public Employment Relations Commission, and for all such additional bargaining units and classifications for which the parties may subsequently mutually agree, and for which the Union is certified as the exclusive bargaining representative by the New Jersey Public Employment Relations Commission"^{12/}.

LOCAL 246

On May 24, 1972, pursuant to proceedings on a representation petition filed by Local 246, Jersey City Public Employees, Inc., the Commission's Executive Director ordered an election among employees in the following unit found to be appropriate for collective negotiations: "All white and blue collar employees employed by the City of Jersey City in City Hall and the Agencies of the Mayor, excluding the Department of Public Works, supervisory and professional personnel, craftsmen and policemen and managerial executives."^{13/} However, an election was not held, as Local 246 withdrew its petition in favor of the City's offer of recognition.^{14/}

DISCUSSION

Against this background Local 2266's unit clarification petition may be best discussed. The title Recreation Center Director has existed in Jersey City prior to the formation of Locals 2266 and 245. Both Locals have stipulated that at the time of the representation election for the non-supervisory

^{11/} The undersigned notes in passing the discrepancy in the Local 2265 and Local 2266 designations.

^{12/} Commission Exhibit 2, P. 1

^{13/} U.D. No. 13, P.2

^{14/} Subsequent recognition clauses of the respective Locals are embodied in footnotes 4 and 5, supra.

Department of Public Works unit, the Division of Recreation, in which recreation center directors are employed, was included within the Department of Public Works. ^{15/} There is no allegation or evidence to indicate a change in work responsibilities of center directors since that time.

Similarly, the title "Head Clerks" pre-existed the formation of the negotiating units. While the title name has been changed to "Supervising Clerk" pursuant to a Civil Service Commission re-classification, it is the undisputed testimony of the City's Director of Personnel that the duties associated with the position have remained the same. ^{16/}

Consequently, it appears to the undersigned that this unit clarification petition does not involve any change of circumstances, and, in fact, Local 2266 has not argued such.

POSITIONS OF THE PARTIES

The thrust of Local 2266's argument is that the positions Recreation Center Director and Supervising Clerk have been and still are supervisory positions. ^{17/} To this end Local 2266 has stipulated acceptance of the Civil Service Description of "Supervising Clerks" as a full description of duties performed by those personnel. Local 246, arguing that supervising clerks are not supervisors, has agreed with certain limitations (which will be discussed, infra) to be bound to that stipulation. With respect to Recreation Center Directors, Local 2266 has coupled its supervisory argument with the contention that recreation center directors were not intended to be included within the non-supervisory unit represented by Local 245, and that, consequently, there was intent to include

^{15/} T 2/28, P. 119 The Division of Recreation is now within the Department of Human Resources; However, Local 245's recognition clause has been amended to include the Division of Parks and Recreation within that Department. See footnote 5 supra.

^{16/} T 2/28, P. 43

^{17/} The issue of whether recreation center directors and supervising clerks are supervisors will be discussed in detail later in this report.

employees in that title in a supervisory unit. Local 245 disputes both of these contentions.

ISSUES

Intent

Since intent to include certain employees within a negotiating unit is a relevant consideration to unit clarification proceedings, a few words must be said about the latter contention. Firstly, it must be borne in mind that the unit sought to be clarified is the supervisory unit, and that a unit clarification proceeding cannot be used by an employee organization to clarify a unit represented by another organization.^{18/} While the undersigned recognizes the reality that Local 245 represents non-supervisory personnel and Local 2266 represents supervisors, it is not exactly syllogistic reasoning to conclude that a lack of intent in 1969 to include certain employees in a unit of non-supervisory personnel necessary means that the personnel were intended to be included in a unit of supervisory personnel established in 1972.

Secondly, even if such reasoning were deductive, the proof underlying the petitioner's contention would not be sufficiently dispositive. Petitioner alleges that the non-inclusion of recreation center directors in the eligibility list provided by the Employer for the 1969 non-supervisory election for negotiating representative expresses an intent that recreation center directors not be included in that unit. However, the undersigned's review of that document^{19/} discloses that even the title "recreation leader," which Locals 245 and 2266 have

^{18/} N.J.A.C. 19:11-1.2 and 19:11-1.5

^{19/} Exhibit 2266-4

stipulated to be within the non-supervisory unit,^{20/} is not included on the list. Moreover, the undersigned researched the file of the proceedings thereinvolved, Docket No. R-9, which revealed the original list of employees provided by the Employer to the election officer. That document purported to be a list of all employees in the Department of Public Works including both non-supervisory and supervisory personnel. The title recreation center director does not even appear on this all inclusive list.^{21/}

Petitioner claims that its contract with the City covers recreation center directors; however, general references to "recreational employees covered by this contract" is not the same.^{22/} Neither petitioner's 1972-1973 contract nor its 1974-1975 contract specifically makes reference to the title recreation center director.

Contrary to Petitioner's claims of intent, it is undisputed testimony of the City's Director of Personnel that recreation center directors have received benefits pursuant to Local 245's agreement, and while the Petitioner might not have agreed "to have the recreation center directors covered by the Local 245 contract"^{23/} there is no evidence on the record that it voiced objection to the imposition of these benefits.

The undersigned submits, therefore, that there is no express or implied intent to include recreation center directors in the Petitioner's unit.

Supervisory Issue

Whether or not recreation center directors and supervising clerks are supervisory personnel is the only remaining issue that need be discussed. The

^{20/} T 4/10, P. 111

^{21/} Commission Exhibits 13 and 14; T 4/23 pp. 5-7

^{22/} Article III, Commission Exhibit 3

^{23/} T 2/28, P. 56

embarkation point of such a discussion must necessarily be a definition of the term "supervisor." In this respect the undersigned is called upon to apply the provisions of the New Jersey Employer-Employee Relations Act, ^{24/} which sets forth the relevant statutory framework for the composition of appropriate negotiating units of New Jersey public employees.

In applying the Act, the Commission has had opportunity to reflect on the definition of "supervisor". In the Matter of Cherry Hill Township, Department of Public Works, and American Federation of State, County, and Municipal Employees, Local 1965, AFL-CIO, P.E.R.C. No. 30, the Commission stated:

"It is true that ^{25/}Section 13A-3 of the Act, entitled "Definitions", does not contain a definition of the term "supervisor". Section 13A-5.3 does provide that supervisors "having the power to hire, discharge, discipline or to effectively recommend the same..." shall not be represented by an employee organization which admits "non-supervisory" personnel to membership, absent certain conditions not pertinent here. The Employer argues that this language is not a definition but simply a modification which indicates a class of supervisors who are subject to the prohibition. It further argues that, without a statutory definition, the Commission should broadly construe the term, and for guidance it urges consideration of the definition found in the National Labor Relations Act. The clear implication, from the above quoted portions, of the Act's disjunction between non-supervisory personnel and those having the enumerated authorities is that employees without such authority are not supervisors. Even if it were otherwise, the Act, by this delineation, has obviously marked out separate areas of interest and a faithful construction would seem to require the conclusion that those having some, but not these specific authorities, are, for the purposes of representation by an employee organization, more closely allied in interest with non-supervisory employees. On the other hand, were we to borrow the definition from the federal act, there could result the anomalous situation that one having the authority to assign and transfer, for example, could not normally be included by the Commission in the same unit with non-supervisors, by virtue of the prescription in Section 13A-6(d), but he could be represented in negotiations by an organization which admits non-supervisory members. It is the judgement of the Commission that the Act does, in effect, define a supervisor

^{24/} Chapter 303, Laws of 1968 as amended by Chapter 123, Laws of 1974 NJSA 34:13A et. seq.

^{25/} The Commission's references reflect Act sections as designated by New Jersey Statutes Annotated.

to be one having the authority to hire, discharge, discipline or to effectively recommend the same." (emphasis mine)^{26/}

While the Commission's statement was rendered within the context of a representation proceeding, it is equally applicable to the clarification question presently before the undersigned. For if the definition of "all non-uniformed supervisory personnel" under Local 2266's recognition clause were other than limited to supervisors with power to hire, discharge, discipline or to effectively recommend the same, Local 2266's recognition as exclusive representative of supervisory personnel could not be read in harmony with Local 245's earlier certification as exclusive representative of "White and blue collar employees... excluding...supervisors within the meaning of the Act..."

The issue before the undersigned, therefore, is whether recreation center directors and supervising clerks are supervisors within the meaning of the Act, i.e. having the power to hire, discharge, discipline, or to effectively recommend the same.

Recreation Center Director

Recreation center directors are employees within the Division of Parks and Recreation who are assigned to various recreation centers of the City. The center director assigned a particular center is responsible for the overall direction of activities at that center. The center director also directs the work of several recreation leaders employed at the center. This would consist of assigning leaders to certain posts within the center for the purpose insuring that participants are not violating center rules, and, occasionally directing leaders to officiate in the activities.

The line chart in the recreation division would read in descending order as follows: Department of Human Resources; Division of Parks and Recreation: Division Director (Parks and Recreation), two Assistant Superintendents, four Recreation Supervisors, eleven Recreation Center Directors, and approximately thirty Recreation Leaders.^{27/} Normally, a center director would report to a recreation supervisor; however, within the context of certain assignments a center director may report to either the division director or to his assistant.

Besides directing recreation leaders, the center director is responsible for a number of administrative functions. However, directing the work of others does not necessarily mean that an employee is a supervisor within the meaning of the Act.^{28/} Nor does the requirement of processing time cards for submission to recreation supervisors and the calling in of absences^{29/} constitute the center directors as supervisors.

To fall within the definition of supervisor, recreation center directors must have the power to hire, discharge, discipline or to effectively recommend the same. The testimony of all the witnesses (the City Director of Personnel and two recreation directors) is undisputed that center directors neither have the authority to hire nor to discharge,^{30/} or to effectively recommend the same.^{31/} The record also indicates that center directors have not been delegated disciplinary authority. They do not have the power of suspension;^{32/} and, even in the most

^{27/} T 2/28, pp 29:30

^{28/} See Bergen Pines County Hospital and I.U.O.E. Stationary Locals 68-68A-68B, AFL-CIO, P.E.R.C. No. 40, wherein the Commission reverses the Hearing Officer on this point.

^{29/} See Hearing Officer's Report page 3 West Orange Board of Education and I.U.O.E. Local No. 68, P.E.R.C. No. 2.

^{30/} T 2/28, P. 52; T 4/10 P. 12, 14; T 4/23, P. 20

^{31/} T 2/28, P. 57,77; T 4/10, P. 12; T 4/23, P. 21

^{32/} T 2/28, P. 77, 78; T 4/10, P. 20

extreme situation, where a center director might send an employee home if the employee is intoxicated (this has never happened), the Director of Recreation has the final say. ^{33/}

While a recreation center may recommend that disciplinary action be taken against an employee, and he is, in fact, expected to report recreation leaders not doing their job, it does not appear that any recommendation of discipline is or would be effective. No specific instance of a recommendation by a center director has been brought before the Hearing Officer. However, any such request would necessarily be channeled through recreation division channels ultimately to the department head, who would not make a final decision until at least one independent "look at the particular situation" by an assistant director. ^{34/} Additionally, the City has no regular evaluation procedure for its employees by which a center director's evaluation might possibly lead to discipline.

Mr. Przystup, a recreation center director, testified that upon his recommendation a recreation leader was transferred. However, this one instance which happened "several years ago" ^{35/} appears to the undersigned to have been an isolated incident occurring within a specialized program over which Mr. Przystup has authority. ^{36/} Moreover, the undersigned is not convinced that such transfer was, in fact, disciplinary action. There is no evidence to indicate that it was non-voluntary, that it carried with it a verbal or written reprimand normally associated with disciplinary actions, or that it was even considered disciplinary by the City.

33/ T 4/10, P. 26

34/ T 2/28, P. 75

35/ T 4/10, P. 49

36/ T 4/10, P. 14

For the above reasons, the undersigned submits that the recreation center directors are not supervisors within the meaning of the Act.

Supervising Clerks

The position of Supervising Clerk may be found in several departments of the City. An example would be in the Department of Personnel where the supervising clerk would fall, in a line chart, underneath assistant division directors, and above account clerks and clerk typists.^{37/} In general, the supervising clerk has responsibility of overseeing the clerical staff underneath her jurisdiction, organizes the work, and assigns the work load.

Petitioner and Local 246, as stated supra, have stipulated the Civil Service job description as the full description of duties of supervising clerks, with the addition, as expressed by Counsel for Local 246, of evidence introduced through the testimony of the Director of Personnel.^{38/} It appears that these

^{37/} T 2/28, P. 43

^{38/} The job description of supervising clerks is set forth as follows:

DEFINITION: Under direction, performs highly responsible and varied clerical work requiring thorough knowledge of department rules and regulations and has charge of a large clerical unit; does related work as required.

EXAMPLES OF WORK: When the work program has been established organizes assigned work and develops effective work methods; reviews, checks and certifies reports, applications, and other documents for corrections where difficult determinations are concerned; handles special requests for information in accordance with prescribed rules and regulations; relieves the supervisory officer of office details; interviews and transacts business with persons who may call at the office; prepares agendas of meetings; assists in the planning, and when so required, in the revision of clerical procedures and office routines; compiles statistical and other data; receives, reviews and adjusts complaints; prepares requisitions; answers inquiries; guides, instructs and assigns tasks, participates in and is responsible for the work of the staff; compiles data for budgets and reports; makes special studies of certain operations and reports findings; handles correspondence; prepares periodic statements; maintains petty cash fund; prepares reports and statements; makes decisions requiring thorough knowledge of the organization; maintains, classifies, indexes, and cross references records and files.

responsibilities, as set forth below, are a spectrum of duties - not all performed by every supervising clerk. In the opinion of the undersigned, none of the duties set forth in the description constitute a supervising clerk as a supervisor within the meaning of the Act. As the Commission stated in Middlesex County Welfare Board and Communication Workers of America, AFL-CIO, P.E.R.C. No. 10,

"The fact that they are called supervisors in a civil service job job description, give verbal evaluations of subordinates and otherwise assign, check and review case work does not warrant a finding that they are "supervisors" within the meaning of this Act."^{39/}

Supervising clerks do not have the authority to hire, or to discharge.^{40/} There is no evidence that any supervising clerk can effectively recommend the same. Like the recreation center directors, supervising clerks are expected to report work violations to their supervisors, and may recommend discipline, but they do not have the authority to suspend. The Director of Personnel cannot recall any recommendations of discipline from a supervising clerk.^{41/} Moreover, any such recommendation would necessarily be directed ultimately to the Director of Personnel, who would make an independent investigation and decision.^{42/} Lastly, supervising clerks are not requested to evaluate other employees.^{43/} For these reasons, it appears to the undersigned that the supervising clerks cannot hire, discharge, discipline or effectively recommend the same.

RECOMMENDATION

Upon the entire record and the findings and conclusions predicated thereon and set forth heretofore, the Hearing Officer respectfully submits that

^{39/} P.E.R.C. No. 10, P. 3

^{40/} T 2/28, P. 48

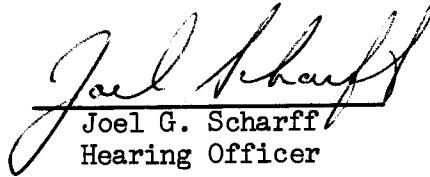
^{41/} T 2/28, P. 70

^{42/} T 2/28, P. 69

^{43/} T 2/28, P. 68

those personnel employed as recreation center directors and supervising clerks by the City of Jersey City are not supervisory personnel and are not included within the unit represented by Local 2266, A.F.S.C.M.E., AFL-CIO.

RESPECTFULLY SUBMITTED


Joel G. Scharff
Hearing Officer

DATED: July 10, 1975
Trenton, New Jersey