

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

Docket No. SN-78-4

-and-

STATE SUPERVISORY EMPLOYEES  
ASSOCIATION AFFILIATED WITH THE NEW  
JERSEY CIVIL SERVICE ASSOCIATION/  
NEW JERSEY STATE EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the State of New Jersey, the Commission determined that the statutory language of N.J.S.A. 38:23-2 was obligatory in nature and had to be viewed as requiring that public employers, such as the State of New Jersey, grant leaves of absence with pay, subject to the limitations contained within the above-cited statute, to all duly authorized representatives of the New Jersey Civil Service Association and New Jersey State Employees Association included within the negotiations unit represented by the State Supervisory Employees Association to attend the annual New Jersey Civil Service Association and New Jersey State Employees Association conventions. In accordance with the Commission's decision in In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976), the Commission concludes that the grievance concerning this issue may proceed to arbitration if otherwise arbitrable under the terms of the parties' agreement. The request of the State of New Jersey for a permanent restraint of arbitration concerning this issue was therefore denied.

P.E.R.C. NO. 78-66

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

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STATE SUPERVISORY EMPLOYEES  
ASSOCIATION AFFILIATED WITH THE  
NEW JERSEY CIVIL SERVICE ASSOCIATION/NEW  
JERSEY STATE EMPLOYEES ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, John J. Degnan, Attorney  
General (Mr. Guy Michael, on the Brief).

For the Respondent, Fox and Fox, Esqs. (Mr. David  
I. Fox, on the Brief).

DECISION AND ORDER

On September 8, 1977 the State of New Jersey (the "State") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (the "Commission") seeking a determination as to whether a certain matter in dispute between the State and the State Supervisory Employees Association affiliated with the New Jersey Civil Service Association/New Jersey State Employees Association (the "Association" or "Respondent") is within the scope of collective negotiations.

The Respondent is the certified majority representative of certain supervisory personnel subsumed within a negotiations unit known as the Primary Level Supervisors Unit. The State is the public employer of these individuals. The instant Scope Petition was filed

in response to the filing of a grievance by the Respondent Association and its effort to process said grievance through binding arbitration, the subject matter and circumstances of which the State contends relates to an illegal subject of collective negotiations. More specifically, the aforementioned grievance was filed in response to a June 27, 1977 letter from the Director of the State Office of Employee Relations to the Attorney for the Association advising him, inter alia:

Your clients, the New Jersey Civil Service Association (CSA) and the New Jersey State Employees Association (SEA) regularly hold annual conventions. Pursuant to the N.J.S.A. 38:23-2,1/ your clients have requested that certain employees, designated as either CSA or SEA delegates, be released from their duties as State employees in order to attend these conventions.

Please be advised that, pursuant to the Attorney General's Formal Opinion No. 25-1976 [a copy of which was attached], the State's policy will no longer permit the release of any managerial, confidential or supervisory employee for attendance as delegates to conventions of either Association. Hereafter, such employees will be advised that attendance at either convention would constitute a conflict of interest with their State employment." (footnote added).

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1/ N.J.S.A. 38:23-2 in pertinent part states the following:

The head of every public department and of every court of this State, every superintendent or foreman on the public works of this State, the heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities, shall give a leave of absence with pay to every person in the service of the State, county, or municipality who is a duly authorized representative of the . . . Council of State Employees [now the State Employees' Association]. . . New Jersey Civil Service Association . . . to attend any State or national convention of such organization.

(continued)

By letter dated July 14, 1977, the attorney for the Respondent filed a grievance that later resulted in a demand for the appointment of an arbitrator under the procedures of the Commission [Docket No. AR-78-30], contending that the policies set forth in the aforementioned June 27, 1977 letter relating to paid leaves to attend New Jersey Civil Service Association (the "NJCSA") and New Jersey State Employees Association (the "NJSEA") annual conventions violated several contractual provisions subsumed within the negotiations agreement between the State and the Respondent.<sup>2/</sup>

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1/ (continued)

A certificate of attendance to the State convention or encampment shall, upon request, be submitted by the representative so attending.

Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention. No person shall be entitled to a total of more than 5 days leave of absence with pay each calendar year for the purpose of attending, as authorized representative, the State or national convention of one or more of the above enumerated organizations. The leaves of absence authorized hereunder shall not be cumulative and any unused leaves shall be canceled at the end of any given year.

2/ Two other grievances were filed concerning the effect of the State's changed policies concerning NJCSA and NJSEA convention leaves on behalf of two negotiations units represented by the NJCSA and NJSEA, the administrative and clerical services unit and the professional unit, and requests for arbitration of these grievances were also filed. The State filed a separate Scope of Negotiations Petition concerning these particular arbitration requests and this Petition was docketed as SN-78-5. It now appears that these two arbitration requests relating to the administrative and clerical unit and professional unit will be withdrawn by the NJCSA and NJSEA and the State will thereafter withdraw the related Scope Petition (SN-78-5).

The State filed the instant scope petition in response to the Respondent's filing for arbitration and further requested that the Commission grant interim relief in the form of an order restraining the arbitration proceedings concerning the issue in dispute, contending that the subject matter of the grievance submitted to arbitration related to an illegal, non-arbitrable issue. In a letter dated November 2, 1977 the Respondent agreed to a voluntary stay of the arbitration proceeding during the pendency of this Scope Petition.<sup>3/</sup>

An informal conference, pursuant to N.J.A.C. 19:13-3.3, was conducted by an agent of the Commission on December 12, 1977 for the purpose of clarifying the issues in dispute, exploring the possibility of voluntary resolution and settlement of the dispute, and for the taking of stipulations of fact. The State and the Respondent subsequently agreed to certain stipulations to be presented to the Commission to help facilitate the disposition of the instant scope of negotiations petition. A copy of this stipulation is attached to this decision as Exhibit "A" and made a part hereof. Both parties to this proceeding submitted briefs regarding their respective legal contentions, all of which were received by March 17, 1978.<sup>4/</sup>

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<sup>3/</sup> The Respondent also filed an Unfair Practice Charge dated December 19, 1977 against the State concerning the convention leave issue. [Docket No. CO-78-128]. This matter is being held in abeyance pending the Commission's decision in this related scope of negotiations proceeding.

<sup>4/</sup> The State, in a letter submission dated April 7, 1978, asserted that the Respondent had exceeded the scope of the above mentioned stipulations in regard to the arguments set forth in the

The State asserts that a request made on behalf of individuals designated as either NJCSA or NJSEA delegates and included within the primary level supervisory unit represented by the Respondent, for time off with pay to attend annual conventions held by the NJCSA and NJSEA, organizations with whom the Respondent is affiliated with, relates to an illegal subject of collective negotiations, in consideration of the effect of language contained within N.J.S.A. 34:13A-5.3. More specifically, the State relies upon statements contained within a Formal Opinion of the Attorney General, No. 25-1976, a copy of which is attached to this decision and designated as Exhibit "B", that concludes that supervisory employees in general may not receive a leave of absence with pay to attend conventions of either supervisory or non-supervisory employee organizations if attendance at and participation in these conventions conflicts in any manner with their undivided loyalty, responsibilities and obligations to State government. In its brief the State asserts that the attendance of members of the supervisory unit at conventions where officers of the NJCSA and NJSEA -- organizations which in part represent non-supervisory employees in the Administrative and Clerical and Professional units -- are elected and where collective negotiations matters may be discussed

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4/ (continued)

Respondent's brief. The State reserved its right to seek an evidentiary hearing, apparently through the vehicle of a motion for reconsideration pursuant to N.J.A.C. 19:14-8.4, if any of the additional facts raised by the Respondent or conclusions drawn therefrom proved relevant to the Commission's determination of this matter.

The Commission believes that an examination of this decision will reveal that its decision would have been the same even if it had not considered the Respondent's brief.

necessarily conflicts with their loyalty, responsibilities and obligations to the State, as a public employer. The State submits that acceding to the respondent's requests could result in the State violating the New Jersey Employer-Employee Relations Act by ignoring cited proscriptions against interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act (N.J.S.A. 34:13A-5.4a(1)); and by dominating or interfering with the formation, existence or administration of an employee organization (N.J.S.A. 34:13A-5.4a(2)). The State concludes that permitting primary level supervisors to serve as delegates to the NJCSA and NJSEA conventions would also conflict with provisions within the Act relating to the unit separation of supervisory and non-supervisory employees and could lead to a question being raised by the State as to the Association's qualifications as an independent supervisory organization. The State in part relies upon the New Jersey Supreme Court decision, Board of Education of West Orange v. Wilton, 57 N.J. 404 (1971) in support of its contentions.

The Respondent maintains that the State is statutorily obligated (pursuant to N.J.S.A. 38:23-2) and contractually required (pursuant to Article XXIV of the agreement between the State and the Respondent<sup>5/</sup>) to grant duly authorized representatives in the supervisory

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5/ Article XXIV in part states the following:

1. The State agrees to provide leaves of absence with pay for delegates of the Association to attend Association activities. A total of 300 days of such leave of absence may be used during the period July 1, 1977 through June 30, 1978, and 300 days of such leaves of absence during the period July 1, 1978 through June 30, 1979. The total number of days of such leave which may be used in each year shall be exclusive of leave provided under

(continued)

unit represented by the Respondent time off with pay to attend the NJCSA and NJSEA conventions. The Respondent submits that the Wilton decision, supra, is not pertinent to the instant matter, inasmuch as it is stipulated that no question is presently being raised concerning the composition of the primary level supervisory unit nor to the majority representative status of the Respondent with respect to the members of said unit. The Respondent relies upon the Act's statements that (1) public employees shall have, and shall be protected in the exercise of their right to form, join and assist any employee organization (N.J.S.A. 34:13A-5.3), and (2) the fact that an organization that has supervisory employees as members shall not deny the right of that organization to represent the appropriate unit [that may be composed of non-supervisory employees] in collective negotiations (N.J.S.A. 34:13A-5.3), in support of its position. The Respondent also contends that N.J.S.A. 38:23-2, amended recently, mandates the conclusion that unit members represented by the Association be permitted time off to attend the NJCSA and NJSEA conventions with full pay. The Respondent in this regard cites Commission decisions that have held, in part, that specific statutes governing terms and conditions of employment cannot be abrogated by collective negotiations and, of course, by unilateral action.<sup>6/</sup>

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5/ (continued)

the provisions of N.J.S.A. 38:23-2 and ordinarily granted under that statute.

2.a. This leave is to be used for participation in regularly scheduled meetings or conventions of labor organizations with which the Association is affiliated and for training programs or other Association activity for which appropriate approval by the State is required and which approval shall not be unreasonably withheld.

6/ In re Local 195, IFPTE and Local 518, SEIU, P.E.R.C. No. 77-57, 3 NJPER 118 (1977), Appeal pending, App. Div. Docket No. A-3809-76, and In re State Supervisory Employees Association, CSA/SEA, P.E.R.C. No. 77-67, 3 NJPER 138 (1977), Appeal pending, App. Div. Docket No. A-4019-76.



The Association concludes that there is no actual or potential conflict of interest that results when primary level supervisors attend NJCSA or NJSEA conventions, and in fact the reverse is true; specifically, that harmonious employer-employee relations are fostered.

The Commission, after careful consideration of the arguments advanced by the parties in this matter, determines that the statutory language of N.J.S.A. 38:23-2, cited hereinbefore, is obligatory in nature and must be viewed as requiring that public employers, such as the State of New Jersey, grant leaves of absence with pay, subject to the limitations contained within the above cited statute, to all duly authorized representatives of the NJCSA and NJSEA included within the negotiations unit represented by the Respondent to attend the annual NJCSA and NJSEA conventions. We conclude that under the terms of N.J.S.A. 38:23-2, and in accordance with Commission decisions that have held, in part, that specific statutes governing terms and conditions of employment cannot be contravened by collective negotiations or by unilateral action<sup>7/</sup> that the State does not have the authority to deny requests for the aforementioned leaves of absence to attend the NJSEA conventions.

The State relies in part upon a Formal Opinion of the Attorney General in support of its brief. This Opinion accurately cites judicial precedent in the State that establishes that (1) the State Legislature is charged with knowledge of its prior enactments and (2) that where there is an apparent conflict between two statutes, the more recent statute will govern. However, the application of these rules of statutory construction to the instant situation serves

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<sup>7/</sup> See cases cited in n. 6.

to support the Commission's decision. N.J.S.A. 38:23-2 was last amended by the Legislature in 1975 [Laws of 1975, Chapter 332 and Laws of 1975, Chapter 363], seven years after the New Jersey Employer-Employee Relations Act was passed, and yet no changes were made in the language of N.J.S.A. 38:23-2 concerning the requirement to grant paid leaves to all authorized representatives to attend NJCSA and NJSEA conventions.

The Commission moreover believes that the State's reliance on the Wilton decision, supra, is entirely misplaced. The Wilton decision referred to the conflicts of interest that could arise when the placement of particular supervisors in a unit composed in part of subordinate personnel who were evaluated by these supervisors effectively placed an employer on both sides of the negotiations table to the possible detriment of both the employees in the unit and the loyalty owed to the public employer. In the instant matter, as pointed out by the Respondent, the State has not challenged, either in the past or at the present time, the right of the State Supervisory Employees Association to be affiliated with the NJCSA and NJSEA, organizations that represent employees who are supervised and evaluated by individuals included with the Respondent's negotiations unit. The State has thus been seemingly satisfied that this particular commingling of supervisory personnel and subordinate employees has not conflicted with the loyalty, responsibilities and obligations owed to the State by the supervisors nor has it resulted in the domination of NJCSA or NJSEA by these supervisory personnel. In light of the above factors, the Commission cannot therefore credit the

State's assertions that conflicts of interest arise as the result of the attendance of certain individuals represented by the Respondent at annual State conventions of the organizations that they are affiliated with.

The Commission moreover believes that it is irrelevant as to what actually takes place at these annual conventions, e.g., whether officers of the affiliated organizations are selected or whether policies and/or objectives of a general or specific nature are discussed which may relate to negotiations with the Respondent. Our conclusion in this proceeding would remain the same, i.e., N.J.S.A. 38:23-2 requires the State to grant paid leaves to duly authorized representatives of the NJCSA and NJSEA who are included in the Respondent's unit.

The Commission further notes that its decision is not in conflict with the formal Attorney General's opinion cited by the State. That opinion in part concludes that supervisory employees may not receive a leave of absence with pay to attend conventions of particular employee organizations when this activity conflicts with the supervisor's undivided loyalty, responsibilities and obligations to State government. The Commission in interpreting the Act that it is authorized to administer, has determined that such activity does not result in the above conflicts.

The Commission has determined in numerous decisions that "a dispute arising under a grievance/arbitration procedure contained within a contract entered into after the effective date of Chapter 123 of the Public Laws of 1974 [January 20, 1975] may be submitted

to arbitration for resolution if it involves either a required or permissive subject of collective negotiations.<sup>8/</sup> In light of its determination that the subject matter at issue is not an illegal subject for collective negotiations and in fact relates to a statutory provision that must be complied with, the instant dispute may be submitted to arbitration, if otherwise arbitrable, under the terms of the parties' agreement.

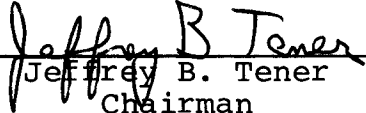
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<sup>8/</sup> See for example In re Bridgewater-Raritan Regional Board of Education, P.E.R.C. No. 77-21, 3 NJPER 23 (1976) and In re Ridgefield Board of Education, P.E.R.C. No. 77-45, 3 NJPER 150 (1977). The Commission's thinking relating to the effect of Chapter 123 amendments on scope of negotiations and arbitrability issues is clearly set forth in these decisions and will not be referred to again at this time.

ORDER

Therefore, for the reasons hereinabove set forth, the request of the State for a permanent restraint of arbitration must be and is hereby denied.

BY ORDER OF THE COMMISSION

  
\_\_\_\_\_  
Jeffrey B. Tener  
Chairman

Chairman Tener, Commissioners Hartnett, Hipp, Graves and Parcels voted for this decision. Commissioner Schwartz voted against this decision.

DATED: Trenton, New Jersey  
April 20, 1978  
ISSUED: April 25, 1978

STIPULATION OF HYPOTHETICAL QUESTIONS  
TO BE PRESENTED TO FACILITATE DISPOSI-  
TION OF THE PETITION FOR SCOPE OF  
NEGOTIATIONS DETERMINATION FILED BY  
STATE OF NEW JERSEY REGARDING ATTENDANCE  
AT CONVENTION OF MEMBERS OF PRIMARY LEVEL  
SUPERVISORY UNIT EMPLOYEES

Use of hypotheticals is not a concession that there is a factual basis for the hypothetical.

The Primary Level Supervisory Unit consists of State employees at the lowest level of supervision in State employment.

Assuming that a demand has been made for or there is a contractual clause in the Agreement between the exclusive representative of the unit, the State Supervisory Employees Association affiliated with the New Jersey Civil Service Association and the New Jersey State Employees Association and the State permitting time off at the expense of the State at the affiliate's conventions and also assuming and considering the effect of N.J.S.A. 38:23-2, is it illegal or an illegal subject of negotiations for:

1. Statutory supervisors to receive time off with pay as set forth by agreement to attend conventions of an affiliated organization of which they are members (either New Jersey Civil Service Association or New Jersey State Employees Association) in any representative capacity so as to participate in the affairs of the convention.

2. Statutory supervisors to receive time off with pay as set forth by agreement to attend conventions of an affiliated organization of which they are members (either New Jersey Civil Service Association or New Jersey State Employees Association) in any representative capacity so as to participate in the affairs of the convention when a purpose of the convention is the exchange of employee information involving general Civil Service rights and problems, as well as discussions of other matters.

3. Statutory supervisors to receive time off with pay as set forth by agreement to attend conventions of an affiliated organization of which they are members (either New Jersey Civil Service Association or New Jersey State Employees Association) in any representative capacity so as to participate in the affairs of the convention when one of the purposes of the convention is the selection of officers of the affiliated organizations.

EXHIBIT "A"



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
EDUCATION AND PUBLIC EMPLOYMENT SECTION  
STATE HOUSE ANNEX  
TRENTON 08625

WILLIAM F. HYLAND  
ATTORNEY GENERAL

ROBERT J. DEL TUFO  
FIRST ASSISTANT ATTORNEY GENERAL

STEPHEN SKILLMAN  
ASSISTANT ATTORNEY GENERAL  
DIRECTOR

MARY ANN BURGESS  
DEPUTY ATTORNEY GENERAL  
CHIEF

September 29, 1976

Frank A. Mason, Director  
Office of Employee Relations  
134 West State Street  
Trenton, New Jersey 08625

FORMAL OPINION NO. 25-1976

Dear Director Mason:

You have requested our advice as to whether a managerial executive, a confidential employee or a supervisory employee, as defined by the New Jersey Employer-Employee Relations Act, have a right to join or actively participate in public employee labor organizations. You are advised that managerial and confidential employees have no guaranteed statutory right to join in or participate in employee labor organizations. You are also advised that, although supervisory employees may join either a supervisory or nonsupervisory employee labor organization, they may not be represented in collective negotiation by any labor organization which admits nonsupervisory employees to membership. Moreover, supervisory employees may not participate in public employee labor organization activities in a manner as to create a conflict of interest between their supervisory responsibilities for State government and their activities in furtherance of the labor relations of nonsupervisory employees.

The New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. is a legislative implementation of article I, paragraph 19 of the New Jersey Constitution. See Lullo v. Intern. Assoc. of Fire Fighters, 55 N.J. 409 (1970). N.J.S.A. 34:13A-5.3 provides that:

"Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided

EXHIBIT "B"

however, that this right shall not extend to elected officials, members of boards and commissions, managerial executives, or confidential employees . . . ."  
(Emphasis added)

Managerial executives are defined in the Act as follows:

"'Managerial executives' of a public employer means persons who formulate management policies and practices, and persons who are charged with the responsibility of directing the effectuation of such management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.: N.J.S.A. 34:13A-3(f)

Confidential employees are defined in the subsequent subsection as follows:

"'Confidential employees' of a public employer means employees whose functional responsibilities or knowledge in connection with the issues involved in the collective negotiations process would make their membership in any appropriate negotiating unit incompatible with their official duties.'" N.J.S.A. 34:13A-3(g).

It is clear, therefore, that the Legislature has not provided a managerial or confidential employee with a statutory right to join or assist an employee organization.

This type of legislation is not unique to New Jersey. The New York State Legislature has enacted a similar provision:

"No managerial or confidential employee, as determined pursuant to subdivision seven of section two hundred one of this article, shall hold office in or be a member of any employee organization which is or seeks to become pursuant to this article the certified or recognized representative of the public employees employed by the public employer of such managerial or confidential employee." Civil Service Law §214.

This provision has been reviewed by the Court of Appeals of New York, in Shelofsky v. Helsby, 295 N.F.2d 774 (1973), appeal dismissed, 414 U.S. 804, 94 S.Ct. 60, 38 L.Ed.2d 41 (1973). The court upheld

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the provision as a legitimate exercise of the State's power to insure for itself "a responsible cadre of management personnel to formulate policy and to handle labor relations. . . ." 295 N.E.2d at 775. In conclusion, the court held that:

"In sum, there has been no showing that exclusion of management personnel from association membership is an unreasonable limitation on State employees. Withholding the benefits of collective bargaining from management personnel has long been approved in private employment. Its carry-over into public employment is a reasonable means of promoting harmonious labor relations." 295 N.E.2d at 776-777.

See also Elk Grove Firefighters Local No. 2340 v. Willis, 400 F.Supp. 1097, 1099 (N.D. Ill., E.D. 1975); City of Greenfield v. Local 1127, 150 N.W.2d 476 (Wis. 1967); Goodwin v. Oklahoma City, 182 P2d 762 (Okla. 1947); Perez v. Board of Police, Commissioner of City of Los Angeles, 178 P2d 537 (D.Ct. of Appeals, Cal. 1947). These decisions are illustrative of a widespread policy to deny managerial and confidential employees in the public sector the right to join employee labor organizations. Section 5.3 of the Act reflects a similar legislative policy in our State to the effect that a right to membership by managerial and confidential employees in labor organizations interferes with the State's interest in maintaining a loyal and efficient managerial staff.

As contrasted with the managerial and confidential employee, a supervisor, defined by the Act as one having the power to hire, fire, discipline or effectively recommend the same, may join any employee labor organization with the proviso that such supervisory employee not be "represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership. . ." N.J.S.A. 34:13A-5.3. Thus, a review of this provision of the Act provides no prohibition to the membership of supervisory employees in non-supervisory employee organizations; it merely prohibits a hybrid organization from representing the supervisors in collective negotiations. As the court in Bowman v. Hackensack Hospital, 116 N.J. Super. 260, 273 (Ch. Div. 1971) stated:

"It would appear that our policy, as set forth by the New Jersey Legislature, is not to disqualify an organization from functioning as the collective bargaining representative of non-supervisory employees because of the fact that there might be supervisors included within its membership. Rather, it would appear that the

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only prohibition under the New Jersey act is that supervisors not be included within the same unit as nonsupervisors." (Emphasis added.)

Cf., Pennsylvania Labor Relations Board v. Eastern Lancaster County School District, 315 A.2d 382 (Commonwealth Ct. of Pa. 1974).

Thus, although the Act does not expressly preclude the right of supervisory employees to join either supervisory or nonsupervisory labor organizations, it is necessary in the construction of the Act to avoid "conflicts of interest" and to preserve the loyalty which supervisors owe to the State in the performance of their official responsibilities. This proposition has been recognized by our Supreme Court in Bd. of Ed. of West Orange v. Wilton, 57 N.J. 404 (1971). In that case the court was concerned with the question of the propriety of a certain supervisory employee's inclusion in a unit of other employees whom the employee in question supervised. In the course of holding that such inclusion was inappropriate the court stated that:

"One underlying concept which emerges from a study of statutes, texts and judicial decisions in employer-employee relations, whether in the public or private employment sector, is that representatives of the employer and the employees cannot sit on both sides of the negotiating table. Good faith negotiating requires that there be two parties confronting each other on opposite sides of the table. Obviously both employer and employee organizations need the undivided loyalty of their representatives and their members, if fair and equitable settlement of problems is to be accomplished. Unless the participation is of that calibre, the effectiveness of both protagonists at the discussion table would be sharply limited."  
57 N.J. at 425.

The court noted that significant potential for conflict arises in performing such common supervisory functions as performance evaluation, discipline, and grievance administration. 57 N.J. at 423. With respect to the appellant in this regard the court stated:

"In the performance of such tasks she owed undivided loyalty to the Board of Education. If she were joined in an employees' unit which included the principals whose work she was duty bound to appraise in the Board's interest, would she be under pressure, real or psychological, to be less faithful to the Board and more responsive

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to the wishes of her associates in the negotiating unit? She is obliged, of course, to be fair and nondiscriminatory in evaluating the principals, and if the Association felt that she was consciously or unconsciously in error in doing so, presentation of a grievance would undoubtedly result. In that event she would have to defend against a complaint made by an organization of which she was a member." 57 N.J. at 426.

Moreover, although the Wilton case dealt with unit membership, the determination of the question of organization membership may surely receive guidance from the above language and from the following dicta by the court:

"The fact that potential conflict of interest in a given case may bar supervisors from representation by an organization of nonsupervisory employees does not mean that the former have no organizational rights. Under our statute, supervisors are employees and ordinarily have the right to join and be represented by an organization of their own, i.e., an organization of supervisory personnel. But here again, if there are grades or echelons of supervisors having differing relations to each other because of the quantum of managerial or supervisory authority or duty delegated by the employer, the general exclusory language of N.J.S.A. 34:13A-5.3, quoted above, would seem to throw some light on the legislative intention with respect to the organizational rights of such supervisors." 57 N.J. at 419.

Accordingly, you are hereby advised that supervisors may be prohibited from activity in public employee labor organizations when such activity conflicts with their duties and responsibilities in their supervisory role and that such activity may include serving as an officer or negotiations representative for a nonsupervisory employee organization.

You have also asked whether managerial, confidential or supervisory employees may be granted time off with pay for attendance at conventions of public employee labor organizations.

The Legislature has provided specific authorization for time off with pay for attendance at the conventions of certain organizations. In particular N.J.S.A. 11:26C-4 provides that:

EXHIBIT "B."

"The head of every public department and of every court of this State, the heads of the county offices of the several counties and the head of every department, bureau and office in the government of the various municipalities, shall give a leave of absence with pay to every person in the service of the State, County or municipality who is a duly authorized representative of the New Jersey State Patrolmen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc., the Uniformed Firemen's Association, or the New Jersey State Association of Chiefs of Police, to attend any State or national convention of such organization.

"A certificate of attendance to the State convention shall, upon request, be submitted by the representative so attending.

"Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention."

In addition, N.J.S.A. 38:23-2 speaks in very similar terms and grants such leave for attendance to the conventions of a great number of organizations including the New Jersey Civil Service Association and the Council of State Employees (now the State Employees' Association).

It is clear, however, that those persons entitled to leaves of absence with pay for attendance at conventions of labor organizations either authorized by the above statutory provisions or by collective negotiations agreements, are limited by the applicable provisions of the Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3. It is a well settled rule of statutory construction that the Legislature is charged with knowledge of its prior enactments. Brewer v. Porch, 53 N.J. 167 (1969). In addition, where there is a conflict, the more recent statute will govern. State v. Roberts, 21 N.J. 552, 555 (1956). Thus, the dictates of the Employer-Employee Relations Act which does not grant a statutory right to managerial and confidential employees to participate in public employee labor organizations must be read to impliedly limit that class of persons who may qualify as "duly authorized representative" under both N.J.S.A. 11:26C-4 and N.J.S.A. 38:23-2. Accordingly, you are hereby advised that since managerial and confidential employees do not have a statutory right to join or assist a public employee labor organization, they are not entitled to a leave of absence for attendance at conventions of those public employee labor organizations. A supervisory employee may receive a leave of absence with pay to attend conventions of either supervisory or nonsupervisory employee labor organizations when the activity of such supervisory employees does not conflict in any manner with their undivided loyalty, responsibilities and obligations to the State government.

E X H I B I T " B "

You have additionally requested advice on whether non-supervisory employees in one unit may be granted time off, with pay, to serve as officers or representatives of employee organizations which represent other units.\* To reiterate, N.J.S.A. 34:13A- provides in pertinent part that:

" . . . public employees shall have, and shall be protected in the exercise of the right to form, join and assist any employee organization." (Emphasis added)

Accordingly, in this case there is no statutory impediment to the non-supervisory participation in this organizational activity.\*\*

For the above reasons, you are hereby advised that (1) Managerial and confidential employees do not have a right under the Act to join or assist an employee organization; (2) Supervisory employees having the power to hire, fire, discipline or collectively recommend the same, may join either supervisory or non-supervisory labor organizations in their discretion. However, a non-supervisory labor organization may not represent the interests of supervisors in collective negotiations and supervisors may not participate in the activities of non-supervisory labor organizations in any manner as to create a conflict of interest with the exercise of their supervisory responsibilities to the State government; (3) Managerial and confidential employees having no right to join a public employee labor relations organization are not entitled by law to time off for attendance at public employee labor organization conventions or meetings; (4) Supervisory employees having a right to join either a supervisory or non-supervisory employee labor organization are entitled to time off with pay for attendance at employee labor relations conventions or meetings, so long as the activities of supervisory employees do not conflict with their responsibilities to the State government.

Very truly yours,

WILLIAM F. HYLAND  
Attorney General of New Jersey

By Guy S. Michael  
Deputy Attorney General

GSM:mt

\* Since a public employee labor organization including non-supervisors may not represent supervisors, the instant question involves only units of non-supervisors.

\*\* However, it should be made clear that employee organizations may not negotiate time off with pay provisions for convention attendance or for other functions for employees in negotiating units represented by other employee organizations. A certified employee representative is authorized to serve as the exclusive representative for collective negotiations solely for those employees in the unit of whom it represents. N.J.S.A. 34:13A-9.3; see also Lullo v. Intern. Assoc. of Fire Fighters, supra. This is an established proposition in labor relations and needs no further elaboration.

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