The Commission shall make an annual report to the Governor and Legislature . . .*

* *Excerpt from S.C.I. Law*

SIXTEENTH ANNUAL REPORT

of the

STATE OF NEW JERSEY

COMMISSION OF INVESTIGATION

to the

GOVERNOR AND LEGISLATURE

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

28 West State Street
Trenton, New Jersey 08608
609-292-6767

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* Mr. Lane was succeeded as Commissioner by Paul Alongi, Esq., of Bloomfield early in 1985 and Commissioner Patterson was designated as Chairman by Governor Kean.

** Mr. Morley became Executive Director in December, 1984. He succeeded James T. O'Halloran of Bayonne, who was appointed as Superior Court Judge.

STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION

28 West State Street
Trenton, N. J. 08608
Telephone (609) 292-6767

TO: *The Governor and the Members of the Senate and the General Assembly of the State of New Jersey*

The New Jersey State Commission of Investigation is pleased to submit for the year 1984 its sixteenth annual report and recommendations pursuant to N.J.S.A. 52:9M–10, the Act establishing the Commission of Investigation.

Respectfully submitted,

Arthur S. Lane, *Chairman*
Henry S. Patterson, II
William S. Greenberg
James R. Zazzali

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52:9M-1. There is hereby created a State Commission of Investigation. The Commission shall consist of four members, to be known as commissioners. Two members of the Commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of 3 years and until the appointment and qualification of his successor. The Governor shall designate one of the members to serve as Chairman of the Commission.

The members of the Commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the Commission shall hold any other public office or public employment. Not more than two of the members shall belong to the same political party . . .*

* *Excerpt from S.C.I. Law*

THE COMMISSION

- **Origin and Scope**
- **Biographies**

ORIGIN AND SCOPE OF THE COMMISSION

Despite the range of the Commission's achievements, inquiries continue to be made about its jurisdiction, the way it functions and its importance to a better New Jersey. The Commission believes this information should be conveniently available. Accordingly, the pertinent facts are summarized below.

The New Jersey State Commission of Investigation (S.C.I.) was an outgrowth of extensive research and public hearings conducted in 1968 by the Joint Legislative Committee to Study Crime and the System of Criminal Justice in New Jersey. That Committee was under direction from the Legislature to find ways to correct what was a serious and intensifying crime problem in New Jersey.

Indeed, by the late 1960s New Jersey had the unattractive image of being a corrupt haven for flourishing organized crime operations. William F. Hyland, who was Attorney General from 1974-1978, vividly recalled that unfortunate era in testimony before the Governor's Committee to Evaluate the S.C.I. He said in part:

> ". . . our state quickly developed a national reputation as a governmental cesspool, a bedroom for hired killers and a dumping ground for their victims. Whether this was a deserved reputation was not necessarily material. The significant thing was that this became an accepted fact that seriously undermined confidence in state law enforcement."

The Joint Legislative Committee in its report issued in the Spring of 1968 found that a crisis in crime control did exist in New Jersey. The Committee attributed the expanding activities of organized crime to "failure to some considerable degree in the system itself, official corruption, or both" and offered a series of sweeping recommendations for improving various areas of the criminal justice system in the state.

The two highest priority recommendations were for a new State Criminal Justice unit in the executive branch of state government and an independent State Commission of Investigation.

The Committee envisioned the proposed Criminal Justice unit and the Commission of Investigation as complementary agencies in the fight against crime and corruption. The Criminal Justice unit was to be a large organization with extensive manpower and authority to coordinate and conduct criminal investigations and prosecutions throughout the state. The Commission of Investigation was to be a relatively small but expert body which would conduct fact-finding investigations, bring the facts to the public's attention, and make recommendations to the Governor and the Legislature for improvements in laws and the operations of government.

The Joint Legislative Committee's recommendations prompted immediate supportive legislative and executive action. New Jersey now has a Criminal Justice Division in the State Department of Law and Public Safety and an independent State Commission of Investigation* which is structured as a commission of the Legislature. The new laws were designed to prevent any conflict between the functions of this purely investigative, fact-finding Commission and the prosecutorial authorities of the state. The latter have the responsibility of pressing indictments and other charges of violations of law and bringing the wrongdoers to punishment. The Commission has the responsibility of publicly exposing evil by fact-finding investigations and of recommending new laws and other remedies to protect the integrity of the political process.

The complementary role of the S.C.I. was noted in two comprehensive, impartial analyses of the Commission's record and performance, in 1975 by the Governor's Committee to Evaluate the S.C.I.,** and in 1983 by the State Commission of Investigation

* The bill creating the New Jersey State Commission of Investigation was introduced April 29, 1968, in the Senate. Legislative approval of that measure was completed September 4, 1968. The bill created the Commission for an initial term beginning January 1, 1969, and ending December 31, 1974. It is cited as Public Law, 1968, Chapter 266, N. J. S. A. 52:9M-1 et seq. The Legislature on three subsequent occasions extended the term of the S.C.I. for five-year periods—in 1973 for a term expiring December 31, 1979; in 1979 for a term expiring December 31, 1984, and in 1984 for a term expiring December 31, 1989. The full text of the 1984 statute appears in the Appendix at P. 137.

** The Governor's Committee to Evaluate the S.C.I. was created in April, 1975, by executive order of the Governor after the introduction in the Senate of a bill to terminate the S.C.I. touched off a backlash of public criticism. The measure was subsequently withdrawn.

Review Committee.* Both of these reports stated that the S.C.I. performs a valuable function and that there is a continuing need for the Commission's work. The 1983 report said its advocacy of the Commission is reinforced by the views of top law enforcement officials in the State that the S.C.I. "continues to serve as an important adjunct to New Jersey's criminal justice system."

To eliminate any appearance of political influence in the Commission's operations, no more than two of the four Commissioners may be of the same political party. Two Commissioners are appointed by the Governor and one each by the President of the Senate and the Speaker of the Assembly. It thus may be said the Commission by law is bipartisan and by concern and action is nonpartisan.

The paramount statutory responsibilities vested in the Commission are set forth in Section 2 of its statute. This section provides:

> 2. The Commission shall have the duty and power to conduct investigations in connection with:
>
> (a) The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering;
>
> (b) The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> (c) Any matter concerning the public peace, public safety and public justice.

The statute provides further that the Commission shall conduct investigations by direction of the Governor and by concurrent resolution of the Legislature. The Commission also shall conduct

* As part of the 1979 renewal statute, a Committee was established to review the S.C.I.'s activities and to determine whether its statute should be revised or repealed. The Review Committee by law must be organized every four years during the first year of a legislative session. The 1983 report was produced by the first Review Committee that was created in 1982. By statute the Committee must be bipartisan and consist of seven members. The 1982 Committee consisted of three members selected by the Governor, two by the President of the Senate and two by the Speaker of the General Assembly. Governor Thomas H. Kean appointed Thomas R. Farley, Esq., a former judge and a former S.C.I. commissioner; William B. McGuire, Esq., and Mercer County Executive Bill Mathesius, a former staff attorney with the S.C.I. Senate President Carmen A. Orechio selected William L. Brach, Esq. and James M. Piro, Esq. Speaker Alan J. Karcher appointed former Assemblyman Albert Burstein, Esq. and Carl Valore, Jr., Esq. Mr. Burstein was Chairman and Mr. Farley was Vice Chairman of the 1982 Committee.

investigations of the affairs of any state department or agency at the request of the head of a department or agency.

Thus, the enabling statute assigned to the Commission, as an investigative, fact-finding body,* a wide range of responsibilities. It is highly mobile, may compel testimony and production of other evidence by subpœna, and has authority to grant immunity to witnesses. Although the Commission does not have and cannot exercise any prosecutorial functions, the statute does provide for the Commission to refer information to prosecutorial authorities.

One of the Commission's prime responsibilities, when it uncovers irregularities, improprieties, misconduct or corruption, is to bring the facts to the attention of the public. The objective is to insure corrective action. The importance of public exposure was put most succinctly by a New York Times analysis of the nature of such a Commission:

> Some people would put the whole business in the lap of a District Attorney (prosecutor), arguing that if he does not bring indictments, there is not much the people can do.
>
> But this misses the primary purpose of the State Investigation Commission. It is not to probe outright criminal acts by those in public employment. That is the job of the regular investigation arms of the law.
>
> Instead, the Commission has been charged by the Legislature to check on, and to expose, lapses in the faithful and effective performance of duty by public employees.
>
> Is sheer non-criminality to be the only standard of behavior to which a public official is to be held? Or does the public have a right to know of laxity, inefficiency, incompetence, waste and other failures in the work for which it pays?

The exact format for public action by the S.C.I. is subject in each instance to a formal determination by the Commission which takes into consideration factors of complexity of subject matter and of conciseness, accuracy and thoroughness in presentation of

* As a legislative investigative agency, the S.C.I. is not unique, since investigative agencies of the legislative branch of government are almost as old as the Republic. The first full-fledged Congressional investigating committee was established in 1792.

the facts. The Commission may proceed by way of a public hearing or a public report, or both.

In the course of its conduct, the Commission adheres to the New Jersey Code of Fair Procedure, the requirements for which were incorporated in the Commission's enabling law as amended in 1979. These provisions satisfy the protections which the Legislature by statute and the Judiciary by interpretation have provided for witnesses called at private and public hearings and for individuals mentioned in the Commission's public proceedings. Such procedural obligations include a requirement that any individual who feels adversely affected by the testimony or other evidence presented in a public action by the Commission shall be afforded an opportunity to make a statement under oath relevant to the testimony or other evidence complained of. The statements, subject to determination of relevancy, are incorporated in the records of the Commission's public proceedings. Before resolving to proceed to a public action, the Commission analyzes and evaluates investigative data in private in keeping with its obligation to avoid unnecessary stigma and embarrassment to individuals but, at the same time, to fulfill its statutory obligation to keep the public informed with specifics necessary to give credibility to the S.C.I.'s findings and recommendations.

The Commission emphasizes that indictments which may result from referral of matters to other agencies are not the only test of the efficacy of its public actions. Even more important are the corrective legislative and regulatory actions spurred by arousing public and legislative interest. The Commission takes particular pride in all such actions which have resulted in improved governmental operations and laws.

MEMBERS OF THE COMMISSION

The Commission's activities have been under the leadership of Arthur S. Lane since February, 1979, when he was designated as Chairman by then Governor Brendan T. Byrne. The other Commissioners are Henry S. Patterson II, William S. Greenberg and James R. Zazzali. Mr. Zazzali succeeded Commissioner Robert J. Del Tufo in 1984.

Mr. Lane, of Harbourton, initially was appointed to the Commission in May, 1977. As Chairman, he succeeded Joseph H. Rodriguez of Cherry Hill. He has been a member of the Princeton law firm of Smith, Stratton, Wise and Heher since his retirement in 1976 as a vice president and general counsel for Johnson and Johnson of New Brunswick. A graduate of Princeton University, he was admitted to the New Jersey Bar in 1939 after gaining his law degree at Harvard Law School. He served in the Navy during World War II with the rank of Captain, USNR. He became assistant Mercer County prosecutor in 1947, Mercer County judge in 1956 and U. S. District Court judge in 1960 by appointment of the late President Eisenhower. He is a member and former Chairman of the National Council on Crime and Delinquency.

Mr. Patterson, of Princeton, is president and a director of the Elizabethtown Water Co., and a director of the Mount Holly Water Co. and of United Jersey Banks and three of its subsidiaries. He is a former mayor of Princeton Borough. He was graduated from Princeton University. He served during World War II in the U. S. Army and received his discharge as a first lieutenant in 1946. He was first appointed to the Commission in February, 1979 and was most recently reappointed by Governor Thomas H. Kean.

Mr. Greenberg, of Princeton, a partner in the Trenton and Princeton law firm of Greenberg, Kelley and Prior, was appointed to the Commission, effective August 1, 1982, by Alan J. Karcher, Speaker of the General Assembly. A graduate of Johns Hopkins University (1964) and Rutgers Law School (1967), he was admitted to the New Jersey Bar in 1967, the District of Columbia Bar in 1972 and the New York Bar in 1984. He served as Assistant Counsel to former Governor Richard J. Hughes (1969-1970) and as Special Counsel to the New Jersey Chancellor of Higher Educa-

tion (1968-1969). He is a Certified Civil Trial Attorney and is First Vice President of the New Jersey affiliate of the Association of Trial Lawyers of America. He is a Lieutenant Colonel in the New Jersey Army National Guard.

Mr. Zazzali, of Rumson, former Attorney General of New Jersey, was appointed to the Commission in 1984 by Governor Thomas H. Kean. He served as State Attorney General in 1981-82, after prior public service as General Counsel to the New Jersey Sports and Exposition Authority (1974-1981) and as assistant Essex County Prosecutor (1965-68). A graduate of Georgetown College in 1958 and of Georgetown Law Center in 1962, he has been in the private practice of law since 1964 in Newark. He is an Associate Editor of the New Jersey Law Journal. He is serving as a court-appointed Master responsible for investigating and evaluating overcrowding and other conditions at the Essex County, Monmouth County and City of Newark jail systems. Also during 1984 he was appointed by Chief Justice Robert N. Wilentz to the Disciplinary Review Board which hears and determines appeals involving attorneys accused of unethical conduct. In 1981-82 he chaired a national study of remedies for victims of toxic wastes at the request of the U. S. Congress.

Mr. Del Tufo, who resigned from the Commission in March, 1984, said his decision was "prompted by other governmental concerns and a desire to be of public service in other ways" in his notice to Governor Kean. A member of the law firm of Stryker, Tams and Dill of Newark and Morristown, he was the United States Attorney for New Jersey from 1977 to 1980. Previously he had served as First Assistant Attorney General from 1974-1977, during which period he led the Division of Criminal Justice for two years. Between 1963 and 1967 he was Assistant Prosecutor and First Assistant Prosecutor of Morris County.

52:9M-2. The Commission shall have the duty and power to conduct investigations in connection with:

> . . . The faithful execution and effective enforcement of the laws of the state, with particular reference but not limited to organized crime and racketeering . . .*

** Excerpt from S.C.I. Law*

ORGANIZED CRIME PROGRAM

• 1984 Update

1984 Update

S.C.I. Legislation Promoted in Florida and Nevada

Florida law enforcement officials again have requested the assistance of the New Jersey S.C.I. in creating a similar agency to battle crime and corruption in their state. The effort is being led by the Broward County Crime Commission. According to Frank R. Pinter, chairman of the citizens' crime-fighting group, more than 250 major organized crime figures reside in Broward County, 78 of them in Hollywood, Fla., where the commission is headquartered.

"Ironically", said Pinter, "a number of these mobsters are here because they fled New Jersey to avoid being subpoenaed by the New Jersey S.C.I."

A bill similar to the S.C.I.'s enabling law has been drafted for introduction in the Florida State Legislature in 1985. This proposal has been endorsed by the Broward County Crime Commission and the Police Chiefs Association of Broward County. The Broward police chiefs voted to support enactment of an S.C.I.-type law last May after a talk about the New Jersey agency's background and activities by then Executive Director James T. O'Halloran of the S.C.I. He credited the S.C.I.'s investigative gains to a "small but vigorous staff of lawyers, auditors and agents whose diverse law enforcement experience enables them to probe successfully into the most complex of law enforcement issues." O'Halloran, now a Superior Court Judge, was succeeded as Executive Director in December, 1984, by James J. Morley (See P. 131).

Florida officials last sought to enact a law creating a New Jersey-type S.C.I. in 1978, but the proposal died in the Legislature.

According to Pinter, "there is solid law enforcement support for passage of the S.C.I. legislation in South Florida. Now we want to make this a State-wide effort." In preparation for pushing the bill in the 1985 legislative session, Pinter said he will seek the endorsement of the Florida Police Chiefs Association and the Florida Sheriffs Association.

In its 1984 Annual Report, which focused on "Organized Crime in Southern Nevada", the Las Vegas Metropolitan Police Department called for establishment of an S.C.I.-type agency as well as an investigative grand jury system. The report, sponsored by the Department's Intelligence Services Bureau under Commander Preston E. Hubbs, declared that such a commission "would be very effective in bringing to the public (attention) the true picture of the impact of organized crime." The report also stated:

> Many states have experienced great success in their struggle with organized crime by the establishment of *State Crime Commissions* charged with the investigation of organized crime. These commissions armed with the power to subpoena witnesses, grant immunity and prosecute perjury have been very effective at driving organized criminal conspiracies out of their jurisdictions or at least forcing them further underground.

The S.C.I. has been contacted by the Las Vegas Police Department and has submitted copies of its enabling statute and other background materials, as requested.

Nicodemo (Little Nicky) Scarfo

During 1984, as the Commission continued its surveillance of currently active organized crime members and associates, certain mobsters who have been involved in the S.C.I.'s confrontation program suffered law enforcement and/or judicial reverses. One of these crime figures was Nicodemo Scarfo, who eventually succeeded the murdered Angelo Bruno as head of the Philadelphia-based crime family which controls the South Jersey underworld. Scarfo, who operates out of Atlantic City, spent more than two years in Yardville State Prison for refusing in 1971 to testify before the S.C.I., after being granted immunity, about organized crime activities. Scarfo was released in January, 1984, from a Federal prison in Texas, where he served all but six months of a two-year term for illegal gun possession, only to be put on the Casino Control Commission's exclusion list in February. The following July, the Casino Control Commission voted unanimously to permanently ban Scarfo from all of Atlantic City's 10 casino-hotels. The ban was voted after the state Division of Gaming Enforcement testified that the 55-year-old Scarfo was a "career criminal" and an "associate" of criminals.

Tino Fiumara

Back in the 1970's Tino Fiumara, formerly of Wyckoff, in Bergen County, fled to Florida to avoid being subpoenaed to testify before the S.C.I. However, he subsequently was convicted on federal racketeering charges, in 1979 and again in 1980, and is serving a 25-year term in the Federal Penitentiary in Leavenworth, Kansas. In April, 1984, Fiumara lost an apepal before the U.S. Supreme Court to set aside his extortion and bribery convictions on the grounds he was not adequately represented by counsel during the Federal prosecution. At one time Fiumara controlled almost every type of waterfront activity in New Jersey, particularly at Port Newark and Elizabeth.

John DiGilio

Another New Jersey gangster who fled to Florida to avoid an S.C.I. subpoena in the 1970s, John DiGilio, also lost an appeal to the U.S. Supreme Court, which rejected his plea for a new hearing on a 1980 indictment for illegal gun possession. DiGilio has been identified as a leader in the North Jersey operations of the Genovese crime family.

Frank (Condi) Cocchiaro

Yet another New Jersey crime figure who fled to Florida rather than testify before the S.C.I. was Frank Cocchiaro. A reputed "enforcer" for the DeCavalcante crime family, he disappeared in 1969 during an S.C.I. hearing coffee break. He was subsequently arrested when he became flustered and revealed his identity after a driving mishap in Florida. What became known as the "world's longest coffee break" ended when he finally testified before the S.C.I. in 1973 after serving a jail sentence for criminal contempt. Cocchiaro was indicted by a Federal Grand Jury in Tampa in March, 1984, for participating in a racketeering plot with, among others, Denny McLain, the former Detroit Tigers pitcher, who was accused of extortion and of importing and distributing cocaine.

52:9M-2. The Commission shall have the duty and power to conduct investigations in connection with:

> . . . The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;
>
> . . . Any matter concerning the public peace, public safety and public justice.*

* *Excerpt from S.C.I. Law*

THE S.C.I.'s PUBLIC ACTIVITIES

- **Public Hearing Report**
- **1984 Update**
- **State Legislative Liaison**

PUBLIC HEARING REPORT/RECOMMENDATIONS

*S.C.I. Inquiry Into Excessive Spending by Supplemental Fringe Benefits Fund of the Newark Board of Education/Newark Teachers Union.**

Background

The Newark Board of Education/Newark Teachers Union Supplemental Fringe Benefits Fund resulted from a collective bargaining agreement in 1971 between the Board and the Union to provide dental care for teachers and certain hourly aides through Prudential Insurance Company (the Board itself handles all regular benefits for employees). The Board's contribution to this Fund rose from $100 per capita in the 1971-72 school year to $200 the next year and remained at that level despite its acceptance of Union demands in 1976 for additional benefits—expanded dental care, eye care and a $1-deductible prescription program. The original trust agreement structured the Supplemental Fringe Benefits Fund entity into which the Board began depositing about $1 million annually. This agreement established an administrative format consisting of four Fund trustees, two representing the Board and two the Union.

Particularly relevant to the Commission's investigation was the annual funding deficit that began after 1976 when, because of increased benefits, Prudential's payout for claims began to exceed the Board's annual contribution at the fixed $200 per capita rate. By this time, however, the Fund had accumulated a reserve of more than $3 million dollars because a more limited benefit program and a lower claim demand in prior years had generated sizeable balances. As Superior Court Judge Reginald Stanton noted in later litigation involving the Fund, an immediate financial crisis was averted only because the Fund trustees utilize the reserve funds to cover constantly increasing claims and operating costs. The Commission has characterized the Fund as a mere conduit through which Board contributions flowed to Prudential. A

*This report is being submitted to the Governor and the Legislature within the statutory deadline of 120 days from the public hearing that was conducted on December 11 and 12, 1984.

comparison of year-to-year operating expenses,* compiled by S.C.I. accountants for the period from 1971 to July 1, 1983, demonstrates how aggressively this pipeline began to be tapped by its operators. The startling contrast between the miniscule expenditures necessary to administer the Fund in its early years and the later sky-rocketing of such costs despite a relatively stable clientele of beneficiaries can be attributed only to the fiscal extravagances that marked Fund operations after 1976. In the fiscal years 1971-1975, when the Fund was the conduit for Board payments that more than covered average annual premium costs, the Fund trustees managed to hold administrative expenses to less than 1 percent of premium costs. In Fiscal 1976, with the claims payout at $1.302 million, the Fund's administration still kept such costs to a mere 2 percent. However, administrative expenses then began a drastic rise—to 7.9 percent in Fiscal 1977-78, to 32.6 percent in Fiscal 1981, to 29.4 percent in 1982 and to 18.1 percent in 1983.

The Commission's inquiry began in early 1984 after the receipt of allegations of misconduct at the Fund. The investigation quickly developed evidence, in the form of admissions in executive session testimony and audits of books and records, that the Fund was utilized as a vehicle for the callous and irresponsible self-enrichment of its administration and the Union. The findings also demonstrated the acquiescence of the Board through its Fund appointees in the depletion of Fund resources. In brief, the Commission's investigation revealed that the Fund during a five-year period spent almost $1.2 million in public tax money for unnecessary, inappropriate and possibly illegal purposes. This excessive spending, largely for personal gain, was authorized despite documented warnings since early 1978 that Fund expenses annually were exceeding finite revenues and that by 1982 the Fund was facing insolvency.

Litigation Spurred Public Hearing

The Commission's inquiry began with a public hearing as its objective. However, during the course of the S.C.I.'s investigation, a series of turnabout events took place because of both the Fund's imminent insolvency and the protracted 1984 school election political fight for control of the Board of Education. These events

* See chart, P. 15.

SUPPLEMENTAL FRINGE BENEFIT FUND
COMPARISON BETWEEN ADMINISTRATIVE EXPENSES & BUILDING COSTS AND NET BENEFIT INSURANCE PREMIUMS

FISCAL YEARS ENDING	BENEFIT INSURANCE PREMIUMS (ROUNDED)			ADMINISTRATIVE AND BUILDING COSTS	RATIO: EXPENSES AS A % OF PREMIUM COSTS
	PREMIUMS	DIVIDENDS FROM PRUDENTIAL	NET PREMIUMS		
12/1/71 to 6/30/75	$ 3,324,000	$1,508,000	$ 1,816,000	$ 4,000	.2%
6/30/76	$ 1,302,000	UNKNOWN	$ 1,302,000	$ 25,000	1.9%
6/30/77*	$ 1,291,000	$ 494,000	$ 797,000	$ 85,000	10.6%*
6/30/78	$ 1,665,000	SPECIAL RESERVE	$ 1,665,000	$ 133,000	7.9%
6/30/79	$ 1,694,000	$ 551,000	$ 1,143,000	$ 145,000	12.6%
6/30/80	$ 1,714,000	$ 452,000	$ 1,262,000	$ 198,000**	15.7%
6/30/81	$ 1,702,000	$ 687,000	$ 1,015,000	$ 331,000**	32.6%
6/30/82	$ 1,862,000	$ 502,000	$ 1,360,000	$ 400,000**	29.4%
6/30/83	$ 2,365,000	–0–	$ 2,365,000	$ 429,000**	18.1%
TOTAL	$16,919,000	$4,194,000	$12,725,000	$1,750,000	

* J. Visotski's tenure as Fund Administrator begins during FY 1977.
** Includes $550,000 of Building Acquisition and Renovation Costs.

included the sudden dismissal of the Fund's director and a Board of Education decision to assume more direct control of its enlarging contribution to the Fund. The Commission decided, as a result, to cancel plans for a public hearing in the belief that a public report would suffice to provide the factual base necessary for a permanent reform of the supplemental benefits funding program and for strong sanctions and restraints against those individuals and entities who so flagrantly abused their fiduciary responsibilities.

S.C.I. Chairman Arthur S. Lane put into the hearing record a summary of the court action against publication of the Commission's investigative findings and the Commission's resulting decision to render the litigation moot by reinstating its original public hearing plan. Lane stated:

> *Certain parties named in the S.C.I.'s scheduled report sued in Superior Court to enjoin the issuance of that report. Although the S.C.I. was convinced that it would ultimately prevail, we were also concerned that highly probable appeals would cause an unjustified delay in the full public disclosure of the misconduct our probe had confirmed. Therefore, the Commission decided to reinstate its initial public hearing plan and to forego the issuance of its report on this critical subject matter. This decision not only expedites the public presentation of the evidence of abusive treatment of the Fund but also gives those litigants who had alleged they would be aggrieved by the issuance of the report a full opportunity to state their case directly to the public.*

The Public Hearing Issues

The Commission's public hearing was held on December 11 and 12, 1984, in the State House Senate Chamber. A dozen witnesses were called during the proceedings, including the former Fund director (and former Union vice president) Joseph J. Visotski, former Fund Trustee (and former Newark school superintendent) Alonzo Kittrels, the Union President Carole A. Graves, and others who were associated with Fund operations as either trustees or administrators. Supplemental testimony also was provided by spokesmen for the Board and for Prudential and particularly revealing details of misconduct at the Fund marked the testimony of the Commission's Chief Accountant, Julius Cayson. The combined testimony portrayed three areas of what S.C.I. Chairman Arthur S. Lane described as the Fund administration's "fiscal gluttony." These areas were:

(1) The payout of more than $500,000 to the Fund director alone in overly generous compensation that included fees for managing such simple Fund investments as certificates of deposit, unauthorized cash payments for unused vacation and sick leave, lavish expenses for excessive travel and personal car use, in addition to a non-contributory 15 percent pension, entitlement to a year's leave with pay and other benefits.

(2) The wasteful expenditure of more than $152,000 for junkets by Fund trustees and officers to plush resorts in Florida, California, Hawaii, Mexico and elsewhere.

(3) The misuse of more than $550,000 in dwindling Fund assets to buy and renovate a 90-year-old building in downtown Newark for Fund headquarters but which was otherwise tenanted primarily by the Union and its affiliates at below market-level rents.

Insolvency Peril Ignored at Fund

Before focusing on the three major findings of its inquiry, the Commission put evidence into the hearing record that, during the period in which Fund operators were wasting hundreds of thousands of dollars, they also knew that insolvency was imminent and did nothing to prevent it. Initial witnesses reported that the then Fund director, Joseph J. Visotski; the Treasurer, Anthony DeFranco, and various trustees were alerted to the Fund's deteriorating financial condition and were urged to consider offsetting options, but did nothing—all the while persisting in their spending orgy.

Edward B. Dooley, CPA

The first Fund witness to appear, Edward B. Dooley, a CPA who since 1975-76 had served as the Fund's outside accountant, confirmed the Commission's investigative finding that Fund operators showed little or no concern during the entity's fiscal decline about the timeliness of the submission of their annual financial statements. For example, Dooley testified that he had not, as of the end of 1984, submitted financial statements for the 1983 fiscal year that ended June 30, 1983, or for the 1984 fiscal year that ended June 30, 1984. Whatever the availability of his Fund audits from year to year, Dooley insisted that he kept Fund

administrators—but not the trustees—otherwise informed about the Fund's declining fiscal circumstances. S.C.I. Counsel James J. Morley questioned Dooley about this:

> *Q. Is it correct that throughout the period of your engagement with the Fund, the balance of the Fund's reserve was decreasing?*
> A. Yes, that's true.
>
> *Q. As a simple matter, the expenses were exceeding the revenues. Right?*
> A. That's correct.
>
> *Q. And is it correct to say that at some point you came to the conclusion that eventually the reserves would be depleted and that, based on revenues alone, the Fund would be unable to meet its obligations?*
> A. Yes, that's true.
>
> *Q. Did you ever discuss that conclusion with anybody at the Fund?*
> A. Yes, I discussed it with Mr. DeFranco and Mr. Visotski.
>
> *Q. And when were these discussions?*
> A. I really don't recall the date, but I would think it was prior to 1980. Maybe 1979.
>
> *Q. Did you ever discuss any of these matters with the trustees?*
> A. No, I did not.
>
> *Q. Were you satisfied, based on the continuing problems with the balance of the reserves, that Mr. Visotski and/or Mr. DeFranco had communicated your opinions and your concerns to the trustees?*
> A. I'm not really sure of that.
>
> *Q. You were satisfied that your concerns had been adequately presented to the trustees?*
> A. Well, I took the word of the management people, the people who were directing the Fund, that they were aware of what I was presenting to them and that they were doing things about it, yes.
>
> *Q. In your opinion, would it be accurate to say that the reason for the budget shortfall and the necessity to go into the reserve funds every year was that the chief source of*

revenue was remaining relatively constant while expenses were steadily increasing?

A. Yes.

Q. Did you conclude that if the Fund were to remain solvent and to meet its obligations to provide benefits for its beneficiaries, that the per capita contribution would have to be increased?

A. Yes, I did.

Q. Did you ever, in connection with preparing your reports, obtain or recommend the obtaining of an actuarial report to project the future cost of benefits to enable the trustees to endeavor to construct a more realistic revenue scheme?

A. No, I did not.

Q. And once again, you felt that your responsibility to communicate your concerns and your ideas ended with your discussions with the management?

A. Yes, I did.

Prudential's Dennis J. Walker

The next witness confirmed during his testimony that he not only alerted the Fund about its enlarging fiscal peril but also suggested options to resolve it. He was Dennis J. Walker, the Prudential Insurance Company groups representative who serviced the supplemental benefits plan for which Prudential was the carrier. During questioning by S.C.I. Counsel Gerard P. Lynch, he was asked about steps he suggested for reducing premium costs:

Q. In this letter you propose to Mr. Visotski that if certain changes were made you could save the fund anywhere from $117,000 to $573,000. Did Mr. Visotski, or anyone else from the Fund, take advantage of these savings?

A. We discussed it. None of the changes were ever implemented.

Q. All right. I would like you to look at the following... dated December 27th, 1983. Again you sent this letter to Mr. Visotski. Do you recognize this letter?

A. Yes, I do.

Q. Now, this letter states that you supplied three options to Mr. Visotski in order to reduce the premiums paid to

Prudential and it appears that each one of these options carried with it a savings of over $1.5 million. Is that correct?

A. Yes, that's correct.

Q. Did Mr. Visotski implement any of these options?

A. To date, they haven't been implemented.

Q. On January the 3rd, 1984, there was another letter sent by you to Mr. Visotski, again giving three additional option plans. All of these option plans were given and again each one would have brought a total savings of $1.5 million each. Do you recognize that letter?

A. Yes, I do.

Q. Did Mr. Visotski implement any of those additional option plans?

A. None of the benefit changes or benefit reduction options were implemented at that point.

Q. I notice further in this exhibit a letter dated January 30th, 1984, that you sent to Mr. Visotski. Do you recognize that letter?

A. Yes, I do.

Q. Now, in that letter it states that the plan administered by the trustees is facing a very serious fund problem, and again you talked about cancellation of the policy. After this letter was sent to Mr. Visotski, did he sit down, or any member of the trustees sit down, with you and implement any of the cost savings options that you had presented to him or the trustees earlier?

A. They were—I discussed them with Mr. Visotski, but they weren't implemented and they aren't implemented yet.

Q. Finally, the last correspondence in this exhibit is a letter sent by you to Mr. Visotski on February 9th, 1984, where you further discussed the critical matter of the situation the Fund was facing and you discussed the cancellation procedures and the effects that they may have. After this letter was sent to Mr. Visotski did he, or anyone from the Fund, contact you regarding the possibility of reducing the premiums paid to Prudential?

A. I talked to Mr. Visotski about it, but the plan options weren't implemented, so we did not reduce the premium.

Q. To this date, has any of these options ever been implemented?

A. No.

DeFranco's Executive Session Testimony

Fund Treasurer DeFranco was unable to testify at the hearing but portions of his executive session testimony taken at the S.C.I. were put into the hearing record. One portion was his recollection that even the realization of approaching insolvency brought no response by Fund operators. Using a transcript of DeFranco's private testimony, S.C.I. Counsel James A. Hart, III, read the questions and Chief Accountant Cayson read DeFranco's answers:

> *Q. When did you and Mr. Visotski first determine that the Fund could anticipate financial difficulties in the future?*
> A. I'd say about 1978.
>
> *Q. What action, if any, did the trustees take upon receiving this information?*
> A. I don't remember specifically any definite action I could describe.
>
> *Q. Were any steps taken that you recall to cut expenses in any manner?*
> A. Well, at that time, as I know, no definite program that I can remember; Let's do this or let's cut that out, that's it.
>
> *Q. Were any steps taken in an attempt to receive increased funding from the Board of Education in 1978?*
> A. No, sir, not at that time.

The Issue of Excessive Compensation

The Commission had required from the outset that its investigation concentrate on the Fund's operations. Other issues came under scrutiny because of their impact on Fund actions and activities—including the inadequacy of the Board's supplemental benefits contribution, the increasing cost of the benefits and the resulting imbalance between income and expenses that, between 1976 and 1984, moved the Fund toward financial collapse. The Commission found that throughout this period of threatened insolvency the administrative affairs of the Fund were conducted with an irresponsible disregard for its deteriorating financial condition and were dominated for questionable purposes by the Union despite the bipartisan balance that an equal division of Board and Union trustees was supposed to guarantee. Of chief concern to the Commission with respect to these findings was the role of Joseph J. Visotski, the Fund's director from 1976 until his dismissal in July, 1984. The Commission's inquiry delineated

Visotski's unwarranted contractual self-enrichment—his $395,000 in excessive salaries, $70,000 in questionable personal expenses, $49,000 in investment "service" fees, and compensation for highly questionable building "management"—all while fund assets were dropping from over $3.2 million to almost zero.

At the opening of its public hearing the Commission stated that its objectives included a portrayal of the Fund management's profligacy and greed and that one aspect of this would be . . .

> . . . the payout of more than $500,000 to the Fund director alone in overly generous compensation that included fees for managing such simple Fund investments as certificates of deposit, cash payments for unused vacation and sick leave, lavish expenses for excessive travel and personal car leasing, in addition to provisions for a non-contributory 15 percent pension, a year's leave with pay and other benefits . . .

Visotski, according to the S.C.I.'s investigative findings, was an influential officer of the Newark Teachers Union when he was appointed as a trustee in January, 1972, by Union President Carole A. Graves. He also became the trustees' first chairman. By the time the supplemental benefits were increased, he had voluntarily undertaken whatever administrative tasks the Fund required and DeFranco had assumed all financial chores. When Clara Dasher, special assistant to the Union president, replaced him as trustee in March, 1976, Visotski became her "adviser" on Fund matters. On September 7, 1976, a contract employing Visotski as the Fund's director was signed by Dasher as Fund chairman and by Alonzo Kittrels, a Board trustee who then was executive superintendent of Newark schools. The contract awarded to Visotski, who was by then the executive vice president of the Union, provided him with the same health benefits teachers got, with a Fund-paid $75,000 life insurance policy, with liberal reimbursement for expenses and the assurance of a retirement pension, all precursors of more elaborate rewards for promoting the Union's cause at the Fund. His salary was set at $25,000 per 10-month "year" but he was asked to work a full year for an additional pro-rata sum of $5,000. By the time he was fired in mid-1984, his salary was over $70,000 a year.

Fund Director Visotski was quizzed at length at the hearing about various aspects of his compensatory agreement. Early on he indicated that he had sought even more "extras" than were

contained in the already lucrative contract that was signed in 1976 and which was handsomely expanded five years later. Indeed, under a renewed employment contract that took effect January 1, 1981, virtually every move Visotski made at the Fund was converted into a cash transaction. This contract gave him automatic pay raises of 10 percent a year for two years, 12 percent for the third year and 9 percent in each of the last 2 years—increasing his base salary to $77,285 in the final contract year. The Fund was to provide and maintain a car for him and pay all expenses attributable to Fund operations, and allow him 30 days vacation annually and 15 days sick leave annually at full pay. This contract also authorized him to supervise the Fund's investments for a fee of one half of one percent of the invested funds and to "maintain and manage" a six-story building which the Fund had purchased out of its dwindling resources during 1980 at a cost of $80,000. The unusually generous provisions of this 1981 contract strongly suggest a quid pro quo for what Visotski had arranged in the form of enlarged Union office space at scandalously low rents and for what he was to continue promoting in the form of junkets to plush resorts for Fund trustees and officers.

Fund Director Joseph J. Visotski

Counsel Hart began his interrogation by noting the approval by three Fund trustees in September, 1976, of Visotski's original contract. Chairman Lane and Commissioner William S. Greenberg asked what contractual provisions were discussed at the meeting:

THE CHAIRMAN: And you discussed all the provisions?

THE WITNESS: We discussed this. As a matter of fact, we revised it. As a matter of fact, this is a scaled-down version of the original contract.

THE CHAIRMAN: Hard bargaining?

THE WITNESS: Yes. It was substantially larger and thicker.

COMMISSIONER GREENBERG: You mean there was something you asked for that the trustees didn't give you?

THE WITNESS: Oh, yes.

THE CHAIRMAN: What was it?

THE WITNESS: I can't remember.

Using copies of W-2 forms submitted to the Internal Revenue Service in connection with Visotski's compensation, Counsel Hart traced with the witness the chronology of his pay raises:

Q. What does that first [W-2 form] indicate as your salary in 1977?
A. $35,636.34.

Q. All right. On the next exhibit for the year 1978 your salary is reflected as $35,950. Is that correct?
A. Yes, sir.

Q. All right. And the exhibit for 1979 reflects your salary as $45,931?
A. '79.

Q. And the exhibit for the year 1980 shows a salary of $51,913, does it not?
A. Yes, [and] 62 cents.

Q. For some reason the Fund was unable to provide us with a copy of your W-2 for the year 1981 but an examination of the books and records reveals that you received a salary of $59,033 in 1981. Does that comport with your recollection?
A. Probably, yes.

Q. All right. If you look at Exhibit P-23, it shows your salary for 1982 as being $66,016. Is that correct?
A. Yes, $66,016.84.

Q. All right. And in addition to that salary of $66,000, the W-2 also reflects that $11,000 and some-odd dollars were paid on your behalf into your annuity?
A. That's correct.

Q. And the last exhibit for 1983, which is P-24, shows your salary as $66,559?
A. And 45 cents, yes.

Q. And 45 cents. And another $11,000 paid towards your annuity?
A. Yes.

COMMISSIONER GREENBERG: What was the change in the number of employees covered by this Fund between 1977 and 1984? Approximately 5000 in 1984, covered by this Fund?

THE WITNESS: Yes, about the same number.

COMMISSIONER GREENBERG: About the same between 1977 and 1984 and your salary went from $25,000 to $70,000?

THE WITNESS: That's correct.

Despite the unusually generous terms of Visotski's 1981 employment contract, which would be worth more than a half-million dollars to him, it was drafted and ratified in an extremely casual manner. Visotski's testimony:

Q. Over that five-year period your salary from the base year to the end of the fifth year would increase by somewhat more than 50 percent. Is that correct?
A. Yes, approximately, yes.

Q. This contract, Mr. Visotski, was approved, I take it, at a regularly-scheduled meeting of the Board of Trustees of the Fund?
A. Yes, it was.

Q. Do you recall what month that meeting was held?
A. I think it was February of 1981.

Q. And did Ms. Dasher sign your contract at that meeting?
A. No.

Q. Can you tell me where it was that she signed the contract?
A. Ms. Dasher signed several copies of the contract in the kitchen, on her kitchen table in her home prior to that meeting.

Q. Were the other trustees present when she signed it?
A. No.

Q. Do you know where Mr. Kittrels was when he signed it?
A. I know I met Mr. Kittrels for breakfast one morning, after Ms. Dasher had signed, at a restaurant in Newark in the neighborhood of the Newark Board of Education. We sat and talked and I think that's where he signed the contract, at that time.

Q. Paragraph 8 on page 10 of the agreement states, in part, that you are to be given an automobile. Do you recall that being contained within the contract?
A. Yes, sir.

Q. And that automobile was to be provided by and maintained at the expense of the fund. Is that correct?

A. Yes.

Q. Did you negotiate the terms of this contract on your own behalf?

A. Yes. I had input into it through the in—as I explained before, Mr. — the trustees at a meeting in November of the preceeding year had voted to authorize a long-term contract. They also passed a resolution at that meeting authorizing me to have a leased automobile with the —

Q. No, that's not the question. Who, on your behalf, negotiated with the trustees of the Fund on the terms of this contract?

A. Well, I'm trying to explain, Mr. Hart. I negotiate—I made comments, and I testified earlier today, I, I had conversations with (Fund counsel) Imperial, who was charged by the trustees with preparing the document. I had several conversations with him. I voiced my opinion on a number of issues. He raised a couple of issues to me. I concluded and I assume that he also was in communication with the trustees, and so that there was no face-to-face negotiations in the formal sense with the trustees and me, but it was through the intermediation of Mr. Imperial.

Counsel Hart also noted during his interrogation that the contract was generous in its authorization for Visotski to continue his official duties for the Newark Teachers Union:

Q. It says, in part, that: "The Employer agrees that the Employee may continue the services which he performs on behalf of the Newark Teachers Union." Can you tell me what services or duties you performed on behalf of the Union?

A. When this contract was signed, I served at that time as executive vice-president of the Newark Teachers Union. I was in an elected position but a voluntary position. I received no remuneration. However, I provided a good deal of services to the Union. I represented the Union in functions; I served on the various committees of the Union; I represented the president of the Union in a variety of places and occasions; a few instances I served as negotiator for the Newark Teachers Union in contract negotiations with the Newark Board of Education. I was a delegate to many

labor bodies—the New Jersey State A.F.L.-C.I.O., the New Jersey State Federation of Teachers, the Essex-West Hudson Central Labor Counsel, the A.F.T., many of them. So that those things that I was doing at that time as a volunteer for the Newark Teachers Union, this agreement said that as long as I don't allow those things to interfere with my duties on the Fund, that I can continue to do them.

Q. Were you also the editor of the Union newsletter?
A. Yes, I did. I did that, too.

Q. Were you a contract negotiator at the 1980 negotiations?
A. 1980, yes.

Alonzo Kittrels on Visotski's Contract

When former Newark School Superintendent Alonzo Kittrels, a Fund Trustee from 1976 through June, 1981, was questioned about the terms of Visotski's 1981 contract, which he initialed, he stated he had not read it in detail, expected that it would be reviewed closely by Fund trustees prior to ratification and contended he was not at any trustee meeting at which such approval was voted. S.C.I. Counsel Paul D. Amitrani refreshed his memory when he was questioned at the hearing:

Q. To your knowledge, was this contract ever brought up at a trustees meeting?
A. I never attended a meeting where the contract was brought up. I made that statement in executive session.

Q. Did you not feel it was your obligation, since you had signed in support of it, to make sure that it was brought up at a trustees meeting?
A. Let's fix the date on when that item was signed, because we are at the period when I was leaving the school district. I did leave in 1981.

Q. In order to help you out, I asked you to look at P-3, the minutes of the meeting of February 11, 1981. Do you have that exhibit, Mr. Kittrels?
A. Yes, I do.

Q. I'm going to ask you to look at the second page. Go down to the third full paragraph, which is "Personnel and Finance Committee."
A. Yes.

Q. And does not that paragraph apply to the contract that was negotiated with Mr. Visotski and as it states here: "Committee Members Dasher and Kittrels signed for the Board of Trustees and recommended adoption of the Board of Trustees at this meeting." Are you saying that's incorrect?

A. Again we are referring to February 11th, 1981. Is that correct?

Q. That's correct.

A. In case you're wondering what I'm looking at, I'm looking at an appointment book that I secured from my office. I did not keep this book. I see no indication of such a meeting scheduled for February 11th, 1981.

Q. So you're saying that these minutes are incorrect?

A. I do not recall attending a meeting on February 11th, 1981, at which time this contract was discussed and at which time it was approved.

THE CHAIRMAN: Well, at any rate, this contract you signed, you didn't know its provisions?

THE WITNESS: Generally speaking, I knew something about it, but not the detail that I know now by virtue of sitting in these hearings.

THE CHAIRMAN: There are five or six extraordinary, shall we say, provisions there for remuneration. Did you know those five or six extraordinary provisions?

THE WITNESS: The one that puzzles me, Mr. Lane, and I have reflected over and over again, is the one regarding the administration fee for investments, the investment fee, and that is my initial on that page. The circumstances centered around that have puzzled me over and over again. I do not recall the circumstances. I may, in fact, have signed it. I do know, and I will say clearly, that I do not recall attending a meeting where the provisions, each provision was discussed, voted on, give and take, and a contract was ultimately approved.

BY MR. AMITRANI:

Q. Mr. Kittrels, you have heard testimony today and have been shown things in executive session concerning Mr. Visotski's overall compensation for the years that he

served as executive director. Can you give us an opinion as to whether or not you feel that that overall compensation was excessive in view of his duties?

A. You're putting all the packages together. It—no one asked me my background officially, but I've spent more time in human resources management than I have in the field of education. And given what the duties were, it appears to me it's not the level of compensation that I would have recommended for a position like that. It would seem a bit much.

Visotski's $49,000 in "Investment Fees"

From Fiscal Years 1978 through 1982, according to S.C.I. audits, the Fund reduced its reserves by huge amounts annually in order to cope with a constantly enlarging revenue shortfall—by $100,000 in FY 1978, by $500,000 in FY 1979, by $300,000 in FY 1980, by $100,000 in FY 1981, and by $700,000 in FY 1982. Two-thirds of the Fund's savings, which had peaked at over $3.2 million in 1977, were in Certificates of Deposits (CDs) and these were reduced from $2.5 million to a mere $800,000. In view of these findings, the Commission did not believe that one of the 1981 contract's provisions—to allow Visotski to collect a fee of one-half of one percent for investment services, primarily to "roll over" CDs —was a prudent use of the Fund's severely declining assets. The public hearing testimony on these fees bolstered the Commission's views.

Over a five-year period, three years of which pre-dated the fee proviso of 1981, Visotski received checks totalling more than $49,000 for purported investment services that he himself conceded were largely performed by others, chiefly Fund Treasurer DeFranco. Of Visotski's total fees, S.C.I. accountants isolated checks amounting to more than $30,000 that were paid to the director in the period 1978-1980, prior to the 1981 contract. Asked to explain how a 1981 agreement that contained no retroactivity clause could enable such payments, Visotski contended that he and the trustees had discussed his investment services since his initial employment as director. While no formal authorization of a specific investment fee is noted in any meeting minutes before the 1981 employment contract was authorized, there is evidence that both Board and Union trustees knew—or should have known—that their director was receiving such fees since they were noted in periodic financial reports submitted at Fund meetings.

The Commission had a portion of Fund Treasurer DeFranco's executive session testimony on Visotski's investment fees read into the record:

Q. Could you describe for me the nature of that fee, what it amounted to?

A. He at one time received an allowance in the amount of one-half of one percent of our total investments at the time —when the Supplemental Fringe Benefit Fund enjoyed a surplus, we had excess reserves, the fees were greater than, say, during the past year when we had no money to invest, which was zero.

Q. What type of investments did the Fund have when there was a surplus?

A. We invested in certificates of deposits at the local bank, we invested in treasury bills and one instance we invested in bond anticipation notes issued by the City of Newark, New Jersey.

Q. Could you tell me what management duties Mr. Visotski had to perform regarding the certificates of deposit and the treasury bills that the Fund invested in?

A. Communicate with the bank if we had extra money on hand at one time not needed immediately, just invest it in the certificate of deposit. If we didn't need the money to meet our costs, we would then just roll it over and that was the extent of the investment service. We didn't have any—we were not in the common market like dealing stocks and bonds and things like that.

Q. If I understand correctly, Mr. Visotski would receive one-half of one percent of the Fund's assets for performing the management duties which consisted of either, A, purchasing the certificates of deposit or treasury bills or, B, telling the bank holding such certificates to roll them over when they expired; is that correct?

A. That's correct, sir.

THE CHAIRMAN: And who handled the mechanics of that?

THE WITNESS: Commissioner, we did it together. I handled it, but always with his knowledge and—I handled communications with the bank either telephone calls, correspondence, issuing the checks, always with Mr. Visotski's knowledge and information.

THE CHAIRMAN: But you did it?

THE WITNESS: Yes, I did.

The Commission questioned Visotski about certain aspects of his investment service, including the fact that some of his fee payments pre-dated the 1981 contract authorizing them:

BY MR. HART:

Q. Mr. Visotski, many of the checks we just discussed were dated prior to your 1981 contract. Can you tell me the manner in which the trustees of the Fund approved your investment manager fee prior to the 1981 contract?

A. There are, I think, three separate sets of minutes of trustee meetings in which it is stated by me or by one or more of the trustees that I am the investment manager of the Trust Fund. In addition to that, every, every financial statement that was prepared by Mr. DeFranco during that period of time contained the phrase "investment manager fee," specifically, with the stated amounts. They were all presented to the trustees at formal Trust hearings, I mean Trust meetings, and they were approved and ratified by the trustees. As a matter of fact, one meeting Mr. Paul Molle, who was a trustee from the Board of Education, insisted that it be recorded in the minutes that I was the investment manager. Mr. Molle and a number of other trustees were concerned about the personal liability for the management of Trust Fund assets, and they did not want to be liable personally for the management of those assets and they asked me then if I would assume the responsibility for doing so.

Q. The trustees were bonded, weren't they?

A. Yes, but that doesn't cover a fiduciary liability of management of funds. As a matter of fact, at that very time in 1977, as a result of attending a conference, we had been informed by, at the conference about this personal liability, we also learned that ERISA had eliminated exculpatory clauses so that trustees no longer were protected from errors and omissions in the management of their duties and were held personally liable. We also learned that there was a new product on the insurance market.

THE CHAIRMAN: You mean by that the bonds were cancelled out?

THE WITNESS: No, sir, not bonding; not bonding. It had been a practice prior to ERISA for trust fund agreements to include exculpatory clauses which held trustees harmless for loss of assets unless they were criminal. The passage of ERISA prohibited that.

THE CHAIRMAN: 1974?

THE WITNESS: Yes. So there became a new product on the insurance market, fiduciary liability insurance, to cover those instances. We tried to purchase that insurance. Mr. DeFranco spent a great deal of his time and issued many reports to the trustees that he was unable to get any insurance carrier to provide us with that insurance.

THE CHAIRMAN: You weren't insured either?

THE WITNESS: No, sir, not for that. Subsequently we did receive, we were able to get fiduciary liability insurance, but that I believe was a year or two years afterward.

THE CHAIRMAN: What date?

THE WITNESS: I don't know the date of the insurance, sir. But that was the framework under which the trustees then, I will assume decided, hey, I don't want this personal liability, would you assume it? I didn't want that personal liability either. I said—

THE CHAIRMAN: But you were willing to assume it?

THE WITNESS: If you will pay me for the risk, I will assume the liability. If you don't, the law imposes upon you the responsibility for handling and being responsible for these funds.

THE CHAIRMAN: Now, this responsibility you had, I take it, was ordering from a bank certificates of deposit?

THE WITNESS: No, sir. It was being responsible for the assets of the Fund and—

THE CHAIRMAN: Excuse me. What did you do in keeping with your great responsibility to manage the Fund? Tell us that.

THE WITNESS: I complied with the Trustees' investment policy which they had.

THE CHAIRMAN: What did you actually do?

THE WITNESS: Invested the funds in the bank.

THE CHAIRMAN: How?

THE WITNESS: By purchase of certificates of deposit and by purchase of some government securities, bonds.

THE CHAIRMAN: You got on the phone and ordered those securities?

THE WITNESS: Well, I also visited the bank as well.

BY MR. HART:

Q. Other than initially purchasing certificates of deposit and advising the bank to roll them over when they expired, was there anything else that needed to be done concerning these investments?

A. Well, reporting to the trustees, and that was done repeatedly. Also, reminding them, and I did that, too, and that's recorded in the minutes, I reminded them, hey, I'm still the investment manager until you get somebody else, and they never chose to get somebody else.

THE CHAIRMAN: Were you anxious to drop the job and—

THE WITNESS: Yes, I was, I was.

THE CHAIRMAN: You didn't want the remuneration?

THE WITNESS: No, I didn't want the responsibility.

Q. Mr. Visotski, considering the fact that the investments the Fund had were in certificates of deposit and treasury bills, which investments are relatively risk-free, and that there's very little work involved other than purchasing the certificate initially and having it rolled over and reporting to your trustees from time to time, can you tell me whether or not the expenditure of some $49,000 over this five-year period for maanging these investments was a prudent use of the Fund's assets?

A. Yes, it was. If a bank like the Franklin National Bank in New York can go bankrupt, if Continental in Chicago can go bankrupt, save for two-and-a-half or four-billion-dollar infusion and bailout by the Federal Reserve, certainly the Broad National Bank on Broad Street in the city of Newark can certainly go under, and I was responsible for it. I saw

no reason to put my, my family's future in jeopardy or have my house foreclosed and personal liability just because I was doing the trustees a favor. Let them lose their own house.

Q. Did you at any time after 1978 when you began receiving this investment manager's fee tell the trustees that there's very little risk involved in these investments, there's very little work in these investments? There's really no need to pay investment manager fee to anyone for these types of investments?

A. That was their judgment. The law imposes a duty upon them. They made that judgment. I accepted it.

Union Spokesman Dasher Criticizes Fees

Even Clara Dasher, the Union trustee at the time Visotski was collecting fees for investing the Fund's assets, largely CDs, agreed with the Commission's view that such an expenditure was improvident. S.C.I. counsel Charlotte K. Gaal questioned her on the subject:

Q. Ms. Dasher, based on this Commission's review of the books and records of the Fund, Mr. Visotski received approximately $49,000 for managing the certificates of deposit of the Fund between the period of 1979 and 1980. Would you agree that that expenditure of Fund monies was not a prudent use of the assets of the Fund when all he had to do was purchase the certificates and at the maturity date tell the bank to roll them over?

A. I would agree.

Q. Ms. Dasher, I want to represent to you that, based on the Commission's review of the books and records of the Fund, between 1979 and 1983 Mr. Visotski received more than $472,000 from the Fund in the form of salary, pension contributions, travel expenses, car allowances, and these so-called investment management fees. In light of the financial condition of the Fund between '79 and '83, would you regard this compensation that he received from this very finite source of revenue as a prudent use of the Fund's assets?

A. No, I would not.

Indeed, Dasher was critical of Visotski's overall contract:

Q. How would you characterize that expenditure of well over $400,000 in compensation to one individual for that period of time?

A. Excessive.

Q. Excessive?

A. Yes.

Q. Ms. Dasher, did you have any idea during that period of time what compensation Mr. Visotski was receiving?

A. No, I did not.

Q. Was there any discussion regarding Mr. Visotski's salary or compensation by any of the trustees during that time period?

A. No, there was not.

Q. Did there come a time when the questions were raised by the trustees regarding his compensation?

A. As I said, in 1983.

Q. Was that because of the shortage of funds?

A. Yes.

Q. Did anyone request an accounting?

A. There were several requests made.

Q. Did you get an accounting at that time?

A. No, we did not.

Q. Who was requested to provide the accounting?

A. Mr. Visotski.

Q. And he did not provide it at that time?

A. Not at that time.

THE CHAIRMAN: And had you seen the contract in '81,'82?

THE WITNESS: No, we had not.

Visotski Was Paid for Unused Vacation, Sick Leave

The Fund resolution terminating Visotski as director on July 18, 1984, cited him for violations of his "contractual and fiduciary duties." One accusation was that he negotiated checks that were not properly authorized to pay himself $22,249 for unused sick leave. The other charge was that he similarly processed checks, without proper authorization, for $26,860 worth of unused vacation time. Because the Commission felt such transactions were unusual in any private or public employer-employee relationship, Visotski

was questioned about them during his public hearing appearance. Visotski particularly was asked to find any contractual provisions that allowed him to obtain such payments:

Q. Would you identify for me the clause that authorizes the cashing-in of sick and vacation time?

A. One reference is on page 12, Article 11, which reads: "As further compensation, the employee shall be entitled to a vacation of 30 days duration per year at full pay at a time to be agreed upon between the Employee and the chairperson of the Board of Trustees of the Employer."

Q. That phrase, in your opinion, authorized you to cash in unused vacation time?

A. I said that was one of the, one reference. There are a number of references, and, of course, there is also the history of the agreement that I had with the trustees.

THE CHAIRMAN: Read the other references.

THE WITNESS: I'm looking for it, sir.

A. Again on page 12, "The Employer agrees that the Employee shall be entitled to receive full pay for up to 15 days per year that he is unable to attend to his function as the director."

Q. Due to illness?

COMMISSIONER PATTERSON: Doesn't that mean if you're sick you get paid for those sick days?

THE WITNESS: Yes, sir, yes.

COMMISSIONER PATTERSON: I don't think that was the question. The question is: How do you get paid in cash in lieu of the sick days?

THE WITNESS: Well, I'm trying to find out the appropriate—

COMMISSIONER PATTERSON: That one doesn't have anything to do with the question, does it?

THE WITNESS: It entitles me to 15 days pay and it's one circumstance.

COMMISSIONER PATTERSON: It entitles you to 15 days pay when you're sick?

THE WITNESS: Yes, sir.

COMMISSIONER PATTERSON: Not when you're well and you take 15 days pay. Is that right?

THE WITNESS: Yes, sir.

COMMISSIONER PATTERSON: There isn't anything in the contract that would allow you to take this pay before termination, is there?

THE WITNESS: A—

COMMISSIONER PATTERSON: Yes or no.

THE WITNESS: I can't answer that, no, sir, because it's interpretation, see, predicated on other agreements.

COMMISSIONER PATTERSON: Well, there's nothing in that contract—

THE WITNESS: In the contract that says that I am entitled to 15 days cumulative sick days.

COMMISSIONER PATTERSON: We went through that. But there's nothing in the contract that says you can get paid for sick time, for vacation time before termination, is there?

THE WITNESS: The agreement that I had with the trustees said that I did.

COMMISSIONER PATTERSON: Well, that's beyond the contract?

THE WITNESS: In specific language, yes.

COMMISSIONER PATTERSON: Show me where it says that you can take your vacation pay, your sick pay before you get terminated, in cash.

THE WITNESS: Sir, I, I admitted to you a moment ago, you said is there a specific phrase, a word that says that I may, and I said, no, there is no such specific word. But the agreement that I had with the trustees was that I was authorized to do so.

COMMISSIONER PATTERSON: And is that agreement in writing?

THE WITNESS: When Mr. DeFranco rejected that, or he said from his reading of this contract, he did not think that

I had such authority, I said I certainly had and if it doesn't say so specifically in the contract, go and check with the trustees and see if it is not their understanding. He returned with the signature of the chairperson saying, yes, that there was the agreement.

COMMISSIONER GREENBERG: What do you mean? Signature on a check?

THE WITNESS: No. signature on a, on a voucher which Mr. DeFranco presented to the trustees for approval.

THE CHAIRMAN: In what amount?

MR. HART: Mr. Chairman, I have it right here if you would like me to go into that.

BY MR. HART:

Q. Can you tell me what that first document is in that exhibit?

A. This first document is a piece of lined paper with handwritten notes figuring on accumulated days, sick days, and the possible value of same.

Q. All right. Is it this document that Mr. DeFranco questioned the propriety about of cashing in this sick time?

A. Yes. It was a discussion at this time.

THE CHAIRMAN: Who helped you?

THE WITNESS: Mr. DeFranco wrote on this paper as well.

THE CHAIRMAN: What's the amount?

THE WITNESS: $8,042.04.

THE CHAIRMAN: And what does that represent; sick pay for what period of time?

THE WITNESS: I think, 36 days, I think, sir.

COMMISSIONER GREENBERG: This is 36 days that you weren't sick, you actually worked, got paid your salary and your consultant's fee, and this—

THE WITNESS: Yes, sir.

COMMISSIONER GREENBERG: —$8,000 on top of that; is that correct?

THE WITNESS: That's correct.

Q. If I can have just a minute on this particular exhibit. On the bottom of the page there's a stamp "Approved" and a signature. Do you recognize that signature?

A. Yes, sir.

Q. Whose signature is that?

A. Clara Dasher.

Q. What was her position with the Fund at that time?

A. Chairperson, the Board of Trustees.

Q. Did you ever attend a meeting of the trustees at which they voted to pay you the unused sick time represented in this exhibit?

A. No. No, no meeting with a, with their request for payment, but meetings where the financial statements reflected that these payments were made and those financial statements were approved by the trustees without argument and without comment and without disagreement.

THE CHAIRMAN: Probably without any knowledge of what those figures represented, too.

THE WITNESS: Well, I don't think that they were as ignorant and as careless and as irresponsible as that, sir.

THE CHAIRMAN: Well, that's a matter of opinion.

THE WITNESS: I think they paid good attention to their responsibilities.

COMMISSIONER GREENBERG: My question to you, sir, is: Do you happen to know or can you tell us in what manner the trustees manifested their understanding of what they were signing on that?

THE CHAIRMAN: One trustee.

COMMISSIONER GREENBERG: One trustee.

THE WITNESS: It's clear it says paid sick days, per diem rate, and then it has the figures here and Mr. DeFranco went to discuss it. It would—I know that he did—didn't simply just slip this in for a signature because he very carefully argued the point with me, as the Commission has, that that specific language does not exist in the employment agreement. And I said, "Mr. DeFranco, whether the specific language is included in that employment agreement

to me is not important because that was our specific agreement with the trustees. Go and check with them."

He did and I know that he must have discussed it in detail and at length, and it was signed, so that, you know, the trustees agreed with what I said was the agreement.

By Mr. Hart:

Q. Mr. Visotski, if you look at the next page contained within that exhibit which has been marked as Exhibit P-4B, that contains a voucher, does it not, representing another cash-in of 30 days of unused sick leave in 1981 and 1982. Is that correct?

A. Yes, sir.

Q. And that's in the amount of $7,505.70?

A. Yes, sir.

Q. Is that your signature that appears at the bottom of the voucher?

A. Yes, sir.

Q. All right. Now, there's a line marked "Approved by" and the line is blank. The signature line is blank. Do you see that?

A. Correct.

Q. Can you tell me why there's no signature on the approval line on that voucher?

A. This is Mr. DeFranco's procedures. He typed this voucher up. He typed in the dates. He gave it to me to sign to certify that I, I in fact did receive this, and from my discussion with him, he said there's no—it's not necessary to continue to receive approval for something which had already been approved. If the understanding contractually was that I was entitled to this benefit, the trustees didn't have to constantly reassert the approval every time we went to execute one of the agreements, and so he never sought, he never sought a trustee approval on the second voucher.

Q. Mr. Vistoski, I would like you to look at what's been marked as Exhibit P-32. Tell me if you recognize that?

A. Yes, sir.

Q. All right. Those are minutes of a meeting of the Board of Trustees of July 18, 1984, with an attached

resolution reflecting the fact that you were terminated as director of the Fund. Is that correct?

A. Correct.

Q. And if I can summarize, the resolution states that you were terminated because on three occasions you cashed in sick leave that the trustees believed was unauthorized, amounting to $22,029.40, and on eight occasions between 1977 and '83 you cashed in vacation time totaling $26,860.83 in an unauthorized fashion. Is that an accurate summary of that resolution?

A. Yes, that's what it says.

THE CHAIRMAN: What's the aggregate of those sums?

MR. HART: Approximately $48,800 and some odd dollars, Mr. Chairman.

Although Clara Dasher had approved one payment for unused leave to Visotski, she said Visotski had told her such compensation was authorized by his contract. She subsequently looked for but couldn't locate any such authorization. Counsel Gaal questioned her at the hearing about these unusual payments:

Q. It's a fact, is it not, that you yourself approved some of the payment to Mr. Visotski from the Fund of monies for cashing in unused sick and vacation time?

A. Yes, I did, the initial payment.

Q. Does his contract anywhere provide for such payments?

A. At the time that I signed the initial payment, I was under the impression that there was a written clause in the contract. Subsequently I have not been able to find that clause.

Q. How did you come to be under that impression?

A. I don't know. It has—it had been with me. I did recall it from some discussion.

Q. Whom did you discuss it with?

A. I'm sure, Mr. Visotski and I'm sure one of the, one or two of the other trustees, but I can't say definitely.

Q. Would you agree that there is no written provision for that?

A. I agree.

Q. Do you know of any place where an employee can be paid day for day for unused sick or vacation time?
A. Not offhand.

Q. Ms. Dasher, as to any approvals that you gave out authorizing the cashing in of sick or vacation time for Mr. Visotski, did you seek the authorization, agreement, or approval of any of your fellow trustees?
A. In, for this particular item, I did not because, as I said, I thought that it was within the contract, so that second approval by the trustees was not necessary since it was part of the contract and then subsequently just learned that it was not part of the contract.

Q. Did you call the attorney that handled this matter and ask his advice as to whether or not this was included in the contract?
A. No, we did not. I think both of us were accepting Mr. Visotski's word.

Q. Well, did he represent it was in the contract?
A. Yes, he did.

Q. He did?
A. Yes, he did.

Q. To you personally?
A. Yes.

Union Employees Got Benefits

Despite the financial pressures on the Fund, its management extended coverage that the Fund's trust agreement had delegated to teachers and certain aides to employees of the Teachers Union, without assessing premium costs against the Union. The Commission questioned this during Visotski's testimony:

Q. Mr. Visotski, were any employees of the Newark Teachers Union covered by benefits of the S.F.B.F.?
A. Yes, sir.

Q. Can you tell me how many such employees were covered?
A. I believe at the beginning of this year, 1984, the figure was somewhere around ten.

Q. Can you tell me what these the employees of the Union did for the Fund?

A. They did nothing for the Fund.

COMMISSIONER GREENBERG: Are we talking about people who do work for the Union as opposed to employees of the Board of Education who are members of the Union?

THE WITNESS: No, my understanding of the question is these are employees or officers of the Union who have no other, they're not paid by the Board of Education, they're paid by the Union.

Fund Counsel Imperial Got Benefits

An additional—and questionable—drain on the Fund's resources was imposed when the management decided to convert the Fund's counsel, George Imperial, into an "employee" so he also could become eligible for all dental, vision and prescription benefits without paying premiums. This change in status occurred in 1981, although Imperial nonetheless continued his private law practice. Visotski was questioned about this:

COMMISSIONER GREENBERG: Was Mr. Imperial a full-time employee of the Fund?

THE WITNESS: No, sir.

COMMISSIONER GREENBERG: Was he a full-time employee of the Board of Education?

THE WITNESS: No, sir.

COMMISSIONER GREENBERG: Of the Union?

THE WITNESS: No. sir.

COMMISSIONER GREENBERG: He was—what was his connection with the Fund?

THE WITNESS: He was counsel for the Fund.

COMMISSIONER GREENBERG: And he was voted into this program by the trustees?

THE WITNESS: Yes, sir.

BY MR. HART:

Q. Prior to '81 he was an independent outside counsel?

A. Yes.

Q. Retained by the Fund?
A. That's correct.

Q. In '81 an employer-employee relationship was established?
A. Yes.

COMMISSIONER GREENBERG: Well, just a minute. Did the independent counsel relationship change in 1981 after he became an employee or was he still the lawyer for the Fund?

THE WITNESS: No, he was still the lawyer for the Fund, sir.

COMMISSIONER GREENBERG: And did the method by which he was compensated for his services change after 1981?

THE WITNESS: I think essentially the same. He received, like, a basic stipend and then if there were any extraordinary services that he provided, he would bill on the basis of those services.

No Cost Cuts Despite Fiscal Peril

During the review of Visotski's lavish compensation, the Commission naturally expressed concern that such extravagances persisted despite the obviously severe depletion of Fund assets. S.C.I. accountants have estimated that administrative costs jumped 1,500 per cent since the mid-1970's—yet the Fund administration remained relatively unconcerned and no effort to reduce costs ensued. Visotski was asked about this:

Q. Specifically, what costs or expenses were eliminated in view of the financial condition of the Fund? Prior to 1982?
A. I don't know of the elimination of any expenses.

Q. No expenses were eliminated prior to '82? Is that correct?

THE CHAIRMAN: We want to know what concrete steps were taken to eliminate, to reduce the cost of your operation.

THE WITNESS: We tried simply to constantly improve the efficiency of the operation so that we can deliver the services that we provided as efficiently as possible without wasting any funds or resourecs.

THE CHAIRMAN: Did that result in a reduction of costs of operation?

THE WITNESS: No, but each year, sir, when the cost of inflation goes up, up, up, so if you maintain your costs from year to year, or significantly less than the cost of inflation, that, that is a savings.

THE CHAIRMAN: Did you, succeed in those years in reducing the cost of your operation? Yes or no?

THE WITNESS: I, I don't know. I don't know if we ever cut out anything and I don't know if the figures indicate a lower cost from total costs from one year to the other. I don't know that answer.

BY MR. HART:

Q. Mr. Visotski, perhaps I can refresh your recollection. Do you recall testifying in executive session before this Commission on Friday, September 21, 1984?

A. Yes, sir.

Q. Do you remember the Chairman asking you this question and giving the following answer: "The Chairman: The question is what expenses did you eliminate?
"The witness: Well, we didn't eliminate anything, sir."
Does that refresh your recollection as to whether or not expenses were eliminated?

A. Well, that's what I believe I just said. I don't recall us reducing or eliminating anything, no.

Self-enrichment aspects of Visotski's lucrative employment contract included other issues of concern to the Commission's inquiry, such as excessive expenditures for junkets and the huge financial burden the purchase of a building imposed on the Fund. Visotski's relevant testimony will be noted during this report's following assessment of these issues.

Fund Operators' Junkets

Another example of the Fund's irresponsible disbursements from plummeting assets was emphasized in the statement with which the Commission opened its public hearing. One of the "three principal areas of fiscal gluttony" at the Fund, the Commission declared, was the . . .

> . . . wasteful expenditure of more than $152,000 for junkets by Fund trustees and officers to plush resorts in Florida, California, Hawaii, Mexico and elsewhere . . .

The S.C.I.'s investigative audits revealed that during fiscal years 1979-1983, inclusive, the Fund spent $152,277 on travels to so-called educational and professional conferences at famed resorts and metropolitan meccas in this country and abroad.* Many of these trips were to meetings sponsored by the International Foundation of Employee Benefit Plans, whose objectives and programs were not a public hearing issue. However, the Commission did regard as unconscionable the need for a Fund management consisting merely of four trustees, a director and several other executives to send groups of up to seven representatives to a dozen of these conferences in a single year. Further, such junkets occurred at a time when Fund assets were disappearing and insolvency was imminent. While the total dollars involved were not as large as other financial excesses, the travels reflected more dramatically than other improprieties the callousness with which Visotski and the trustees flouted their obligation to safeguard a $1 million-a-year health care program. The Commission is convinced that lavish travel expense reimbursements were a gross abuse of Fund assets for individual gain.

According to the Commission's accountants, Visotski was reimbursed to the extent of $42,000 for expenses on at least 13 journeys. His travels took him to Bermuda, Florida, California, the Bahamas, Hawaii and other resort areas. Visotski's most important Board-appointed ally, Alonzo Kittrels, a 1976-81 trustee, went on 22 similar excursions at a cost to the Fund of $39,000. More than $5,000 of these reimbursements were for Fund travels by Kittrels during 1981-82, after his tenure as trustee had expired. He was the Fund-appointed arbitrator at the time but his services were never utilized. The Commission questioned whether such dubious expense account generousity may have encouraged Kittrels to take time off from traveling in 1981 to initial his approval of such employment contract profit items for Visotski as the one-half-of-one-percent fee for "managing" the Fund's savings certificates. Diane Astor-Forbes, another Visotski loyalist who also served as a Union trustee from 1976 through 1981, was granted more than $19,000 for at least nine trips, including one to Hawaii and one to Acapulco. Her travel vouchers show she was reimbursed for food, lodging and other expenses of a male companion. Not once, according to the S.C.I.'s scrutiny of the Fund's meeting minutes, did she question any of the improprieties that are the target of this report. Another traveling trustee, who was reimbursed to the extent of $9,600 worth

* See chart, P. 47.

SUPPLEMENTAL FRINGE BENEFIT FUND TRAVEL EXPENSES
FYE 6/30/79 through 6/30/83

Fiscal Year Ended	Amount	Locales	Number of Attendees	Locales	Number of Attendees
6/30/79	$ 27,354	ATLANTA, GA	4	WASHINGTON, DC	5
		MONTEREY, CA	1	BERMUDA	4
		NEW ORLEANS, LA	1	CHICAGO, IL	1
		SAN DIEGO, CA	5	LAKE TAHOE, NV	2
					23
6/30/80	$ 29,786	WASHINGTON, DC	3	DETROIT, MI	1
		HOLLYWOOD, FL	2	CHICAGO, IL	1
		NEW YORK, NY	2	FORT LAUDERDALE, FL	2
		LAS VEGAS, NV	1	BOSTON, MA	1
		PALM SPRINGS, CA	2		
					15
6/30/81	$ 48,899	WILLIAMSBURG, VA	2	SAN FRANCISCO, CA	1
		CHICAGO, IL	1	BAHAMAS	3
		MONTEREY, CA	3	WASHINGTON, DC	3
		*HAWAII	7	ATLANTA, GA	1
		ATLANTIC CITY, NJ	1	SAN DIEGO, CA	1
		SAN ANTONIO, TX	1	LAKE TAHOE, NV	1
					25
6/30/82	$ 27,923	BALTIMORE, MD	1	WASHINGTON, DC	1
		MONTEREY, CA	1	WILLIAMSBURG, VA	4
		PALM SPRINGS, CA	3	SAN FRANCISCO, CA	1
		**ACAPULCO	7		
					18
6/30/83	$ 18,315	TORONTO, CANADA	1	ORLANDO, FL	1
		MIAMI, FL	2	HOLLYWOOD, FL	1
		WASHINGTON, DC	1	MONTREAL, QUEBEC	2
		HERSHEY, PA	1	SAN DIEGO, CA	1
		SEATTLE, WA	–0–		
					10
	$152,277				91

* Cost to S.F.B.F. $18,139.85
** Cost to S.F.B.F. $18,445.63

of trips, was Clara Dasher, the assistant to the Union president and former longtime Fund chairperson. She had joined Kittrels in approving Visotski's lucrative employment contract. Fund Treasurer DeFranco and other Fund administrators also traveled extensively at Fund expense. In Fiscal 1981 alone, when expense vouchers showed reimbursements totaling $48,899 for trips for 25 individuals, including repeaters, the wide-ranging travelers spent six working weeks purportedly attending 12 conferences. Seven went to Hawaii, at a cost to the Fund of $18,139.85. The most costly expense account trip, however, was in fiscal 1982 when another party of seven Fund staffers spent a week in Acapulco at a cost of $18,445.63.

Paradoxically, a periodic topic of panel discussions at conferences attended by Fund personnel was "cost containment." Whatever was preached about this subject within hearing of Fund junketeers was never put into practice upon their return home.

As noted, excerpts from Fund Treasurer DeFranco's executive session testimony were read into the hearing record, including this reference to junket costs:

> THE CHAIRMAN: Wouldn't it have been better to apply the expense money we've been talking about, travel and the convention expense money, wouldn't it have been possible to put that to better use?
>
> THE WITNESS: I suppose from that point of view, yes. It becomes a matter of priorities, where you want to spend your money...
>
> THE CHAIRMAN: You just estimated a few minutes ago that approximately $75,000 was expended by the Fund for travel to seminars during a two to three-year period from '80 to '83 for yourself, Mr. Kittrels and Mr. Visotski. This money was spent at the very least two years after it had been projected that the Fund was running into or would be facing dire financial conditions in the future, isn't that correct?
>
> THE WITNESS: Yes, sir.

As previously indicated, Visotski overlooked no opportunity for personal gain in formulating his employment contract—including its requirement that he be reimbursed for attending professional conferences. He was entitled to use a credit card to obtain advance

travel allowances at Fund expense. Because of Visotski's liberal contract, Treasurer DeFranco believed that when the Fund finally imposed a moratorium on travel, the director might have been the only person to be exempted:

> *Q. Does the Supplemental Fringe Benefit Fund have a policy regarding travel by the Trustees or the director or Fund employees?*
>
> A. Since December of '82 there's been a moratorium on travel, but prior to 1982 the Board of Trustees permitted staff and administrators to attend professional seminars and conferences related to employee benefits. However, in Mr. Visotski's contract there's a stipulation there that says he can or will or must, I don't remember the contract, that he can attend or must attend professional conferences. So whether the moratorium applies to him, I don't know. But for him it's expressed specifically in his contract, for the others it was just a policy.

Visotski's Testimony on Junkets

Thanks to his contractual status, as well as the Fund's leniency prior to 1981 on his travel charges, Visotski amassed $41,632.49 in expense reimbursements during fiscal 1979-83, according to the Commission's audits. In his testimony at the hearing, Visotski defended the Fund's travel policies:

By Mr. Hart:

> *Q. Was it unusual for as many as five or six on some occasions to go to the same conference or seminar?*
>
> A. No, that occurred.
>
> *Q. Did it ever occur to you or to the trustees, or was it ever discussed at a trustees meeting, that perhaps it would be more economical to send one or two individuals to a particular conference or seminar and have them report back to the remaining trustees and advisers?*
>
> A. Yes, there was discussion on that issue and the trustees agreed in comparing their experiences with other trustees that they met at conferences that, since this was a small trust with only four trustees, that those restrictions weren't necessary; where larger trusts with multiple trustees, 12, 20, they did have restrictions, but their restrictions just knocked down the number of participants to about the level that we had.

COMMISSIONER ZAZZALI: Can you name any trust funds with 20 trustees in this state, for example?

THE WITNESS: No, sir, I can't.

COMMISSIONER ZAZZALI: With 12?

THE WITNESS: I can't. But I've met, I've met many, yes, yes.

*Q. Mr. Visotski, can you see the exhibit that's been marked as P-59?**
A. Yes, sir.

Q. I will represent to you, sir, that the figures that appear on this exhibit were obtained from the books and records of the Fund and they show, for example, that for the fiscal year ended June 30, 1979, the Fund expended $27,354 for travel by trustees and advisers to such locations as Atlanta, Georgia, Monterey, New Orleans, San Diego, Washington, Bermuda, Chicago and Lake Tahoe. Do you have any reason to dispute the accuracy of that, sir?
A. No, I don't.

THE CHAIRMAN: How many people participated in that year?

MR. HART: Mr. Chairman, according to the records, all told, there was a total of 23 individuals attending these various conferences. That number would include repeaters.

THE CHAIRMAN: What about the next year?

Q. For the fiscal year ending in June, 1980, Mr. Visotski, the records reflect that $29,787 was expended for 15 trips to the locations listed on the chart; Washington, D.C., Hollywood, Florida, New York, Las Vegas, Palm Springs. Do you have any reason to dispute the figures?
A. No, I don't.

Q. How about 1981? $48,899 was expended for travel by 25 people. Do you have any reason to dispute those figures?
A. No.

Q. How about 1982, $27,923 for 18 people?
A. No, I have not.

* See chart, P. 47.

THE CHAIRMAN: Any of these conferences have to do with the curtailment of costs?

THE WITNESS: Yes.

THE CHAIRMAN: They did?

THE WITNESS: A number of those. Every year one of its topics is cost . . .

COMMISSIONER GREENBERG: How was it decided for example in '79 you took five people to San Diego; in 1980 you had three people to, two people to Palm Springs, and in '81 you had seven people to Hawaii? Was that one of the cost-cutting trips, the Hawaii convention that year, sir?

THE WITNESS: No, that was the Annual Education Conference. The year before that the Annual Education Conference was held in New York City.

COMMISSIONER GREENBERG: How was it decided that seven people went to Acapulco in 1982 and only one to Baltimore?

THE WITNESS: I have no idea about Baltimore, sir.

EXAMINATION BY COMMISSIONER ZAZZALI:

Q. For the record, why don't you explain what the concept is? There is one annual conference a year?

A. One Annual Educational Conference. That's what it's called.

Q. Besides the annual conferences, as I understand it, there are these miscellaneous conferences in a given year?

A. Yes.

Q. On specific topics?

A. Right.

Q. For example, taking Acapulco in '82 and Hawaii in '81, were those the respective locations of the annual conference those years?

A. Yes, sir.

Q. But in the year 1981, for example, besides the annual conference they had a mini-conference, if you will, in Monterey?

A. Well, yes, they—

Q. And in Lake Tahoe?

A. They had a number.

Q. And in the Bahamas?
A. Yes.

Q. All on specific costs?
A. Yes, they have conferences on—there's an investment management conference; there is a public employees conference; there are collection and delinquency conferences; cost containment conferences.

Q. And, in fact, some of the subject matters discussed at the mini-conferences, these smaller conferences, are also discussed at the annual conference, are they not?
A. Oh, yes.

Q. And the theme in every one of these conferences is one word. It's prudence—
A. Prudence.

Q. —isn't it?
A. That's correct.

COMMISSIONER ZAZZALI: There are things in this hearing that may be arguable. You may be right, you may be wrong. I think there's a lot of explaining to do, without my passing judgment, on this whole issue of trips.

EXAMINATION BY COMMISSIONER GREENBERG:

Q. You read a series of figures to Mr. Hart showing a deficit, a difference, a negative difference between income and expense. That's what I'm referring to—
A. Yes.

Q. In 1982, for example, there was a deficit, was there not, in the Fund?
A. Yes, sir.

Q. And in that year almost $28,000 was spent on trips. Is that correct?
A. Yes.

Q. And was there not a deficit at the end of 1980-81, that is the year ending June 30, 1981, according to the financial reports you read to us earlier today?
A. All right. Using those terms and concepts, yes.

Q. Yes. Almost $50,000 was spent on trips in that year. Is that correct?
A. Yes.

Q. Now in either of those two years or even in the subsequent year or at any time did the trustees vote or even consider limiting the amount of expenses devoted to these trips to these places owing to the financial condition of the Fund?

A. Yes, sir.

Q. They considered it and, I trust, they rejected it?

A. No, no, no. You said did they do anything about it. Yes, they voted to curtail the expenditures on travel on trips and travel expenses.

Q. —at the end of 1982?

A. Yes.

Q. Yes. I'm talking about before that, Mr. Visotski.

A. No.

Q. They did not consider reducing these travel expenses—

A. No.

Q. —any year prior to '82?

A. No.

EXAMINATION BY COMMISSIONER ZAZZALI:

Q. How many trips did you take? I understand it's 13.

A. I went on about four or five trips a year.

Q. Then it's about 30?

A. Yes, I said so.

Q. Isn't it a fact that there's one trustee who went on 11 trips in one year and don't you know that in your capacity as the executive director?

A. Yes, yes.

Q. How do you justify a person going on 11 trips in one year? Educate me. That's not a challenge to you. Tell me, give me an explanation if there is a reasonable, plausible explanation. Can you do that?

A. No, sir. I, I, I was an employee. The trustees were the employers. It was they who set the policy. It was not for me to formally chastise or restrain them or grant them permission. I may agree with you or I may disagree with you on the number of trips and attempts.

The question, I think the question was posed to me once before and my response to that question was, I don't know if

I would be so concerned about the total number of trips as I would be about the purposes of the trips and the benefits that were received from each of these visits. I could be very, very condemnatory against one trip a year that you just did nothing and you wasted your time and you wasted the money. On the other hand, I could say that 11 trips were prudent because of the value that the individual received. So that in terms of pure numbers, sir, I don't think that I would be willing to make a judgment on whether that action was prudent or imprudent.

Q. And you're familiar with the "prudent man rule" as it applies to trustees?
A. Yes, sir.

Q. And to you?
A. That's correct, I am.

Q. And you know, of course, that you're subject to a higher standard of care and prudence than an ordinary man or woman?
A. Yes, sir.

Q. And yet you think you could justify 11 trips in one year by a management trustee under some circumstances?
A. Under some circumstances. It would depend on the merits of each of the individual issues.

Clara Dasher on Travel Costs

During Ms. Dasher's public hearing testimony, she prefaced her commentary on specific issues with recollections of the Fund's knowledge of the financial crisis that had been developing since costs first began to exceed revenues in 1977. Since she would later criticize the Fund's travel disbursements in view of its fiscal plight, her views on the failure of the Fund to respond to the crisis were enlightening:

By Ms. Gaal:

Q. Well, was there any decision or resolution on the part of the trustees to liquidate the assets to meet expenses?
A. No, there was no resolution.

Q. How about a policy decision?
A. No, I don't recall that either.

Q. Were these audit reports scrutinized closely by the trustees?

A. No, they were not.

Q. During this five-year period that we just talked about, did any of the trustees raise any questions as to why investments were decreasing?

A. Not that I recall.

THE CHAIRMAN: Do you remember any discussion . . . of the necessity to balance costs with income or drawing of the reserve funds at that point?

THE WITNESS: No. Most of the discussion always centered on getting more money possibly from the Board of Education, never on any discussion on the deficit itself.

THE CHAIRMAN: Did you know during those years that the cost of operation far exceeded the revenue or the income?

THE WITNESS: No. I don't think any of the trustees were really aware, not to any extent.

BY MS. GAAL:

Q. During the time period that we're talking about, were you involved in any of the negotiations?

A. Yes, I was.

Q. Was the financing of the Fund ever made part of the Union's collective bargaining proposals for those years?

A. No, there was never a demand put on the table.

Q. Did the trustees ever consider dealing with the problem by way of reducing benefits in some fashion?

A. No, not to my knowledge.

Dasher also testified that had she been fully aware of the Fund's deteriorating financial condition, she would not have condoned the Fund's generous travel reimbursements:

BY MS. GAAL:

Q. Ms. Dasher, did you attend seminars, or workshops, or conferences in such places as New York City, Hollywood, Florida, Hawaii, Acapulco and Monterey, California, during your tenure with the Fund?

A. Yes, I did.

Q. Further, I would like to represent to you that the Fund records indicate that the Fund picked up expenses for you in the amount of $9,635 to attend these seminars, and during a similar period the Fund paid some $39,000 for Mr. Kittrels in travel expenses, $41,000 for Mr. Visotski in travel expenses, $24,000 for Mr. DeFranco, and approximately $19,000 for Miss Astor-Forbes. My question is: Bearing in mind the financial condition of the Fund during this same time period from approximately 1979 to 1983, is there any way that you as a trustee can justify these types of travel expenses by trustees and Fund employees?

A. I can't justify all of them. I can only speak for myself in that during my tenure as trustee, which I think was seven years, seven to eight years, I took four to five trips in the entire period and I do feel that the educational, the Annual Educational Conferences were beneficial to all trustees. I can in no way speak of or justify the others.

Q. Ms. Dasher, you have indicated earlier that you were not fully aware of the actual financial situation of the Fund at that time. Is that correct?

A. Up until about '80, '81, right.

Q. Would your opinion about the travel expenses be different if you had realized the financial situation the Fund was in at that time?

A. Yes, it would have.

Q. Is there any way that you as chairperson of the Fund can justify as many as seven people attending a seminar in Hawaii in 1981 and seven attending one in Acapulco in 1982 in light of the financial situation at the Fund?

A. I can't justify. In fact, I looked at the figure and I tried to determine who the seven could possibly be from the Fund since there are only four trustees, and I would have to assume, then, at that time that the director, the treasurer, who was Mr. DeFranco, would make six. The seventh person, I'm not sure who that person would be.

Q. Well, do you feel that that number of people attending those fairly expensive trips was prudent in light of the financial situation the Fund was in?

A. In light of the financial picture, knowing what I know now, no, it was not prudent.

Q. Were you aware of conferences that the Fund held at the National Conference Center in East Windsor in the years 1980, '81 and '82?

A. Yes, I was.

Q. I would like to represent to you that the Commission has determined from an examination of the books and records of the Fund that in 1980 the conference cost $10,561, of which $1,989 was for a cocktail party in, that was 1980. In 1981 the total cost of the conference was $14,302 with $3,121 for a cocktail party; in 1982, $16,036 of which $2,883 was for a cocktail party. The total cost was $40,899, of which $7,993 was for cocktail parties. Do you feel that this was a prudent use of the Fund's resources?

A. Well, the experience of the conference for the weekend for the beneficiaries, I felt, was a prudent use of money in order to educate them. In light of finances, no, I do not approve of that high an expenditure.

Kittrels Went on 22 Trips

Alonzo Kittrels, a Board trustee who never raised an objection to Visotski's or the Fund's spending excesses, himself went on more trips than anyone else attached to the Fund—22 journeys for the expenses of which he was reimbursed $39,000. Kittrels also traveled extensively as the executive superintendent of the Newark Board of Education during his Fund trusteeship. The cost of his Board-authorized travels was subject to reimbursement only by the Board. So constant were Kittrels's travels that, according to S.C.I. staff computations, he was absent from Newark on trips for the Fund and/or the Board for 246 working days during the period 1977-1981, only 14 days less than an average working year of 260 days. This analysis does not include the many Saturdays and Sundays he also spent on conference travel.

During the 1981-82 fiscal year alone Kittrels went on 11 trips to conferences in Williamsburg, Chicago, Las Vegas, San Francisco, Hawaii, the Bahamas, Atlanta, San Diego, Washington, Monterey and Acapulco, at a total cost to the Fund of $22,343.46. That one year of heavy travel aroused the Commission's curiosity when Kittrels testified at the hearing:

By Commissioner Greenberg:

Q. You understood your role as a trustee to be to take care that these monies, which were taxpayers' monies after all, weren't they, were properly spent, is that correct?

A. That is absolutely correct.

Q. And you thought you were properly spending taxpayers' monies, Mr. Kittrels, when you went on ten or eleven trips in that one year?

A. Well, I guess the problem I have is setting a number to deal wtih whether it's proper or not. I would like to offer, since it has been raised and I thought we were talking about something else and, but I—

Q. Before you offer this, can you just answer my question yes or no? You thought it was proper, you didn't think it was proper or you're not sure it was proper?

A. I thought it was proper.

Q. You thought it was proper. Now, during this period of time between July 1, 1980, and June 30, 1981, what was the financial condition of this Fund? Was it in balance? Was it surplus, or was it negative expenses to income?

A. Expenses to income with added reserves, we were able to pay our bills.

Q. No, expenses to income. We're not talking about what assets you had.

A. Mr. Greenberg, it was not in balance since 1977.

Q. Mr. Kittrels, I didn't know whether you had gone on eleven trips or ten trips. My question to you, sir, is: Did you ever submit a bill to more than one source?

A. No, I did not.

Q. For any of these trips?

A. No, I did not, Mr. Greenberg.

Q. You never got paid twice for any of these trips?

A. No, I did not, Mr. Greenberg.

Q. As a trustee, did you review the total expenditures being spent by Mr. Visotski, yourself, and the other trustees or other employees of the Fund for these travel expenses during the period of time we are talking about, '77 through, in your case, '81?

A. No, I did not, Mr. Greenberg.

Q. Did you challenge the reasonableness of any of these expenses submitted by Mr. Visotski or anybody else in your role as trustee?

A. I do not recall that information being presented, nor was it an item that was listed on our agenda to cover. I—

Q. Didn't you think it was your responsibility as a trustee representing the Board of Education, the taxpayers of Newark, if you will, to question the expenditures of the monies of this Fund?

A. I did.

Diane Astor-Forbes' Travels

Diane Astor-Forbes, a classroom teacher, a Union official and a trustee from 1976-1982, also was questioned about the Fund's financial problems before being asked about the primary issues raised by the Commission's inquiry. The initial witness on the hearing's second day, she was among the Fund's most active junketeers with $19,000 in travel reimbursements between 1979 and 1983. She was questioned by Counsel Gaal, first about Fund finances and later about her reimbursed travel costs:

Q. Did there come a time when you realized that the Fund was having financial difficulty?

A. Yes.

Q. Can you tell us when you first realized the Fund had financial difficulties or could expect to have financial difficulties?

A. In the eighties, '81, '82.

Q. How is it that you became aware of the financial problems of the Fund?

A. We discussed it at our meetings.

Q. Miss Astor-Forbes, I'm going to show you what has previously been marked as Exhibit P-14. It contains, does it not, the minutes of the Board of Trustees of the Fund at a meeting which was held on April the 26th of 1978, is that correct?

A. Yes.

Q. And were you present at that meeting?

A. Yes, I was.

Q. Would you turn to the second page of the exhibit under the section called Treasurer's Report. Do you have that before you?

A. Yes, I do.

Q. It indicates, does it not, that Mr. Kittrels pointed out that it appeared that current expenses of the Fund were exceeding current income and that he requested a study and projection of when trustee action may be required to reduce benefits or seek additional funding. It shows that, does it not?

A. Yes, it does.

Q. It also shows, does it not, that Mr. DeFranco agreed and indicated that a study was already underway and the trustees would be so informed.

A. Yes, it does.

Q. Is it fair to say, Miss Astor-Forbes, that as of that date, April of 1978, the trustees knew or should have known that there were financial problems coming up in the future?

A. Yes.

Q. Now, did the Fund receive the results of the study that's mentioned in this report?

A. I never did.

Q. Do you recall any discussion about it?

A. We talked about it. We would ask Mr. DeFranco where the report is and it was in the process of being completed.

Q. And you never received it.

A. Never received a copy.

Counsel Gaal turned next to Astor-Forbes' travel vouchers:

Q. Miss Astor-Forbes, are you aware that the Fund records reflect that between 1979 and 1982, the Fund expended more than $19,000 either for reimbursing you or for paying for trips that you took during that period?

A. Yes, and as I stated before, I was a classroom teacher and possibly compared to the other trustees or advisors, I was in need of more educational seminars than the rest of them. I was in a classroom all day long and not out in the business world.

Q. Now, these trips that we're talking about involve such places as Atlanta, Georgia; San Diego; Bermuda; Williamsburg; Hollywood, Florida; Palm Springs twice; Monterey, California twice; Washington, DC; Hawaii and Acapulco, is that right?

A. Yes.

Q. During that same time period, from approximately '78 onward, are you aware that Mr. DeFranco, Mr. Visotski, Mr. Kittrels, Miss Dasher and Mr. Molle went to many of the same places that I just listed for you with expenses exceeding some $137,000?

A. No. ma'am.

Q. Would you agree that the travel policy of the Fund was liberal?

A. I don't know how to answer that, counselor.

Q. While all of this traveling was going on, it occurred, did it not, at a time when the trustees knew that the expenses were exceeding the revenues and the Fund assets were being depleted?

A. Yes.

Q. Were any of the people who went along on the trips other than the trustees and employees of the Fund, Union or Board officials or members—

A. Yes.

Q. Who were they?

A. The gentleman that accompanied me, Mr. Anthony DeVincenzo.

Q. Did the Fund pay any of the expenses for the individuals who accompanied the trustees or employees of the Fund?

A. No.

Q. Were any adjustments made when a trustee had someone along with them in terms of the room rate or the hotel rate?

A. No, I was never informed of a difference until the executive session.

Q. So no adjustments were made when the expenses were submitted?

A. No.

Q. Miss Astor-Forbes, I'd like you to take a look at what has been marked as Exhibit P-69. This is your expense voucher, is it not, submitted to the Fund for an educational meeting in Acapulco in 1981?

A. Yes.

Q. Looking at this particular voucher, it includes, does it not, a charge for limousine service?

A. That was car service for myself, yes, it does.

Q. How much is the amount for the limousine service?

A. It says $130.

Q. Can you tell us, if you can, from where to where?

A. Oh, my car—yes, I did not drive out to Kennedy, and they sent a car. It wasn't a limousine, by the way, it was a regular Ford, from my house which is in Newark, and I wrote it on the bottom of my voucher, round trip car service from Newark to Kennedy Airport, see attached receipt.

Q. And there were no limitations imposed by the Fund for a charge such as that?

A. No.

Q. On this same trip, did you take a side trip?

A. I went to Merida, Mexico.

Q. Did you go to Mexico City?

A. Yes.

Q. And Merida?

A. Merida.

Q. Was that side trip Fund business?

A. No, it wasn't, it was personal.

Q. Were any of your expenses of that trip paid for by the Fund?

A. No, not to my knowledge.

Q. How about the air fare or hotel room?

A. No, and Mr. DeFranco was well aware of the side trip being a personal matter.

Q. Miss Astor-Forbes, I'd like you to take a look at what has been marked as P-37. It contains an invoice, does it not, from Kapaca Travel in Caldwell, New Jersey, directed to you at the Fund involving air transportation as well as

accommodations in Acapulco, Mexico City and Merida, is that right?
A. Yes.

Q. It shows, does it not, a three-night package in Mexico City as well as a three-night package in Merida?
A. Yes.

Q. It also shows a total due of $719.25?
A. Yes.

Q. Did you pay for this?
A. I paid for and I have my American Express receipts here, for my hotel in Merida, Chapultapec and Merida.

Q. Did you pay for your air fare?
A. Yes, to the best of my knowledge, it was my package. I did not receive this letter.

Q. Would you agree that the invoice reflects a balance of $719.25?
A. Yes.

Q. And it is stamped paid, is it not?
A. Yes.

Q. Do you recognize that stamp?
A. No.

Q. I'd like you to take a look at what has been marked as Exhibit P-65. That is check No. 2007 drawn on the account of the Supplemental Fringe Benefits Fund, is it not?
A. Yes, it is.

Q. And it's payable to Kapaca Travel?
A. Yes.

Q. Dated October the 5th, 1981 in the amount of $719—
A. Yes.

Q. —and 25 cents.
A. Yes.

Q. Is that correct?
A. It is.

Q. Which is the balance of the invoice.
A. It is.

Q. Have you ever seen that check before?

A. No, nor was I ever informed that Mr. DeFranco was going to pay, if I'm interpreting this right, for my hotel, $185 for my plane fare, since I have the bills for my hotel. He did not inform me that he was paying this or that I should reimburse the Fund at any time.

Q. As well as the air transportation. The invoice also indicates air transportation, does it not?

A. Yes, and it's—according to my records, if he was paying my hotel and I am paying my hotel, it was a double billing. Do you understand what I'm saying, counselor? I have my receipts here for my hotel. This is telling me that Mr. DeFranco has paid my hotel also.

Q. You have no receipts for air transportation?

A. I don't have them with me, but I will check my records and make them available to the Commission.

Q. Would you agree that from the records of the Fund as well as the invoice from Kapaca Travel it appears that the Fund paid for at least part of your trip to Merida and Mexico City?

A. I don't know that until I check my records.

Q. Miss Astor-Forbes, at least some of the seminars you attended were on the subject of cost containment, were they not?

A. Yes.

Q. Did you or any of the other trustees apply anything you may have learned about cost containment to how you handled the administrative exepenses at the Fund?

A. Yes.

Q. How about as to your travel expenses?

A. No.

S.C.I. Accountant Cayson on Travel Reimbursements

The Commission utilized the testimony of its chief auditor, Julius Cayson, to highlight various fiscal improprieties that its inquiry had uncovered. In connection with the Fund's ultra-liberal travel policy, Cayson noted that, with one exception, the Fund was never reimbursed for any expenses incurred for non-Fund personnel who participated in the junkets. Cayson's testimony on this:

By Mr. Hart:

Q. There has been testimony the past couple of days that on occasion, spouses, family members or friends of trustees or employees of the Fund accompanied these trustees and employees to conferences and seminars and there was testimony also that at least on some occasions, any expenses that may have initially been paid for by the Fund for these relatives and friends were reimbursed to the Fund. During your perusal of the books and records, did you find any indication that such reimbursements were made?

A. The only individual connected with the Supplemental Fringe Benefit Fund who reimbursed anything to the Fund was Anthony DeFranco. There were no reimbursements from anybody else.

The $550,000 Office Building

Yet another investigative finding of critical substance, as the Commission stressed at the outset of its two-day public forum, was...

> ...the misuse of more than $550,000 in dwindling Fund assets to buy and renovate a 90-year-old building in downtown Newark for Fund headquarters but which was otherwise tenanted primarily by the Union and its affiliates at below-market-level rents.

In reviewing the record of its inquiry, the Commission came to the conclusion that the decision in 1980 to purchase an office building constructed almost a century ago defined all requirements for prudent use of the Fund's declining assets. The Fund's balance had plunged by $100,000 in Fiscal Year 1978 and by $500,000 in Fiscal 1979. For Fiscal 1980, which closed only a few days after the Fund bought the six-story structure at 30-32 Clinton Street for $80,000, the Fund's reserve suffered a further decline of $300,000. By June 30, 1982, with the trustees fully committed to building renovations costing an additional $470,000, the Fund's savings had plummeted to a mere $806,000—from a one-time high of $2.5 million five years earlier.

The S.C.I. also questioned other facets of a project that was to provide new and enlarged offices for the Union as well as the minimal space required by the Fund. One issue that marked the interrogation of almost every witness was the failure of Visotski and the trustees representing both the Board and the Union to cut

back on constantly rising administrative expenses—particularly in view of such costly building acquisition and renovation. The Fund's administrative expenses, as determined by the Commission's accounting staff, rose from 15.7 percent of premium costs in Fiscal 1980 to 32.6 percent in 1981 and 29.4 percent in 1982. Acquisition and renovation expenditures for the Clinton Street building represented a major portion of these cost spirals. Meanwhile, no offsetting relief in the form of cutbacks in other spending was even considered. Indeed, the director's expanded employment contract that would assure him of more than a half-million dollars over its term was ratified within six months after the purchase of a building in which the Union became the primary tenant at extremely low rental rates. Although Visotski was the Union's executive vice-president when these arrangements were authorized by him as Fund director, no question was raised at the time, not even by a Board trustee, about the probability of a serious conflict of interest on Visotski's part.

Fund Treasurer DeFranco, whose testimony, as previously noted, was read into the public hearing record, gave the particulars on the building and the Fund's lack of diligence in collecting even the bargain-rate rents:

> *Q. How large is the building at 30 Clinton Street?*
> A. It's a six-story building and the Fund office occupies the entire sixth floor, which might be, maybe a hundred feet by 30.
>
> *Q. Does the Fund rent out any of the space on floors one through five to tenants?*
> A. Yes, sir.
>
> *Q. Let's start with the first floor. Who rents the first floor?*
> A. Currently as of today the Newark Teachers Union Educational Book Store.
>
> *Q. Do they pay rent to the Fund?*
> A. Yes, sir.
>
> *Q. Do you know what the amount of the rent is?*
> A. $500 per month.
>
> *Q. Let's go to the third floor. Who occupies that?*
> A. That third floor is leased to the Newark Teachers Union.

Q. Do you know what rent they pay?

A. The rent they pay is $1300 per month, which includes both the third and fourth floor.

Q. Do they occupy the entire fourth floor also?

A. Yes, sir, they do.

Q. Mr. DeFranco, do you have an opinion as to whether or not these tenants are paying fair market value rent to the Supplemental Fringe Benefit Fund?

A. Well—it looks to me like they're reasonable rents. Not reasonable, excuse me. Judging by what I heard the rents are in other parts of the area, they may be kind of a bargain.

Q. Does the rent that these tenants pay to the Fund include utilities?

A. Yes, they do.

Q. What has been done by the Fund, if anything, concerning the delinquency of the Newark Teachers Union rental payments?

A. There have been no official actions taken by the Fund office to, you know, get the rents up to date. Just I would periodically, not continually, approach the treasurer of the Union and ask him to pay up the rents.

Q. What about the Newark Teachers Union Book Store, any action taken to bring them up to date with their rental payment?

A. Again, it's the same treasurer. The treasurer of the book store is the same treasurer of the Teachers Union, and I would appeal to him to pay the rent because we needed the money, and it's embarrassing for you to be behind in the rent.

Q. Subsequent to the purchase of the building at 30 Clinton Street did the Fund undertake renovations of that building?

A. Yes, they did.

Q. Can you tell me how extensive those renovations were?

A. Approximately $470,000 beyond the acquisition costs. By acquisition, I mean the purchase price.

Q. Of $80,000?

A. $470,000 on top of that.

Q. So, again, this additional $470,000 was spent approximately two years after you and Mr. Visotski were aware that the Fund was facing financial difficulties in the future?

A. That's right.

Q. Did the Fund solicit bids for any of the renovation work?

A. To my knowledge, no.

Q. Did you ever suggest to Mr. Visotski or to the Board that bids would be appropriate?

A. I told Joe, Mr. Visotski, it would be discreet if he didn't get formal bids—to get at least informal bids.

Q. Could you render an opinion as to whether or not the rent that's being collected by the Fund from the tenants in that building is sufficient to recapture the $80,000 acquisition cost and the $470,000 renovation costs?

A. It's a fact our rents are approximately $39,000 a year and our expenses are over $45,000 a year. Just the operating expenses are not met by the rents. As far as the amortization of the building itself and our investment, we're not getting a return on our investment.

Q. Is it true that prudent business practice would dictate that you would want to recapture your acquisition and renovation costs through the rentals? Is that accurate?

A. I learned it in elementary business. In our democracy every person wants a return on their capital investments. It's basic economics.

Visotski on Building Purchase

When Visotski was questioned at the hearing about his role in the purchase and renovation of the building, he said there had been considerable discussion among the trustees about the prospects for a "permanent site" for a Fund office. He noted that both the Fund and the Union were being evicted at the time from their offices at 11 Hill Street, Newark. Visotski's testimony about the building project:

THE CHAIRMAN: And at the time of the enthusiasm that you indicated for the building, how much space did you occupy?

THE WITNESS: We had one small room, essentially.

THE CHAIRMAN: And now you needed a whole building?

THE WITNESS: Well, we didn't need a whole building, but we needed more, more space. Clearly, we were—and the—

THE CHAIRMAN: Awful lot of difference—

THE WITNESS: The building, we were being evicted from the building. The building was—

THE CHAIRMAN: An awful lot of difference in there between two small spaces and a whole building?

THE WITNESS: Certainly, certainly.

BY MR. HART:

Q. You mentioned you were about to be evicted from the building you were in?

A. Yes, we had offices in the building, and the City of Newark foreclosed on the building and became the landlord and at a public auction or something sold it to someone else so all the occupants were going to be thrown out. So that we had to move, anyway, to go someplace.

Q. One of the other occupants about to be thrown out was the Newark Teachers Union. Is that correct?

A. Yes.

Q. Did the Fund's purchase of the building have anything to do with the fact that the Newark Teachers Union was in need of space also?

A. No.

Q. You were an officer of the Newark Teachers Union in 1980?

A. Yes, sir.

Q. Executive vice-president?

A. That's correct.

Visotski Also Got Paid as Building Manager

The extent of the renovations was reviewed with the witness, who acknowledged that the $470,000 renewal program for the most part was done "to the specifications of the tenants of the building." Visotski also was asked whether he was compensated for any chores in connection with the newly acquired property:

Q. Did you ever receive any monies in the form of a building manager's fee for this building?

A. Yes.

Q. And can you tell me what the duties were you performed for that fee?

A. The trustees bought the building, they wanted someone to run the building and become the janitor and supervisor. Again, I said, I am an old labor-oriented individual, and one of the precepts of labor is we don't volunteer for anything. You want me to work, I'll be delighted to work and delighted to be accountable for what I do, but you pay me for it. The employer said, you want this job, we'll pay you. I said, fine, if you will pay me, I'll accept it and I think I received $500 for—

Q. This building manager's fee was in addition to your salary?

A. Yes, sir.

Q. The job of supervising the building, opening it, closing it, janitorial-type services, didn't Mr. Julio Rivera handle those services at 30 Clinton Street?

A. Yes, ultimately he did. He worked with me and for me and I assigned him a good number of those duties.

Conflicts Issue Raised

The Commission indicated a concern over whether a conflict of interest was apparent in Visotski's role as building manager and high ranking Union official—particularly since he arranged for the Union to become the building's dominant tenant and he set the below-market-level rental rates on the basis of which he permitted the Union to sign a five-year lease. Excerpts from Visotski's testimony on this subject follow:

By Mr. Hart:

Q. Mr. Visotski, the first floor of this building is occupied by the Newark Teachers Union Book Store. Is that correct?

A. I believe it's Educational Supply Center, yes, sir.

Q. Is that affiliated with the Newark Teachers Union?

A. Yeah, I believe it is.

Q. And the third and fourth floors are occupied by the Newark Teachers Union itself?

A. Yes, sir.

Q. The sixth floor is occupied by the Fund?
A. Yes.

Q. Can you tell me who negotiated the leases with all of the tenants that are in the building on behalf of the Fund?
A. Well, principally, I did.

Q. Were you responsible for setting the amounts of rent?
A. Yes, I would. I would be.

Q. At the time you were negotiating with the Newark Teachers Union were you an officer in that union?
A. Yes.

Q. You were also the editor of the newsletter?
A. Yes, sir.

Q. Who negotiated on behalf of the Union concerning those leases?
A. I believe the conversations that I had with respect to the rental were with the treasurer of the Union, Mr. Vincent Altieri, and we use a standard form lease, I believe, that was provided by Fund counsel and we agreed on the terms, in general. I agreed on the term with Mr. Altieri that he would repay in rent almost the exact purchase cost of the building over a five-year lease, and that, and then to, to prevent people from drawing the wrong conclusions of sweetheart deals, I presented that lease to the executive superintendent of schools, who was also a trustee, and asked Mr. Kittrels to look it over and see if he had any objections to it, and Mr. Kittrels signed as trustee for the Fund and then I signed along with him.

THE CHAIRMAN: I take it you were afraid it might be termed a sweetheart deal?

THE WITNESS: No, I tried to avoid conflict-of-interest charges and complaints, sir.

COMMISSIONER GREENBERG: What led you to assume that any such charges would be forthcoming?

THE WITNESS: Because I have worked in Newark for 20, 25 years. I have experience with the populace there; with the politicians, with the press, with the community. It's—you've got to be blind and deaf and naive not to anticipate some kind of flak coming down from anything you do.

COMMISSIONER GREENBERG: In other words, flak is common to this situation in Newark?

THE WITNESS: It was common.

COMMISSIONER GREENBERG: It wasn't anything particular about this contract—

THE WITNESS: No.

COMMISSIONER GREENBERG: —that led you to anticipate there would be charges of conflict of interest?

THE WITNESS: The superintendent of schools approved it, so I don't know how you can say I made a sweetheart deal with the Newark Teachers Union when the superintendent of schools approved it and signed the contracts.

COMMISSIONER ZAZZALI: No one said you made a sweetheart deal. What inference will be drawn, we leave to the public.

On the subject of the conflict of interest, if you generally want to avoid the appearance of conflict or the flak—I will accept that—don't you think, in your position as officer of the union, editor of the newsletter, you would have been better advised to delegate that responsibility to someone else, some other trustee, for example?

THE WITNESS: As I say—

COMMISSIONER ZAZZALI: Just answer the question yes or no.

THE WITNESS: No, no, because everyone was involved one way or another.

COMMISSIONER GREENBERG: The lease for rent, this was all concluded while you were simultaneously serving as the editor of the newsletter for the Union; is that correct?

THE WITNESS: Yes, sir.

COMMISSIONER GREENBERG: And officer of the Union and the paid employee of the fund?

THE WITNESS: Yes.

COMMISSIONER GREENBERG: And the building manager and the investment manager?

THE WITNESS: That's correct.

COMMISSIONER GREENBERG: All separate hats?

THE WITNESS: Right.

COMMISSIONER GREENBERG: All separate fees to the extent there were fees involved. Now will you tell me, sir, what else you considered as a prudent investment of approximately a half million dollars of the Fund's money besides this building, if anything?

THE WITNESS: I'm sorry. I don't understand that question.

COMMISSIONER GREENBERG: Did you consider investing that $470,000 in anything else?

THE WITNESS: This was on an ongoing basis over a period of time when we purchased the building. No one sat down and said we're now going to spend $500,000 for this building. We had the appraisal and we made recommendations of what must or should be done after the purchase of the building. That was a replacement of an elevator and replacement of all the windows. We anticipated that this building would provide us with rent-free space for eternity. I was wrong. I thought that I would be there, you know, for the rest of my life. But that's certainly not true. But I think the Fund will. And then we anticipated being able to renovate the building and to fix it up, at relatively moderate cost without putting the price tag on it, and that it would be a very wise investment. I was surprised at the cost of the renovations. But costs are what they are. Costs are costs. We shopped around and we argued and fought for prices, and I think that we got [an] excellent, excellent bargain in our renovations in the building, and I believe that it's an excellent investment.

COMMISSIONER ZAZZALI: Notwithstanding the deteriorating financial condition of the Fund at the time?

THE WITNESS: But, Mr. Zazzali, that was, there was no, there was no deterioration, there was no imminent threat to the fiscal viability of the Fund at that time. There were adequate reserves.

I would like to quote what Superior Court Judge Stanton said on this very issue and in reviewing this case after we had a two-week trial with testimony Judge Stanton said, you

know, it was clear that the Fund was running down in the reserves since 1978, as you have said here . . . and he said, the issue should have been addressed in 1980 by the parties to, for the financing or to reorganize the operation, he said, you know, but it's understandable why it wasn't because clearly the Fund had adequate reserves.

The proof of the pudding is that the Fund went through the next two-year contract agreement without any additional funding, without any interruption of benefis, without any reduction of benefits. He said, but, you know, it should have been addressed in 1982. At that point you couldn't get through the next contract.

So, I mean, when we purchased the building in 1980, there just wasn't—hindsight is beautiful. But I didn't have the hindsight today, you know, that we have. I didn't have it back in 1980 nor did the trustees. We had the money, we bought the building, we paid for the renovations, we got the building filled with tenants. Nobody lost any benefits. There was nothing lost, there was no interruption of services. I think that in itself, you know, is a statement of the wisdom and the prudence of the actions of the trustees.

THE CHAIRMAN: You talk about hindsight. How about foresight? You were negotiating the purchase of that building. Did you have an estimate how much it would cost to renovate it and get it in working condition? Yes or no?

THE WITNESS: We had the Lasser report which gave us some, some concepts. It didn't give us, didn't give us contractor's figures.

THE CHAIRMAN: What was the figure in that report for the renovation of the building?

THE WITNESS: I don't think there was one.

THE CHAIRMAN: I didn't think so, either.

Cheap Rents for the Union

Although Visotski had to back away from his contention that the appraisal report by Lasser Associates had served as a partial guide on building renovations, he sought again to cite the Lasser document as support for the low rentals he established at 30 Clinton Street. Again he had to recant. This subject is covered by the following extracts from Visotski's public hearing testimony:

Q. Do you know the amount of rent that the Union was paying to the Fund pursuant to the lease that was agreed upon?

A. I think it's $1300 a month rent.

Q. Were the rents being charged by the Fund to its tenants less than fair market rates—

A. No.

Q. —for comparable space?

A. Absolutely not. That's just not true at all. The rentals in that building are comparable to rentals that are charged in that immediate surrounding area of downtown Newark. The figures will comply within the range in the Lasser Associates report that was given to us as a guide. That's not true at all.

Q. I would like you to look at that Lasser report, Mr. Visotski. Is that the appraisal you have been referring to?

A. Yes, sir.

Q. And the trustees adopted that appraisal as a guideline at some point. Is that correct? In fact, specifically—

A. As a loose guideline to follow.

Q. Would you look, please, at minutes of a trustee meeting of May 28, 1980, and look at the second motion that's recorded on the first page. Do you see that?

A. Yes, sir.

Q. And that reflects, does it not, that a motion was made, seconded, and passed to accept the recommendations of the appraisal as a guideline for the building manager?

A. Yes, sir.

Q. And that's you?

A. Right.

Q. Now, going back to the Lasser appraisal, would you turn to page 32, please. Now at the bottom of the page there's a section entitled "Comments." Do you see that?

A. Yes, I do.

Q. Would you read the first paragraph of the comments into the record, please?

A. "The gross income that the property could generate was estimated at $5 per square foot for an estimated 15,000 square feet of net rentable area. The figure assumes separate

tenant metering for lights and air conditioning. It also assumes some tenant willingness to make leasehold improvements so that the landlord will not be saddled with huge renovation and decorating expenses at the beginning."

Q. Now, the Newark Teachers Union, excluding the book store, rents one-third of the office space in the building. Is that correct?

A. Yes, sir.

Q. Which would be approximately 5,000 square feet if it's a 15,000-square-foot building. Am I correct?

A. All right. Figures say that.

Q. All right. Now, the Union, you told us, is paying $1300 a month in rent?

A. Right.

Q. If my calculations are correct, it works out the Union is paying $3.12 per square foot, which is somewhat less than the $5 a square foot as is mentioned in the Lasser appraisal. Is that correct?

A. Yes, sir.

Q. And the Lasser figure of $5 assumes, does it not, that the tenants will pay for the cost of any renovations? Does it not?

A. Well, it says assume some, some willingness to make leasehold improvements.

Q. ". . . so that the landlord will not be saddled with huge renovation and decorating expenses at the beginning."

A. Right.

Q. Was the landlord saddled with huge decorating and—

A. Yes, absolutely.

Q. Do the tenants of the Fund pay utilities?

A. No.

Q. The Fund pays for the utilities?

A. Yes.

Q. Again contrary to what Lasser recommended for a five-dollar-per-square-foot rental fee?

A. That would include—

Q. Yes or no, please.

A. Well, yes.

Q. Would you agree with me that the Fund was receiving somewhere between $32,000 and $39,000 a year in rental income from its tenants?

A. Yes.

Q. Considering that based upon the books and records of the Fund, over $550,000 was spent on acquisition and renovation, plus annual maintenance costs, taxes, overhead, whatever else goes along with running a building of this nature, did it ever occur to you or the trustees that the rent being collected was insufficient to recapture the costs that were put into this building?

A. Of course it did.

Q. Did the trustees take any action?

A. If you allow me to explain, yes, I'll tell you.

Q. What action did the trustees take?

A. They advised—I advised them on my philosophy on rental of the building. Our goal was to fill the building with tenants, which we did. That is in comparison to all of the buildings around us. If one were to look at the Newark downtown area in the vicinity of that building, one will see that other buildings were being vacated, were falling into disrepair while our building was in the exact opposite process. We were renovating and we were being tenanted, so that the entire six-story building, almost unique in downtown Newark, was fully tenanted. That was my goal. That was accomplished.

In 1983, then, we also began to try to upgrade the quality of the leases, to upgrade the rent. There was a change of tenants, I'm sorry, a change of trustees and the new trustees that came on board at a meeting voted to freeze any action on leases to prevent me from negotiating any more, any changes or any increases. They just wanted to freeze all the activities, so that there were no increases in the rents due, there were no changes or modifications, and even in lapsed leases there has not been any renovation or renewal of those leases.

So we accomplished the first thing. We got tenants into an empty building. I don't think if we charged higher rents and we had three floors empty, I don't think that we would be any better off.

Auditor Dooley's Views on Building

Edward Dooley, the Fund's outside auditor, said at the hearing that he realized the rental income was insufficient to cover the cost of maintaining and amortizing the building but that Visotski had insisted (despite the long-term rental agreement with the Union) that the low rent pattern was only temporary. In retrospect, Dooley said, "it wasn't a very prudent decision." But he never felt impelled to bring the problem directly to the attention of the trustees:

> *Q. Given that Mr. Visotski was, in effect, speculating with $550,000 of the Fund's money, did you think that it was your responsibility to bring it directly to the attention of the trustees?*
>
> A. Well, again, all my communications were with the management, with the director and with Mr. DeFranco. I knew that what they were doing was a problem in terms of cash liquidity. I didn't feel that what they were doing was taking the Fund's money and just throwing it down the drain, because there was value in real estate and the area was developing.
>
> *Q. But you felt no responsibility to talk to the trustees about it?*
>
> A. I did not.

Inadequate Building Insurance

Despite self-serving statements by certain trustees that the purchase of the Clinton street building was an "investment," little was done to fully protect their acquisition from monetary loss due to damage or destruction until 1984. Insurance coverage for the so-called investment was so flagrantly inadequate as to constitute outright neglect by the fund's administration of its fiduciary responsibilities. Further, the failure to sufficiently protect the Fund's property demonstrates that the various "investment service" and "building management" duties that Visotski so avariciously assumed were a sham. In fact, Visotski's dubious activities in connection with the Fund building should provide ammunition for a civil suit designed to force him to pay back the undeserved profits derived from his association with the Fund.

S.C.I. accountants, in scrutinizing various subpoenaed books and records, learned that the Fund's property insurance coverage dur-

ing the first year after the building purchase on June 17, 1980, amounted to $100,000. Yet between the purchase date and the end of the fiscal year on June 30, 1981, renovations had added $283,000 to the building's value. Despite the building valuation growth to $363,000 by mid-1981 (including the acquisition price), the Fund's administrators contracted for only $108,000 per year in property coverage—amazingly extending this insufficient surety to July, 1983. The coverage remained at the $108,000 level until additional $187,000 in renovations had raised the investment in the building to more than $550,000.

Paradoxically, on June 17, 1984, when the S.C.I.'s investigation was five months underway, the Fund raised its insurance coverage to $800,000, the maximum coverage available on an 80 percent replacement cost basis for a property whose valuation had risen to $1,001,843.

Counsel Morley also asked Fund auditor Dooley about the building's inadequate surety and what steps he took to encourage the trustees to remedy the situation:

> *Q. Would you look at the certified financial statement for fiscal year 1981, and, more specifically, the second-to-last page of that report?*
> A. Are you talking about the insurance schedule?
>
> *Q. Right. That's your schedule of the liability insurance carried by the Fund?*
> A. Yes.
>
> *Q. Given the information that's on that schedule, did you then, or do you now, have an opinion with regard to whether the building at 30-32 Clinton Street was adequately insured?*
> A. I don't recall the improvements that had gone on up to the fiscal year ending '82. I see that the building is insured for a hundred thousand dollars here.
>
> No, it would appear from that schedule that the amount of money in improvements, that the limits of liability should have been higher.
>
> *Q. Did you, at the time you prepared the report, discuss that problem with either Mr. Visotski or Mr. DeFranco?*
> A. No, I did not.
>
> *Q. And I take it that you did not discuss it with any of the trustees?*
> A. I did not.

Clara Dasher, the Fund's chairperson at the time the building was bought and remodeled, said at the public hearing that she, and perhaps the other trustees as well, knew little or nothing about the spiraling costs the project imposed on the Fund. Her recollections were discussed with Counsel Gaal:

> *Q. Ms. Dasher, did the trustees ever at any time consider or even discuss whether or not the annual rental fees generated on that building were sufficient to recapture the acquisition, renovation, and overhead expenses of owning such a building?*
>
> A. Discussion didn't take place until the latter part of '83 when we were really becoming aware of all of the financial problems.
>
> *Q. Well, that was long after the building had been purchased and renovated?*
>
> A. Yes. But I don't think—the trustees were not aware that the rentals were not sufficient or—
>
> *Q. The trustees were not aware of it?*
>
> A. Really weren't. I wasn't. I can't speak for all of the trustees.
>
> *Q. Did the trustees, or did you as a trustee, have any idea of the extent of the investment costs involved in that building?*
>
> A. Are you speaking of the renovation?
>
> *Q. The renovation, the acquisition.*
>
> A. No. As I said, we were not aware of what it cost. We knew that the building was being renovated.
>
> *Q. Were you aware of the projected income to be expected from the building?*
>
> A. The projected income, no. We weren't aware of that.
>
> *Q. Were you even aware that the building cost over a half a million dollars before this Commission brought it to your attention? Were you aware of that figure?*
>
> A. No. The figure that we were aware of was the $80,000 for the purchase of the building.
>
> *Q. Do you know that the amount of rents being charged to the tenants was less than fair market rental value?*
>
> A. I wouldn't know that because the director handled the rentals, so I didn't—I would not know whether it was fair market or not.

Q. Ms. Dasher, as a trustee, do you feel you should have been aware of how much money was expended for the acquisition and renovation of that building?

A. As a trustee, yes, I should have been.

Looking back, former Trustee Kittrels would have had a change of mind about the building project, according to his testimony:

By Mr. Amitrani:

Q. I'm aware, Mr. Kittrels, that at the end, and when some of the renovations, some of the monies were spent, you were not a trustee. I'm asking for your opinion based upon your experience. If you were told today that the total cost of the building plus renovations was $550,000, regardless of when the renovations were done, what is your opinion of that investment by the Fund?

A. My opinion on the investment is as follows: that the purchase of the building was a prudent decision, it was a good decision. Had we known, however, that renovations would have cost in the neighborhood of $500,000, it would not have been the type of investment that I would have supported.

Annual Building Losses Soar

The Commission's chief auditor, Julius Cayson, testified that the Fund's annual losses from its building, primarily because of unduly low rents, were a constantly increasing burden. His testimony on these losses:

Q. Can you tell me whether or not that building was operated at a profit?

A. It was operated at a loss as follows: In 1981, the loss was $32,753, in 1982, the loss was $57,379, in 1983, the loss was $41,648 . . . Their own independent CPA determined that he would reflect in the books and records $15,640 worth of depreciation in '81, $33,877 worth of depreciation in '82, and $33,000 plus of depreciation in 1983. Therefore, when we add the depreciation to the cash loss, we come up with a $132,000 dollar loss on the building.

Should Fund Entity Be Abolished?

On several occasions during the hearing the entity that was structured to conduct Fund affairs was described as a mere conduit or pipeline for the transmission of the school board's contributions to Prudential. This characterization reflected a concern by the Commission about the need for such an entity. The hearing record demonstrated the Fund management's inability, even after the premium costs were stabilized by larger school board contributions, to properly administer the Fund, and also indicated that the Board itself managed benefit programs for 3,000 to 4,000 employees other than Union teachers. The question confronting the Commission, therefore, was whether it should recommend the abolition of the Fund entity. During the two-day hearing, various discussions between the Commission and certain witnesses ensued on this issue. These discussions will be capsulized here, focusing on the most relevant exchanges.

During the testimony of Dennis Walker, Prudential's liaison with the Fund, he was questioned about the actual role of the agency:

EXAMINATION BY COMMISSIONER ZAZZALI:

> *Q. Did the Fund perform a function in connection with the discharge of your duties?*
>
> A. Yes, they handled eligibilty problems; they submitted the premiums, and generally handled the administration between Prudential and the people that were covered under the Fund.
>
> *Q. What do you mean by "administration"?*
>
> A. For instance, if there was a beneficiary or person covered by the plan, if they had a problem, if they couldn't resolve it, I believe it went through the Fund's office. Mr. Visotski, on occasion he would contact me to ask me to look into certain claim situations, claim problems, or if the claims weren't paid on time I could anticipate—in other words, if we were not keeping up our service index, we try to get claims out in a certain period of time. If there were problems there, I would receive a call from Mr. Visotski.

EXAMINATION BY THE CHAIRMAN:

> *Q. Prudential does the major portion of the paperwork in the payment of these claims. Isn't that so?*
>
> A. Yes, we pay the claims.

Q. And you receive the claims and you process them and you send out the checks?

A. Yes, our claim area does, yes.

Q. What percentage of paperwork and office work would you estimate was done by Prudential and what was done, what percentage was done by the Fund office? They had four employees, I think.

A. In terms of claim administration, sir?

Q. Yes.

A. Most of it was done by Prudential's claim people.

Q. And how often did Prudential call the Fund to get whatever little information you needed from the Fund?

A. If I had to estimate it, I would say it happened several times a week probably.

Q. A telephone call?

A. Telephone call normally, right.

EXAMINATION BY COMMISSIONER ZAZZALI:

Q. Mr. Walker, I just conferred with my fellow Commissioners. You're perhaps one of the most removed witnesses scheduled and you certainly have an expertise. We would like to know whether in your judgment this Fund has a purpose for being, a raison d'etre, a reason for being, and if so, what is that purpose? Does it serve a purpose in connection with the administration of these benetfis to these employees?

A. Yes, they serve a purpose, I believe.

Q. What is that purpose?

A. It's from what I can see, to be the liaison between Prudential and the people that are covered under the plan, as any administrator would be for any other Prudential group case. There's some contact that you have with someone that runs the particular plan.

EXAMINATION BY COMMISSIONER PATTERSON:

Q. Couldn't the Board of Education do that?

A. I assume they could. In this case that's not how the plan was set up. I would say that's possible, yes.

Q. You use the word "liaison." Can you be more specific? And bear in mind we're not cross-examining you in the

traditional sense, but if you could elaborate on what they do normally?

A. Normally every group case, [by] group case I mean plans with more than 50 lives, there's some person or group of people that handle the benefit package. In this case it was the people at the office of the Fund that fulfilled that function.

EXAMINATION BY COMMISSIONER GREENBERG:

Q. Mr. Walker, again on the same line. We have a package that's put together by Prudential. You present it to the employer or the employee and say, here, this is what it's going to cost and these are the benefits for your members. Is that correct? Is that how this worked in this particular fund?

A. Well, I didn't sell any part of it. But, basically, yes.

Q. All right. Now, what is it that requires an administrative staff or any separate administrative staff of whatever size to administer a Fund like this? That's the question I think we all have on our minds. Is there any discretion in the Fund as to which benefits they're going to apply for and—

A. Only if in the case of when we discuss plan options, they could discuss various benefit modifications. Why a Fund or administration exists is not for the daily operation. I think that's what you're asking me. I'm not sure. But usually administrative-type functions like that deal with the overall financial situation of the particular benefit package, the annual re-rate as I explained before year-end analysis and so forth. But as far as the daily administration, I was asked a question what the percentage is, it's a small percentage.

Q. Would Prudential have any difficulty at all in providing the exact same services at the exact same price directly to the Newark Board of Education without this extra layer of administration in this Fund?

A. As long as someone fulfilled those same functions, I don't think so.

The Commission similarly questioned Carole Graves, the Newark Teachers Union president and a Fund trustee from January, 1982, until the end of 1983. Excerpts from her testimony:

COMMISSIONER ZAZZALI: I'd like you and I'm going to ask the same question of the Board, what reasons, if any, exist

for the continuation of this Fund or do you have an opinion that the Fund should not continue, and if not, why not?

THE WITNESS: Well, I think that the Fund is another first for public employees in this state.

COMMISSIONER ZAZZALI: That's not a justification, respectfully.

THE WITNESS: Well, it's my lead in, and the reason why is because the Board of Education, and the Newark Board of Education is a very large institution and one only has to look every now and then at the paper that there's a lot of, always, political intrigue or in-fighting, and with a large unit such as we have, they are just not equipped to service the beneficiaries as effectively as can be done from a separate office.

What goes on in that office is not a conduit. The claims records are housed in that office. All of the data on each individual employee, the medication which they take, it's—they come in to seek service from us, to get quick service, expeditious service, not to be routed around from office to office as all bureaucracies work, that's one reason.

COMMISSIONER ZAZZALI: Let me interrupt you, if I may. What kind of service, what does a Visotski, a secretary, a trustee do that is a direct benefit to that employee that the Prudential could not do?

THE WITNESS: Well, one thing, when they call up with a problem, they have someone to answer them. The second thing, when they need someone to check out a problem with a pharmacist who may be giving them problems or shorting them on medication, they are able to respond to that.

* * *

COMMISSIONER PATTERSON: Forget the Fund for a second, and let's look at the Board of Education and the problem with Blue Cross and Blue Shield. It would be my position that if it is so, that the Board of Education is not properly administering the servicing, [if] it's not properly servicing its constituency, the teachers and the other employees of the Board of Education with regard to Blue Shield and Blue Cross, and if that is so, it ought to get its act together and administer it properly.

If they do that, the next question is why can't they do it for the supplemental benefits?

THE WITNESS: I had brought up a point earlier and it may not be on target to what you're saying, I think we have to bear in mind that this was a negotiated benefit, no one had it before we got it in our contract. The reason why we had it was because there's just no control over certain things unless there are other kinds of regulations.

The state plan does not allow for much diversion from what the law says that you are entitled to, since we are members of that plan. I mean, people don't have to worry about interruption, because Blue Cross' people do that. But with the fringe benefit plan, there is a flexibility as to what the plan is. You know, we may not want what the Board wants...

During his appearance, Pietro Petino, the Union-appointed trustee who was chairing the Fund at the time of the hearing, submitted a lengthy dissertation on why the Fund entity was essential.

He said that the Fund's function begins with the enrollment of beneficiaries, to provide the basis for Prudential's processing of claims. The small office staff, he continued, maintains records on individual claimants. A "major task," also, is to "keep very close tabs" on prescription benefits. The office also maintains and updates an eligibility list, handles litigation over the misuse of benefits. Because the Fund is "separate" from both the Union and the school board, it "cannot be put out of existence by a unilateral decision" of the school board. Petino also made these comments:

The Board at any point in time can't just decide to abolish the benefits for the beneficiaries or the employees in the Newark school system.

If the Board is allowed to take over the benefits, the total benefit package of the employees, the dental, optical and vision, on the horizon, very possibly, depending upon the political circumstances in the city at that time, the benefits could go poof.

Under the existing structure, under the existing structure, that can't happen. And 5,000 employees and approximately another 15,000 family members or 20,000 people won't lose

their benefits because of political whims or a recalcitrant Board of Education.

The Fund is functioning in the best interests of the beneficiaries and I'd like to see it continue and I believe we've shown, at least since my tenure, and that's all I can speak to, because since I got on there that the Fund can operate efficiently in a manner that's in the best interest of the beneficiaries.

THE CHAIRMAN: At the outset, I think you said that there would be no record of the enrollment of 5,000 people if the Fund hadn't done that, but it's the same 5,000 people the Board of Education has enrolled, is it not?

THE WITNESS: You have to understand something, it changes. That 5,000 changes.

THE CHAIRMAN: Of course, it changes. It changes for the Board and it changes for the Fund. If the Board [benefits office] is understaffed now, there's no reason why it should remain understaffed.

THE WITNESS: But that's not a decision that this Commission or the Union or anyone can make.

THE CHAIRMAN: I'm just replying to what you have said in part.

THE WITNESS: Well, you're talking—yes, you're talking hypothetically, but the understaffing has taken place, to my knowledge, for at least four to five years, and we're talking about the benefits to people, the service to people and—

COMMISSIONER ZAZZALI: Putting the service aside, the Judge's point is, is not the Board of Education in possession of the same 5,000 or so names?

THE WITNESS: They're not as—yes, they are, but we keep more accurate records. In other words, our staff, as soon as Board minutes come out, where an employee is hired, an employee is fired, an employee is—goes on leave, an employee dies, we go to our records and we change them. It's an immediate process, which is necessary to update the files.

I don't want to get into matters, probably I shouldn't, but our recordkeeping is excellent. We work in an efficient manner...

Although Visotski said during questioning at the S.C.I. office that the Fund was primarily the school board's conduit to Prudential, he altered this view at the public hearing:

Q. Would it be fair to say, Mr. Visotski, that the Fund was essentially a conduit for the money going from the Board to Prudential?

A. Mr. Hart, no. I know that when I testified in executive hearing you asked precisely the same question and at that time I said yes. But it's not, it's not fair to say that that's so. The money simply did not pass through the, directly from the Board into the Fund and then directly into the insurance carrier. There was significant decisions, policy decisions, that were made by the Fund, by the Trustees. There was different handling of the monies. No, I wouldn't say it was a conduit, it was not just pass-through.

Q. Well, what did the Fund do with the money other than forward the premium to Prudential?

A. Well, as I indicated before, the Fund paid, paid the salaries of maintaining of the employees of the Fund; they paid the expenses of maintaining a Fund office and these were essential in providing the services to the employees and the participants of the Fund. That wasn't done simply by passing on the premium payment to the insurance carrier. That was done because some monies had been diverted, if you will, to be expended in the Fund's office for these additional services, and they were substantially different services, too. The services that the Fund office provided, sir, were not limited to the three benefit programs which you asked, you asked and I identified.

Q. So, essentially, you have changed your opinion as to whether or not the Fund office was a conduit since you appeared in executive session in September?

A. Well, in a way it was, sir. In a way it was to the extent that the bulk of the money that was paid by Prudential—I'm sorry—by the Board of Education to the Fund and then from the Fund on a monthly basis to the insurance carrier, in that context, yes, it's a conduit. But if the money was simply paid directly, all the money was simply paid to the Prudential, all of the additional services which I alluded to, and I can expand on it if you like, would not have been provided, and that certainly is out of the context of a conduit. That's a substantially different concept.

So I'm not retracting the statement, but I think I just expanded on it a little bit.

The Commission also put the question of the Fund's usefulness as an administrative entity to Rev. Oliver Brown, the president of the Board of Education since May 8, 1984:

> COMMISSIONER ZAZZALI: Reverend, what's your reaction to the question as to whether this Fund should continue in existence? Others have debated that question. Should this Fund continue in existence? If so, why? If not, why not?
>
> THE WITNESS: . . . I'm not in a position to say whether or not, whether this entity needs to be or needs not be. That is a judgment that I want to reserve for the whole Board to make and that I would just simply advocate and speak in behalf of the Board's posture, in light of all the information that is coming before us, now, and the recommendations that you will make, I would reserve, you know, judgment at that time.
>
> COMMISSIONER ZAZZALI: I understand what you're saying and I respect that, but you're talking about an opinion, in effect. But do you think these trustees and the secretaries and the administrator, whoever that administrator may be, serve a function?
>
> THE WITNESS: Okay, let me put it this way, under the existing [trustees] and the existing staff, the Board is very confident and I personally am very confident in terms of what they're doing . . .
>
> * * *
>
> COMMISSIONER ZAZZALI: I appreciate what you're saying, and again as I said to a witness yesterday, I'm not cross-examining you in the traditional sense. Let me ask you another difficult question. Do you think your Board of Education staff can do the job that the Fund is doing now as well or better?
>
> THE WITNESS: As one of the Commissioners indicated, we are doing it with one body or excuse me, several other bodies. If it is suggested and agreed by the trustees and by the Board that we should do it, I could assure you we would do it.
>
> COMMISSIONER ZAZZALI: So you want to make it a product of agreement or consent.

THE WITNESS: It has to be. We're in an agreement. I would not want to violate those agreements, yes.

THE CHAIRMAN: You're saying, in effect, that you think your Board of Education has the ability to properly handle the 5,000 teachers' supplemental benefits now being handled in part at least by the Fund, is that correct?

THE WITNESS: I said if it is by agreement that we should do this, then we would provide whatever is necessary to do it on the basis that we're doing it for several other units.

THE CHAIRMAN: There's testimony here that you have not had sufficient people to properly handle the claims and the benefits of the 5,000 teachers, the claims and the benefits you do handle. Do you agree with that?

THE WITNESS: I think that they are reflecting a record even prior to my coming that that has been the case. I cannot argue with that.

I can only give you assurances in terms of, should such an arrangement be made now, we would make the necessary resources, personnel available to do what needs to be done. But that has to be by an agreement, by an arrangement.

Changing Conditions at the Fund

As the Commission's inquiry moved toward a public presentation of its findings, a succession of events occurred which prompted substantial changes in the Fund's operation. A number of these events were outside the scope mandated by the Commission for its inquiry into the Fund. Such events included the Newark school election impact on the composition of the Board, a more accommodating Board-Union relationship than in the past and the conclusion of a spirited legal controversy over financing the benefits that had proceeded apace with the Commission probe. These events, in combination with the Fund's worsening fiscal condition, led ultimately to a negotiated agreement between the Board and the Union. Under this arrangement, the Board basically agreed to finance the dental, vision and prescription benefits at their actual cost of $471 per capita (as estimated by Prudential Insurance Co., the carrier) instead of at the inadequate former rate of $200 per capita, and the Union basically agreed to accept certain improvements in the structure and operation of the Fund.

Superior Court Appellate Ruling

On June 20, 1984, the Appellate Division of Superior Court handed down a crucial decision in a suit by the Fund. This litigation centered on the meaning of Article 13 of the 1982 Board-Union contract, relating to the Board's annual $200 per capita contribution to the Fund. The Union contended—and the Fund agreed— that Article 13 mandated the Board to pay a substantially larger sum necessary to maintain the health benefits at present levels. The appellate decision, however, reversed a Chancery Division ruling that had compelled the Board to contribute to the Fund at a rate higher than the $200 per capita rate specified in the contract. Unlike the lower court, the Appellate Division found no ambiguity in Article 13 under the terms of the trust agreement which established the Fund in 1976.

The appellate panel also held that the Board could move to recoup the additional payments it had made to the Fund and further declared that the Board "legally need not renegotiate" the controversial provision for a $200 per capita rate base until the 1982 labor agreement expired in 1985.

Nonetheless, according to minutes of its August 14 meeting, the Board of Education agreed to pay for the "actual cost" of the benefits, which Prudential had estimated at $471 per capita. The minutes noted further that the Board could not recoup the additional payments already made to the Fund since it had failed to act within the 15-day limit set by the Appellate Division opinion. Also the minutes stated that the Board's enlarged payments would not cover benefits for Union and Fund employees or the Fund's administrative expenses.

The Commission reviewed this litigation with Trustee Pietro Petino, who chaired the Fund at the time of the public hearing:

By Mr. Morley:

> *Q. Is it correct to say that the litigation was required because without increased financial support from the Board of Education, the Fund would be unable to meet its commitments to provide its benefits?*
>
> A. That's correct. It was a decision of the trustees prior to my being appointed to bring about the litigation. I want that understood. It was the trustees who brought about the litigation against the Newark Board of Education concerning the funding.

Q. Is it correct that the litigation finally came to a conclusion with a decision by the Appellate Division of the Superior Court which held in favor of the Board of Education? And essentially what the Appellate Division held was that the Board's obligation to the Fund was limited to $200 per year per capita?

A. Yes, that's correct.

Q. Is it also correct, however, that in spite of that decision, that ultimate decision by the Appellate Division, the Board of Education is, today, making a contribution, a per capita contribution to the Fund which is in excess of $200 a year?

A. That's correct.

Q. Can you explain how it came about in the face of the Appellate Division's decision in favor of the Board, that the Board nonetheless increased its rate of contribution to the Fund?

A. That was through the negotiations process between the Board and the Union.

Q. Who negotiated on behalf of the Union?

A. Carole A. Graves, president, and myself.

Board-Union Agreement

The negotiations during the summer of 1984 led to an agreement which the Board ratified on August 14 that assured the financing of supplemental benefits at current levels. The agreement noted that the Fund had terminated Visotski and "all expenses and benefits attached to his position," that the vacancy created by Visotski's dismissal "shall remain unfilled," that the trustees had assumed day-to-day Fund management and that travel expenses for Fund trustees and employees and been suspended. It also stated:

(1) That the Board's contribution to the Fund "shall be sufficient to cover the actual cost of benefits [only] to be provided for Fund beneficiaries;"

(2) That such payments of costs exclude beneficiaries identified by the Fund on its Schedule "B" payments, referring to Fund and Union employees.

(3) That the deductible for prescriptions be increased from $1 to $2;

(4) That the Supplemental Fringe Benefits Fund be a "negotiable item" to be addressed at future Board-Union negotiations.

(5) That such negotiations be conducted as soon as possible in order that the Fund item can be "addressed in its proper forum and context;" and

(6) That a full complement of four Fund trustees be appointed.

Counsel Morley also questioned Petino about this Board-Union pact:

Q. Did the Board of Education require of any entity something in return, conditions, agreements, promises, in return for its agreement to increase the funding?

A. There were agreements made with the Newark Teachers Union.

THE CHAIRMAN: Well, what were they?

THE WITNESS: All right, one of them was for the trustees to—they were going to recommend that the trustees from both sides increase the co-payment in the prescription plan from one to two dollars. May I look in my records? I can give you better information than off the top of my head.

Q. Perhaps I can help you with that. Could you hand the witness a copy of P-52? If you look on the last page of that. Is it your understanding that that document, there, represents the substance of the agreement between the Board and the Union with respect to the increased funding?

A. Yes, sir.

Q. Okay. The first condition there is that the Newark Board of Education will fund actual cost, is that right?

A. Correct.

Q. The second entry there is that the payments of—such payments and costs will exclude beneficiaries identified by the Fund on its Schedule B payments. Can you explain what that means?

A. . . . Those were the individauls that worked for the Fund, the clerks and Mr. DeFranco, who is a part-time accountant, and then the supervisor of the three clerks.

The testimony turned to what Petino described as a "Board position" to restrict the use of the Board's payments to benefits

only. He said that was not the "understanding" reached during the negotiations.

As it turned out, Petino had arranged with Prudential to utilize $37,000 of an anticipated year-end dividend, that customarily would go into a reserve account, to pay off the Fund's overdue bills. This maneuver focused attention on the precarious fiscal condition of the Fund entity and on the issue of how the Fund's administrative costs were to be financed. The testimony on this subject:

By Mr. Morley:

Q. Let me ask you a further question about the first item on that document, the word "only" has been penciled in on the copy I have, which was made from the Board of Education minutes.

With the addition of that word there, is it your understanding, as a trustee of the Fund, that that entry, there, means that the contributions from the Board of Education cannot be used to pay any administrative expenses of the Fund?

A. That's a Board position. The Board penciled in "only" in their executive session. That was not the understanding during the negotiating process between the Board and the Union. In other words, that penciled in "only" is a result of their Executive Session. When they come out of Executive Session, they had added "only" to it. That was not the undrestanding during the negotiating process.

Q. Let me read you that entry without the word "only" penciled in; "that the Newark Board of Education's contribution to the SFBF shall be sufficient to cover the actual cost of benefits to be provided for Fund beneficiaries."

Do you read that language, as a trustee of the Fund, to mean that the Board's contributions cannot be used to pay administrative expenses?

A. No, I don't, because part of the benefits is the administration of the benefits. They go hand in hand.

Q. At any time since this agreement was entered into with the Board of Education sometime back in August of this year, has any portion of the funds contributed by the Board been used to pay administrative expenses?

A. On one occasion, with the approval of Prudential, Mr. Walker in specific, who's the accountant representative, as chairperson, I effectuated a one-time payment of $160,000 to Prudential as a premium payment and the $37,000 which normally Prudential put in the special reserve account was —the Fund was allowed to keep to bail itself out of severe financial conditions and this was—I believe it was in August that this occurred, and then later on, it was reported in full and in total to the new Board of Trustees, who were appointed by the Board of Education.

Q. Did you, and by you, I mean the Fund or the body of the trustees, at any time before or after withholding the $37,000, communicate with the Board of Education and obtain the Board's acquiescence in the withholding of that money to pay administrative expenses?

A. They were aware that that took place.

Q. Did they agree with you that the withholding of the $37,000 was within the Board's understanding of the agreement?

A. We have disagreements over that even today.

Q. My question is what did they say—

A. They didn't say they agreed or disagreed.

Q. They just looked at you and walked away?

A. It was part of a discussion. It doesn't occur like that where—

Q. What was their response?

A. I can't recall their response at that time.

Q. Is any of that $37,000 still available to the trustees for paying administrative expenses?

A. By the end of the month, December 31st, there will be none left.

Q. What administrative expenses does the Fund still have?

A. Salaries for the four individuals.

Q. Do you know what those salaries total?

A. For those four people for 12-month positions it's $61,000.

Q. Okay. What other administrative expenses does the Fund have right now?

A. We have insurance to pay.

Q. What is that annually?

A. I'll have to approximate it. I know fiduciary responsibility policy is coming due, I was made aware, which is $10,000 in itself, so I would say in terms of insurances, total insurances, I'm going to guess at $20,000. Now, that's a guess because if you give me time, I may be able to find the reports of—

Q. That's close enough. What also is there in administrative expenses? Do you have taxes on the building?

A. Taxes on the building.

Q. How much is that?

A. What I'm reading from, for your benefit, is an October 22, 1984, memorandum to me from Mr. DeFranco, subject is cash requirements for October, '84. And it sets forth the cash needed for payment in premiums, payrolls and other services to operate the Fund administrative building. . Payrolls including payroll taxes, $8600. Administration and office expenses, $900. Building operating expenses, real estate taxes for the quarter—do you want me to stop?

Q. Right—no.

A. Oh, $3498, electric and gas, $1300, fuel oil, $1200, elevator maintenance, $200, garbage removal, $65, janitorial services, $475, and exterminating, $75.

Q. Okay. Let me ask you this, the figures that you've given us have been for different periods of time, either annually or quarterly or whatever, but would you agree that the annual administrative expenses of the Fund are somewhat in excess of a hundred thousand dollars?

A. Approximately a hundred thousand. That's what you said, right?

Q. You have no commitments from anybody to pay those expenses, as far as you know right now, do you?

A. As a Board of Trustees, we have to meet and decide.

Q. You have no commitment from anybody like the Board of Education to pay for these expenses as of right now, do you?

A. No, sir.

Q. Since you entered into the agreement with the Board of Education in last August, have you taken any steps to

eliminate or minimize the administrative expenses of the Fund?

A. We're working on—we're working on that process. You see, the Board appointed finally four trustees in September. The Union added two trustees. We became a fully constituted Board of Trustees in September, so therefore, as a group, we are working towards that goal of increasing the rents.

The discussions have taken place within our trust meetings to increase the rents. We've begun discussions in terms of the dollar co-pay. We are also going to look into other vehicles which we, as a trustee group, as a trust fund, could move in order to minimize costs, example being and I'm only throwing it out, self-insurance, for example, is a vehicle. . .

Although Petino said the Fund's expenses now were "minimal," nothing had been done at the time of the hearing since the Board-Union agreement to eliminate or reduce what administrative costs did remain:

Q. Does all of that mean that nothing concrete has been done to this point to eliminate or to minimize expenses? Since August?

A. At the present time, the expenses are minimal. They're bare bone, you know, minimal.

Q. Has anything been done since August to minimize or eliminate any expenses? If the answer is yes, tell me what was done and what expense that existed in August is now eliminated or minimized.

A. We haven't eliminated any of the minimal benefits —expenses that we—that exist. That's the only way I can put it.

Background of Visotski's Dismissal

On July 18, 1984, Union Trustee Petino and Board Trustee Charles A. Bell adopted a resolution terminating Visotski as Fund Director and charging him with violating his "contractual and fiduciary duties." The resolution cited as specific contractual violations the improper issuance and authorization of checks for payment to himself of $22,249 in unused sick leave and $26,860 in unused vacation leave. The resolution declared that Visotski was

required by his contract to indemnify the Fund for damages sustained through "misconduct or fraud" by him and that he was thus "held responsible for all monies taken improperly through misfeasance, malfeasance and nonfeasance." Under these conditions, the resolution noted, the trustees could terminate Visotski by a "simple majority" vote. Petino and Bell constituted such a majority of the three Fund trustees who were in office on the dismissal date. Board Trustee Wilbur Parker was absent and the fourth seat, a Union place, was vacant. The resolution also indicated that Visotski's vacancy would not be filled, stating that the trustees "will administer on a day-to-day basis the operation of the Fund and will fulfill all duties and obligations which were the responsibility of Joseph Visotski." On August 27, 1984, Visotski filed suit in Federal District Court seeking reinstatement, compensatory and punitive damages and costs. He listed seven counts, including charges of a conspiracy to deprive him of certain rights without due process of law, violation of his contract, wrongful discharge, libel and slander.

Petino testified he took command of Fund operations after Visotski's dismissal—without compensation. Indeed, Petino was able to hold down his full time job as director of organization with the Union and assume other obligations while also doing what Visotski had been paid more than $70,000 to handle. Petino's testimony:

> *Q. Since Mr. Visotski's dismissal, who is performing the duties that Mr. Visotski otherwise would have performed?*
>
> A. The—as part of the agreement, the Board of Trustees is handling the day-to-day operation and myself individually has taken over the overseeing of the day-to-day operation as a trustee and I report back to the trustees at every meeting, and my co-chairman, now, who's from the Board of Education, that's Ronald Barber. We have a chairman and a co-chairman.
>
> *Q. Is that a full-time job for yourself?*
>
> A. No, sir, I earn my living from the Newark Teachers Union.
>
> *Q. Do you receive any compensation from the Fund for those services that you-ve outlined?*
>
> A. No, sir.
>
> *Q. Do you have any plans, do you or are you aware—you individually as a trustee, or are you aware of any intention*

on the part of the Board of Trustees collectively to retain a full-time director to replace Visotski?

A. No, sir.

THE CHAIRMAN: I take it in addition to your assuming pretty much the duties of the Executive Director of the Fund, that you have three or four other caps that you wear, isn't that so?

THE WITNESS: Yes, sir.

THE CHAIRMAN: And you find, despite that fact, that you have several hats that you wear, that you're able to take care of the management of this Fund in pretty good shape, I take it.

THE WITNESS: Yes, sir. We feel at the present time that under the conditions that exist, that we're functioning very efficiently and in the best interests of the beneficiaries in that their benefits are intact, we're servicing them fully, and as you said, I do wear—I would just like the Commission to know that a union person is capable of functioning in a management position in a very viable way. I think it's important to understand that in a responsible manner...

THE CHAIRMAN: I'll ask you the same question I asked you in executive session. You see absolutely no necessity for having somebody over you in management who has a total remuneration of some $98,000 per annum, do you?

THE WITNESS: No, sir, not at the present time, no sir.

Union President's Trusteeship

The Union president, Carole A. Graves, became a Fund trustee in 1982 to become more knowledgeable, she testified, about Fund operations. Her experience also reflected a changing climate at the Fund. She indicated during her testimony that her relationship had cooled with Visotski, saying she "was not communicating with the director as well as I had in previous years." She said she requested from Visotski certain documents about the Fund but never got the material from him:

THE CHAIRMAN: Well, the question was did you get the material that you were asking for?

THE WITNESS: I got it through the Board trustees. When they made the request later on that year, that's when it was

made available to me. Tony DeFranco, the Board representative who at that time had retired from the Board as Deputy Secretary to the Board, he was the treasurer for the Fund, and he had said he would provide it, but that also got delayed, that he had the material and he would provide it. But for whatever reason, I did not get an answer to my inquiry.

The Board members, the trustee members started to get a little itchy at that time and started to raise questions following my lead and it was as a result of their running around that it was made available to all of us.

COMMISSIONER PATTERSON: I'm interested in why Mr. Visotski didn't give you the information. You don't know why he didn't? Did he give you the impression he was trying to duck the issue or hide something from you?

THE WITNESS: I didn't know why and I couldn't characterize why, except that I just didn't, and we were not communicating very well at that point, anyway, so—

COMMISSIONER PATTERSON: Now, it just sort of confuses me as to why an Executive Director of a Fund doesn't immediately give information to a trustee and why it takes three trustees to have to push to get the information. I just am buffaloed as to why, whether he was trying to hide something or what. And I'm not asking for an answer, unless you know, and you said you really don't know.

THE WITNESS: Well, you know, it sounded like a reasonable request for the trustee, as a trustee.

COMMISSIONER PATTERSON: I think that you're absolutely right.

BY MR. AMITRANI:

Q. Ms. Graves, was one of the reasons that you were requesting this information at this time because Mr. Visotski was askng you to negotiate with the Board for an increased funding through the Supplemental Fringe Benefit Fund?

A. Yes, there was a packet of material prepared by the Fund attorney that gave a rationale for the increase of funds. I don't recall all that was in the document, certainly some of it was because of the skyrocketing health costs in general, the claim experience, and this was given in the middle of negotiations.

Q. All right. Was this the spring of 1982?
A. Yes.

Q. All right. Was this the first time that you had ever heard of any request from the Fund to increase contributions by the Board to the Fund?
A. Right.

Board President Testifies

Changes at the Fund were also reviewed with the Board's president, Rev. Oliver Brown. One of the concerns of the Commission in its probe of Fund affairs was that the money which the trustees so irresponsibly disbursed originated from local, state and federal taxes and was, therefore, deserving of utmost care and conservation. Counsel Morley asked Reverend Brown how much of the Board's finances was supplied by State and Federal sources, he answered, "perhaps upwards of 80 percent." Morley also directed his attention to some of the turnabout events in Board-Union-Fund affairs:

Q. Is it your understanding that recently, this past spring, the Appellate Division of the Superior Court, in litigation instituted by the Fund, held that the Board of Education was not obliged to pay anything more than $200 per capita per year?
A. Yes.

Q. Nonetheless, is it correct that in August of 1984, the Board increased the per capita contribution to the Fund?
A. Yes.

Q. And would it be correct that that per capita contribution is now approximately $471 a year?
A. That is correct.

Q. First of all, can you tell the Commission why the funding level was increased by the Board in face of the Appellate Division decision?
A. Yes. This was a result of a committee both from the Board and involving the Fund trying to work out some way that it was our understanding that at the rate they were going, could face bankruptcy, to use a term. We also knew that in terms of, if they were faced with the possibility of losing their funds, that this would very much have a direct influence upon those who were employed by us and it was

simply the recommendation brought back to the Board, and we thought that in the best interests for all of the Newark school family, that this would be the way to go.

Q. Was it your understanding, as president of the Board of Education, that that $471 represented what the actual cost of providing the benefits would be?

A. Yes.

Q. Okay. I'd like to have you shown Commission's Exhibit P-52. I will represent to you that P-52 is a copy of the combined Board conference and work session minutes of the Board of Education—

A. Yes.

Q. And it lists various items on that there. Is it your understanding that that page, there, represents the substance of the agreement which resulted in the increasing of the support for the Fund on behalf of the Board?

A. Yes.

Q. Now, the first item, number one, says that the Newark Board of Education's contribution to the SFBF shall be sufficient to cover the actual cost of benefits to be provided for Fund beneficiaries, is that an accurate reading of that?

A. You left out "only."

Q. Well, okay. And the word "only" is penciled in?

A. Yes, but you left it out.

Q. Is it your understanding of that entry, there, that the agreement provides that no portion of the Board's contribution to the Fund may be used to pay for administrative expenses?

A. That is correct.

Q. Do you consider salaries of Fund staff, property taxes on the building owned by the Fund, utilities required for the building only by the Fund to be administrative expenses?

A. I would consider that to be administrative expenses, yes.

Q. Was there ever a signed written agreement between the Board and the Fund or the Board and the Union incorporating these two terms?

A. No. No.

COMMISSIONER GREENBERG: Reverend, you do consider the document you have before you binding upon both parties, do you not?

THE WITNESS: Yes, by the process of which I just gave you, yes. Because that's the basis of which we acted upon, that it was a consensus, and I indicated not the whole page, I indicated one through six, you know, that this is what we understood, you know, yes.

The questioning now turned to the Fund's use of part of the Board's money to pay what Fund Chairman Petino had characterized as overdue bills:

BY MR. MORLEY:

Q. Are you aware that in August of 1984, a portion of the contribution made by the Board to the Fund was withheld from Prudential Insurance Company and used to pay salaries and other administrative expenses of the Fund?

A. I am aware.

Q. In your opinion, as president of the Board and as a participant in the agreement, did that withholding of money to pay administrative expenses breach the agreement?

A. That would not be in—that would not be in agreement with that—of our understanding.

COMMISSIONER GREENBERG: Reverend, may I ask what the Board of Education intends to do about this payment on account of administrative expenses, which you've now indicated you consider a breach of the agreement between you and the Union, if anything?

THE WITNESS: It is difficult to say what the Board is going to do. This Fund has its own trustees and we, therefore, could not arbitrarily you know, just necessarily do anything that we may desire to do. It is a grave concern to us and we suspect that that's what this hearing is all about, too, that they would perhaps be making some recommendations in light of in your estimation would give us some direction. We would also hope that the existing trustees who are currently working on the matter would be advising the Board as to what it ought to do.

By Mr. Morley:

Q. Reverend, before the Board entered into the agreement to increase the funding from $200 per capita annually to approximately $471, which if my computations are correct, the increase is about a million three-hundred fifty thousand dollars, did the Board get any advice from its fiscal staff as to the impact that that agreement would have on the Board's financial condition?

A. Yes, the Board did get advice and elected to vote as they—as the record will show.

Chairman Lane then directed similar questions to Fund Chairman Petino, who was in the audience, and to the witness about the Fund's fiscal outlook:

The Chairman: If I understand the testimony of the last witness in this regard, the Fund will run out of money at the end of the month. It will have no money for operation expenses. That's correct, is it not? Your testimony was that the Fund presently has no money and will have no money at the end of the month for operating expenses.

Mr. Petino: Yes, presently we have to deal with it as a Board of Trustees, that is correct. There are options available to us. I just didn't want to get into them.

The Chairman: Right. I'm asking what plans the Board of Education has in regard to that and whether or not you've had meetings with the Fund and are trying to negotiate one way or the other or halfway between that same situation that will take the Fund out of that dilemma.

Rev. Brown: We certainly recognize that we do have a dilemma before us. We also want to assure this body, here, that such people have gotten together and trying to work out a reasonable solution, but we still are bound by the fact, organizationally, that here is the responsibility of the Board of Trustees. We're not in a position as the Board to say that we can just completely ignore the trustees, so we are working very cooperatively in this matter until such time as, again, this body renders a decision or a suggestion as to how we might do it better.

Public Hearing Conclusions and Recommendations

At the conclusion of its hearing, the Commission noted that the accusations of excessive and otherwise questionable spending of public funds by Fund administrators and trustees had been confirmed by two days of testimony, much of it by witnesses who were the Fund's operators. As Chairman Lane's closing statement emphasized:

> *The Commission hopes this public hearing will discourage any attempt to establish again anywhere in this State a trust fund entity capable of the flagrant abuses the S.C.I. found at the Newark Fund. Parenthetically, the Commission notes that pension and health benefit funds in the private sector are successfully administered by employer-employee trustees subject to the Employment Retirement Income Security Act (ERISA). Such ERISA-covered funds should not be confused with the subject matter here.*

The Commission's concluding statement emphasized that the abolition of the Fund as an operating entity—but not, of course, the supplemental benefit program—was a primary recommendation. However, Commissioner James R. Zazzali* noted he was reserving judgment on that recommendation pending a further study of the record.

Chairman Lane's statement proposed a number of other recommendations which reflected the seriousness of the various abuses revealed by public hearing testimony. For that reason, the statement will be cited here almost in its entirety:

> *As has been noted in this hearing record, the Board, the Union and the Fund have already taken certain steps that the Commission would have recommended. These actions included the termination of Joseph Visotski as Fund director, a more realistic financing base for the benefits program, a limitation of eligible beneficiaries to Board employees only, and a more hard-nosed effort to administer a simple pipeline function in a business-like manner.*
>
> *These steps represented a realization on the part of the Board and the Union that abuses of the public trust in the Fund's handling of tax monies for an employee benefits program could no longer be tolerated. Nonetheless, they are woefully inadequate.*

* See Commissioner Zazzali's statement beginning on P. 109.

For example, while it was agreed that no actual need existed for the post of Fund director and that the day-to-day operations of the Fund could be handled by the trustees, neither the Board nor the Union faced up to a primary conclusion of the Commission's investigation—that such a useless entity should be abolished outright. In addition, the agreement contemplates for some bizarre reason continued ownership and operation by the Fund of the Clinton Street building, which is primarily utilized by the Union.

Chairman Lane then voiced the Commission's call for abolition of the Fund as an "operational entity." Commissioner Zazzali's reservations on this issue were placed on the record after the conclusion of the Chairman's statement. Lane continued:

The testimony here has confirmed that the Fund's primary role was to provide a vehicle for siphoning off Newark Board of Education monies to satisfy the spending excesses of the Fund's administrators. The public hearing testimony has verified beyond question that the simple pipeline function of this agency—to transmit Board monies to Prudential, the benefits provider—was superfluous. As a substitute for such an unnecessarily expensive appendage, the clerical functions presently performed by Fund employees should be transferred at once to the Board's staff [which] presently administers Blue Cross/Blue Shield and major medical programs not only for Board staff employees but for teachers as well. This administrative transition can be effected with no loss in supplemental benefits to the teachers and with concomitant savings of hundreds of thousands of dollars in costs.

Building Sale Urged

Along with the dissolution of the Fund as an operating entity, the Commission recommends consideration of the sale of the building at 30-32 Clinton Street, the single most expensive boondoggle undertaken by the Fund. Serious questions have been raised during testimony here as to whether the purchase and renovation of this 94-year-old building at a cost of well over a half-million dollars was a violation of the original trust agreement signed by the Board of Education and the Newark Teachers Union. The Commission has absolutely no doubt, however, that the Fund

purchased this structure primarily to accommodate the Teachers Union's desire for new and inexpensive office space and only secondarily to establish an office for the Fund itself. For these reasons, the Commission recommends that, in conjunction with the dissolution of the Fund entity, consideration be given to selling the building on the open market, with all proceeds going to the Board of Education. Such a disposition of the proceeds is warranted because Board money was diverted to purchase and renovate the premises.

Task Force Inquiry

During the course of our inquiry, the New Jersey Department of Education made public its plans to create a Compliance Intervention Unit, a task force of tremendous potential that would be empowered to conduct investigations in any school district where fiscal or managerial improprieties are alleged. This public hearing and another recent S.C.I. investigation of Newark Board of Education affairs have demonstrated an urgent need for such a task force for "last-resort" monitoring of obviously errant school systems. Since State Education Commissioner Saul Cooperman expects to make the proposed Compliance Intervention Union operational [by 1985], the S.C.I. will forward the record of this hearing to the State Education Department for consideration for task force action.

Restitution Suit

The Commission's public hearing has confirmed that in many instances, and to an extreme degree, former Fund Director Visotski and certain Fund trustees and associates breached their fiduciary responsibilities by wrongfully diverting trust funds for their own personal purposes. The Fund's resolution terminating Visotski stated that he should be held responsible for the reimbursement of his improper financial gains. The Commission is convinced that a suit for restitution should be instituted by the State on behalf of the Board and the public whose taxes support the Board, not only against Visotski but also those trustees and others whose demonstrated improprieties have brought them unwarranted personal enrichment. For these reasons, the Commission's investigative findings and public hearing

record will be submitted at once to Attorney General Irwin I. Kimmelman with a request that an action for restitution be commenced.

Revise Open Meeting Law

One obvious deficiency in the conduct of the Fund was its capacity for anonymity. None of its meetings was ever brought to public attention and since the mid-1970's it squandered hundreds of thousands of dollars with no effective oversight by anyone. Although the Commission has recommended the abolishment of the Fund entity, this hearing's frightening recital of fiscal improprieties compels the Commission to urge the Legislature to widen the coverage of N.J.S.A. 10:4–6, the Open Public Meetings Act. A revision of this vital "Sunshine Law" should be enacted to extend its reach, presently confined to those agencies that are statutorily created, to any entity which is charged with fiduciary responsibility for expending public monies for public purposes. Closer and more constant public scrutiny of the Fund's deliberations might have curtailed its administrative misconduct.

Public Trustee Needed

In addition to widening the jurisdiction of the Sunshine Law to cover all agencies which handle public monies, the S.C.I. believes there should be a statutory requirement for the appointment of a representative of the public to any public or quasi-public trust fund entity. In the case of the Fund targeted by the S.C.I.'s public hearing, its trustees consisted of an equal number of Board and Union appointees. Absent a public spokesman, their authorization of inappropriate expenditures was unrestrained. A provision for a fifth—public—trustee on the Fund's roster would have discouraged the fiscal extravagances that became the Fund's now notorious trademark.

Carole A. Graves, the President of the Newark Teachers Union, who had previously testified as a witness, put a statement of her views about the public hearing issues into the record. Her remarks were highly critical of the S.C.I.'s procedures and motivations. Others involved with the Fund also made final statements for the hearing record, in accordance with the Commission's traditional

policy of fairness toward witnesses and all others whose names are mentioned during the course of a hearing. These final statements to the Commission served to validate the Commission's closing commentary:

> *Certain parties in these proceedings have sought, unsuccessfully, to enjoin the Commission's public disclosure of its evidence of misconduct in the operation of the Fund. Not only have they had their day in court but, in addition, all who have expressed a desire to speak out have been given ample opportunity to state their views here. Overall, the Commission's traditional efforts to protect the rights of those involved in its inquiries have once again been fully confirmed.*

One-Year Probation Urged

As was indicated at the hearing, Commissioner Zazzali reviewed the record of the proceedings and entered a separate statement in connection with the Commission's recommendation that the Fund entity be abolished. He recommended that the Fund "operate for a one-year probationary period," subject to certain stringent conditions, including continued monitoring by the S. C. I. Commissioner Zazzali's statement follows:

> *I concur with all but one of the conclusions of the Commission in its well-reasoned report. Indeed, if time and space allowed, I would expand upon some of the findings in even stronger terms, particularly the practice of some trustees and staff in taking largely frivolous voyages at Fund expense.*
>
> *That said, there is only one issue which warrants further discussion.*
>
> *The Commission recommends the abolition of the Fund. I believe that abolition is premature and too draconian a result at this time. I take this view for the reasons noted below.*
>
> *The present Chairman of the trustees of the Fund described some of its functions. Illustratively, the Fund's relationship with an employee commences by it's enrollment of that employee in the Fund. At the present time there are some 5,000 teachers, aides and clerks who are so enrolled. When a new employee is enrolled, he receives correspondence*

from the Fund itemizing the benefits for which the employee is eligible. There are other communications on an ongoing basis with beneficiaries. For example, communications are sent to beneficiaries in connection with the prescription program. The Fund will request the employee to use a generic drug in place of a brand name drug in order to reduce costs to the Fund. And beneficiaries are advised, when a physician issues a prescription for a smaller dosage, that the beneficiary should request a larger dosage; this also is a cost-saving item. The Fund issues forms to providers for the latter to complete after which the benefit is paid (by the Prudential) either to the individual or to the provider. The Fund monitors closely the prescriptions which the employee/beneficiaries receive. Thus, the Fund issues approximately 100 letters daily relating to various matters. Further, according to hearing testimony, when beneficiaries "call up with a problem, they have someone to answer them."

The Fund also makes certain that individuals who receive benefits are eligible to receive them. Without this procedure, it was indicated, it would be difficult to keep tabs on who is eligible and ineligible. Costs to the Fund would thereby increase. Similarly, the Fund requires employees to repay the Fund for prescriptions improperly filled. Failing repayment, the Fund refers such matters to the Fund attorney for collection so that the Fund can be reimbursed. The Fund is also responsible for maintaining a list of providers of dental care.

All that Prudential Insurance Company does in this entire process—and to my mind there is no significant evidence to the contrary—is to process claims and issue reports to the Fund on the claims which are paid.

The Prudential representative, Dennis J. Walker, testified that several times a week it is necessary for Prudential to call the Fund office for information. He also testified that the Fund serves a more general purpose, i.e., as "liaison between Prudential and the people that are covered under the plan, as any administrator would be for any other Prudential group case." Elaborating on the above, he testified that in "normally every group case—there's some person or group of people that handles the benefit package." Significantly, he stated that such a fund or its staff was

required to exercise discretion in the administration of benefits, when "plan options" or "various benefit modifications" are discussed.

Perhaps most importantly of all, it is the trustees, not the Union or Board of Education, who decide how the Board's contributions on behalf of the employees are to be implemented for benefits, according to the contribution rate established by Board-Union labor negotiations.

None of the above is intended to suggest that benefit funds in the public sector should be or should not be jointly administered. However, while there is at the federal level a legislatively recognized value in joint administration, no legislation regulating jointly administered funds for public employees exists in New Jersey. That being so, it is imperative in this case that the S.C.I. exercise its monitoring function as per its enabling law. With this background in mind I turn again to the operation of the Fund.

Notwithstanding the reluctance of the Board of Education President, the Rev. Oliver Brown, to take a position on abolition of the Fund, he did testify that with the present staff, "the Board is very confident and I personally am very confident in terms of what they're doing...they're doing one heck of a job...given the opportunity to have some resources, they may do even a greater job." Apart from his "confidence" in their work, he agreed that the staff was doing "something important."

There was a suggestion at the hearing that, since the Board of Education already administers the Blue Cross/Blue Shield and Major Medical programs for teachers, it thus could administer the benefits provided by this Fund. But there is difficulty with that approach. To begin with, the President of the Board concluded that it cannot do the described work as well as the Fund because it is understaffed. The testimony indicated that the Board already has problems keeping current with benefits due under the State Health Benefits Plan. Other testimony (and this appears to be uncontradicted) indicated that the benefits pursuant to this Fund "are delivered at a substantially cheaper cost than the benefit plans for any other bargaining unit handled solely by the Board." Further, with the Blue Cross/Blue Shield plan, certain guidelines and restrictions are already in

place so that those plans cannot be "moved or changed around at will". With the Fund there is, and must be, greater flexibility.

Finally, the Board is obligated to provide the Blue Shield/Blue Cross and Major Medical programs pursuant to the New Jersey Health Benefits Program. That is not the case with the Fund.

But there are far more profound problems with the suggestion that the Board administer these benefits.

While it is true that some of these duties can be discharged by the employer acting alone, it is also true that other functions can best be discharged jointly by employer and employee trustees acting together, sometimes as a check and balance upon the other. The Congress, the courts, management and labor over the decades have recognized the value of such joint trustee administrations.

I am concerned if either party, the Union or the Board, becomes the exclusive party responsible for the administration of these benefits. The Union should not be the sole party in control for obvious reasons. By the same token neither should the Board of Education exclusively make the decisions as to eligibility of employee-union members, level of benefits or other decisions affecting these employees and these benefits. If there were no collective bargaining relationship here, my view might be different and I might be less concerned with the Board of Education's administration of employee benefits (although this particular Board's history gives pause). But here there is a collective bargaining agreement. Plainly, an adversarial relationship exists.

In this connection, the genesis of this particular Fund must be kept in mind. The benefits were the product of a bitter dispute between the Union and the Board in the early 1970s. The Board was initially totally opposed to providing such benefits. Continued and difficult negotiations about the existence of the Fund and these benefits have marked and marred the relationship between the Union and the Board for fifteen years. The chairman of the trustees felt that if the Board of Education was allowed to take over the administration of the benefits, because of "political circumstances. . .the benefits could go poof. . ." Under the present structure, he believed, the 5,000 covered employees and their

15,000-20,000 eligible dependents could not lose their benefits merely because of the "political whim" of the Board of Education.

Indeed, the trustees have initiated litigation against the Board in connection with these benefits and the Fund. In the litigation there was some evidence to suggest that the Board was actually urging that the Fund simply become insolvent. At one point in the Fund's history the position taken by the Board of Education would have required the elimination of all family members from coverage as well as a substantial reduction in benefits generally. Other evidence indicated that the Board was more than willing to let the employees' benefits terminate.

History and experience instruct us that it is dangerous for the union or the employer to have the exclusive and final say in the critical area of trust monies. When either party plays God with the employees and their benefits, that power and domination breeds reprisals or threats of reprisal and/or promises or threats of promises by the employer or the union. I therefore would not entrust that function either to the Board or the Union because of these twin specters of favoritism or reprisal. Rather, I would look to a jointly administered and balanced Fund to answer questions and resolve issues, whether they are simple fact questions or more complex inquiries which involve the exercise of discretion.

One may respond that we should simply leave this determination of benefits and eligibility to the Union and the Board when they collectively bargain. That is no solution. First, the Union and Board do not determine what the benefits are. They vest that duty in the Trustees. We should be loath to have it otherwise. Second, even if we could order them to negotiate, the employer and union only negotiate every two or three years. It would be awkward at best to require them to meet periodically between contracts to resolve such issues. Finally, and far more important, we should not leave the sensitive and critical question of an employee's eligibility for benefits to the vagaries of collective bargaining. The utilization of benefit funds in negotiations as a sword or as a shield—as a tool—by an employer or union, either to obtain support or wreak retaliation, is well-documented.

Based on the sworn testimony of Prudential, the new Board, the Fund and the Union, it appears that measures have already been taken to eliminate abuses, although the Fund has a very long way to go. Nonetheless, we should not in any way be satisfied with the progress of the "reforms" implemented to date. If this effort is coupled with a recognition that the interests of the employees and taxpayers must be paramount, not the interests of the Board or Union, then a reasonable accommodation of competing societal and other interests can and should be sought.

Probation Proposal Outlined

I therefore recommend that the Fund be allowed to operate for a one-year probationary period. During this period it is expected that the trustees will substantially cut overhead and administrative expenses including staff expenses and take other corrective steps in accordance with the recommendations of the S.C.I. Only by pursuing a conservative fiscal policy can the Fund expect to continue to exist after the expiration of the proposed one-year probation.

Other conditions should attach: An independent and neutral trustee appointed by the Chief Justice or, if he declines, the Attorney General and Commissioner of Education acting jointly, should also sit on the board of trustees of the Fund. Further, quite apart from what the Legislature may enact, the Fund should voluntarily submit to the requirements of the Sunshine Law to assure the public and the Legislature of its determination to clean house and its willingness to inform the public as to how the house is being cleaned. Minutes of Fund meetings should be made available promptly upon ratification to the Attorney General. Commissioner of Education and the S.C.I. Moreover, only absolutely necessary expenses should be authorized during this probation period.

Also during this period, the Attorney General and Commissioner of Education should monitor the operations of the Fund. At the conclusion of the period, the S.C.I. should determine, after consultation with the Attorney General and Commissioner of Education, and after possible further investigation by the S.C.I. staff, if the Fund can continue to exist and, if so, under what circumstances.

One basic question has been whether this trust Fund or this Board of Education should administer the trust monies. Despite its past problems, I believe that the edge goes to the Fund, jointly administered by trustees under more strict standards, pursuant to a formal Agreement and Declaration of Trust, and as fiduciaries subject to both the common and statutory law dealing with trustees and to both civil and criminal penalties if they violate that law. There are numerous vehicles for dealing with persons who misappropriate funds.

We should abolish the abuses, not the Fund. This is particularly true since, one hopes and expects, the trustees have learned their lesson. I do not suggest that the Board of Education is any more or less competent or honest than the Fund. But it is well known that questions have been raised over the years concerning the competence and probity of the Board. To allow the Fund to continue for a one-year test appears to be the wiser course.

Even if one assumes that there is a doubt as to whether the Fund's continuation would benefit the employees (there is no substantial doubt in that regard in my judgment), it is nonetheless preferable to err on behalf of the employees. They deserve the benefit of any reasonable doubt as to the continuation of the Fund so that they can obtain whatever benefits and assistance the Fund's existence provides for them. Subject to the conditions suggested herein, and other safeguards, I do not perceive any undue risk to either taxpayers or employees. Indeed, the approach recommended here is in the interest of both constituencies.

In sum, it appears that the employees in question, some 5,000 of them, and thrice as many dependents, will benefit if the Fund remains in existence and is operated and administered conscientiously, as it must be. That being so, the Fund ought to be allowed to continue to service the employees on a test basis under the terms and conditions indicated. To do otherwise would be to punish the employees because of the transgressions of others. The employees have been victims once. To now abolish the Fund, which is or should be operating in the interest of the employees, would be to victimize them anew, to place their benefits in harm's way.

Further 1984 Update

The Commission's public activities in 1984, in addition to its public hearing in December, included:

- *Public Reports—*

Two public reports were issued, one on the inadequate regulation of New Jersey's boxing industry, on March 19,* and the other on improprieties in the conduct of the Newark Board of Education school security guard system, on June 25.* These reports outlined broad areas of misbehavior and other irregularities of serious public concern and proposed a number of corrective actions by appropriate legislative and executive entities. These reports are reviewed below.

Interim Report on Boxing

The Commission's 72-page report on boxing was published at a time when the sport had expanded far beyond the ability of State regulators to control it. The physical hazards and other problems of the industry were being exacerbated by the utilization of prize fighting as a gambling casino business promotion, resulting in such an escalation of boxing exhibitions that the demand for healthy, experienced and eligible fighters far exceeded their availability. The report confirmed that the State's regulatory process for the rapidly growing industry, as administered by the Office of State Athletic Commissioner (OSAC)...

> ...is demonstrably unable to cope with its regulatory obligations or keep pace with its workload. Its organizational structure is passé, its operation lacks administrative expertise and policy supervision, and its inadequate staff is devoid of essential skills, most noticeably in medical monitoring and fiscal controls. Meanwhile, regulatory laxity is certainly enlarging the sport's always threatening potential for death and injury. The dramatic increase in the number of boxing events alone suggests a proportionate increase in the number of injuries commonly associated with the sport, particularly injuries to the eyes and brain.

*Copies of the Commission's reports and recommendations on the Inadequate Regulation of Boxing and on Newark Board of Education Security System are available at the S.C.I. office in Trenton.

Investigative Findings

The introduction to the report summarized both the Commission's investigative findings and objectives:

> Although the Office of the State Athletic Commissioner must regulate boxing events generating hundreds of thousands of dollars in purses, gate receipts and broadcast revenues, its licensing procedures are slipshod, erratic and antiquated and its auditing controls over receipts and disbursements are almost non-existent. Even its annual budget, fragmented within the Division of Consumer Affairs' appropriations, can hardly be identified. More importantly, the industry's monitors are failing to properly safeguard the physical welfare of boxers. In this as in other areas both the law and related regulations affecting the industry are being flouted. Boxers of questionable physical and professional qualifications are being allowed to fight, stronger boxers are being matched with inexperienced opponents, and the policing of the matches by ringside officials is becoming increasingly irresponsible.
>
> Obviously, if boxing is to remain a viable albeit qrisly form of public entertainment, an immediate legislative effort must be made to modernize the regulatory process and repair the corroded administrative machinery by which the industry is governed. The basic overall objective must be—perhaps without precedent—that boxing must be regulated by monitors who put the public interest ahead of the industry's.

Recommendations

The Commission's report, which contained numerous excerpts from private session testimony of boxers, promoters, ring officials and state regulators, (including then Deputy Commissioner Robert W. Lee), concluded with a series of recommendations for corrective steps. The Commission urged a restructuring of OSAC to include a group of policy makers who would employ a professional manager to implement policy determinations, thus eliminating the transgressive pattern of one-man rule at OSAC. At the same time the Commission cautioned that whatever the structural revision, its effectiveness would be determined primarily "by the

capability of its leadership, the integrity of its staff and the efficacy of its statutory and regulatory mandate.'' Administratively, the Commission called for a streamlined operational format headed by a professional who recognizes his obligations to develop and maintain the integrity of the sport rather than solely its economic success. In this respect, certain questionable practices should be eliminated, such as instant licensing, last-minute substitutions without verifications, lax enforcement of advance notices on fight cards and inadequate and below standard ringside officiating. A uniform and strictly enforced tax system was also recommended, with no reduced rates and with rates of a sufficient size to cover all State administrative costs. Adoption of an ethics code was urged as well as a ban on any State enforcement official holding office in any national or international sanctioning organization.

Finally, the Commission spelled out in detail its recommendations to reduce as much as possible the physical hazards of the sport, ''particularly at a time when the demand for fighters is outpacing the supply.'' The Commission endorsed a proposed medical board whose rulings would have ''the force of law'' and proposed a number of specific reforms in medical procedures.

OSAC Ethics Controversy

Acting Commissioner Lee, whose official conduct was strongly criticized by the SCI report, was accused of unethical conduct on August 16, 1984, by the Executive Commission on Ethical Standards, which subsequently filed its complaints with the Office of Administrative Law for a hearing. Lee denied all accusations. Governor Thomas H. Kean, who had nominated Lee for the top OSAC post prior to the publication of the SCI report, withdrew the nomination on August 17. Lee's hearing on the ethics charges is scheduled for early 1985.

Legislative, Regulatory Reforms Advance

Soon after the SCI report was published, the movement of boxing reform bills through the Legislature was expedited. In November, an overall revision (A-2353) of the OSAC statute, incorporating many—but not all—of the S.C.I.'s recommendations cleared the Assembly's Independent Authorities and Commissions Committee under the sponsorship of the Committee's chairman, Assemblymen Buddy Fortunato, D-Essex, and William P. Schuber, R-Bergen. This bill was approved 71-0 by the Assembly on December 6 and is

awaiting Senate action. Meantime, Fortunato's Bill A-2468, to reform the OSAC tax structure, was subsequently substituted for Bill S-2184 sponsored by Senator Richard J. Codey, D-Essex. The substitute measure gained passage by 72-2 in the Assembly on November 19 and by 32-1 in the Senate on December 6.

In October Chairman Arthur S. Lane submitted to the sponsors of the most comprehensive boxing legislation letters specifying areas that omitted or fell short of the reforms proposed by the SCI in its March report. In addition, the Commission in September, in a letter by Chairman Lane to Lee at OSAC, criticized what it regarded as serious deficiencies and omissions in extensive regulatory reforms proposed by OSAC on August 20. Lee, in his response, said additional regulatory changes would be forthcoming that would "deal with most of the areas" cited in the Commission's critique. As this report was being compiled, Attorney General Irwin I. Kimmelman announced on January 7, 1985, that expanded OSAC regulatory reforms were being promulgated. He said that although the revisions might lessen the excitement of prize fights for fans, "that is a small price to pay (because) paramount consideration must be given to the safety of the participants inside the ring..."

Should Professional Boxing Be Outlawed?

The Commission anticipates that legislative and executive reforms will be reflected by much-improved law enforcement and administrative conduct. However, it will continue its surveillance of the boxing scene, particularly in the area of the sport's physical hazards. The Commission is far from convinced that boxing can be permitted to continue as a commercial enterprise no matter how stringent are its medical and safety standards or how rigidly such standards are enforced.

Report on Newark School Security System

The Commission undertook an inquiry into the operation of Board of Education security forces in Newark and other school districts after receiving complaints of irregularities in Newark's school security program. An evaluative canvass of major urban districts, including Newark, Jersey City, Paterson, Trenton and Camden, led to a concentrated investigation of Newark's school security force because its problems were found to be the most serious, complex and pervasive. The Commission in June published

a 34-page report with recommendations for correcting the deplorable conditions that the inquiry had uncovered. In the introduction to this report, the Commission specified the need for its investigative focus on the Newark Board of Education Department of Security Services and Drug Enforcement:

> The Commission's review of other school districts uncovered no deficiencies of such substance as to warrant continued probing. In Newark, on the other hand, the school security force was found to have been plagued from its outset by misrule and misconduct. Certain essential reforms have been initiated in recent months. . . These few belated improvements, however, have had only a superficial impact because of 15 years of administrative and operational improprieties. The 57,000 students attending classes in the city's 82 schools cannot be guaranteed, under present security conditions, the peaceful surroundings so necessary to their intellectual and physical maturation as responsible adults. The parents of Newark's public school children—indeed, all of Newark's taxpayers —merit a far safer educational atmosphere than now exists. For that reason, the SCI in this report not only will specify the problems its investigation has uncovered but will also recommend corrective actions for consideration by the Newark Board of Education as well as certain reforms that deserve the attention of the Legislature and the State Department of Education.

Summary of Findings

The Commission's inquiry found a wide range of problems in the Newark security system, including even the absence of any original statutory source for its authority to function. Indeed, the Commission noted that this lack of statutorily defined structure and responsibility contributed to the "faulty management pattern that is largely to blame for the overall staff and operational deterioration that afflicts the Department." This void also clouded the issue of whether the security guards had full police powers under law. Although the school board ruled during the course of the S.C.I.'s inquiry that its school guards did have police powers, the Commission learned that this decision was strongly opposed by the union to which the security guards, as well

as other guards, custodial workers, bus supervisors, laborers, repairmen and clerks, belonged. The conflict between the security department and the union prompted disciplinary problems that threatened to scuttle the entire security system because, as the Commission's report stated, "...authority to run the department is thwarted, official directives and assignments for handling statutory and regulatory violations are being ignored, and an obvious —and dangerous—reluctance exists among some security officers to investigate or arrest other [union] members for alleged wrongdoing." The Commission's inquiry disclosed that, although security guards were carrying firearms while on patrol duty outside of school hours, the school board had no formally promulgated policy or guidelines on firearms and that questions existed as to whether the armed guards received adequate, if any, firearms training.

The investigative findings included the discovery that 38, or 16 percent, of the 239 security guards checked by the Commission had criminal records, that "no show" employees were numerous, that thefts of school property by security personnel was not uncommon, that most of the guards lacked security training and that there was a deplorable lack of liaison with the Newark Police Department. Other deficiencies were also barred and are cited below in conjunction with the Commission's recommendations for corrective actions.

Recommendations on School Security

The Commission prefaced its conclusions and recommendations by stating that its investigative findings of misconduct, mismanagement and other Newark school security deficiencies should be studied by other school districts which sponsor security programs. Copies of the report were mailed to all districts receiving State-funded reimbursements for school security costs. The Commission added:

> The Commission noted that it had canvassed a number of school district security departments but, except for Newark, had found no apparent operational faults of such consequence as to warrant continued inquiry. These districts should realize, however, that this decision by the Commission does not mean that their operations are without defects. Indeed, if the SCI had the financial and personnel resources to

> extend its probe as deeply into other districts as in Newark, one or another of the deficiences that were found to be widespread in Newark also might have been revealed elsewhere. Therefore, this report's pinpointing of statutory omissions and defects, of administrative disfunctions and of personnel abuses should serve as a statewide guide for self-improvement. The recommendations also should provide a basis for such self-analysis.

The Commission recommended to the Legislature that amendments be enacted to eliminate the ambiguities and contradictions of various sections on school security and safety in Title 18A, particularly to facilitate enforcement of the prohibition in N.J.S.A. 34:13A–5.3 against policemen, including school policemen, belonging to a labor union that admits other than policemen to membership. The SCI also urged a statutory requirement for fingerprinting of all school security job applicants.

The State Education Department was asked by the Commission to promulgate more stringent rules and regulations for school districts that are eligible for State reimbursements for security officer costs, including requirements for a full criminal background clearance, a program of specialized training for guard recruits and written personnel and procedural guidelines.

The Commission in its referral to the Newark Board of Education recommended that it divide its security force into two groups, one of daily school "monitors" and the other of security policemen, and prohibit either group from joining a collective bargaining group that allows non-security employees to become members. The board was also urged to adopt a firearms policy, promulgate personnel and procedural guidelines, institute an immediate background check on all security personnel and dismiss those with criminal records, arrange immediately for the training of the security force, and initiate at once an effort to improve relationships with the Newark Police Department, including detailed written planning for joint action in handlng certain crimes and emergencies.

Legislative action

Two bills carrying out statutory revisions urged by the SCI in its school security report were introduced in October by Assemblyman Eugene H. Thompson, D-Essex, and referred to the Assembly Judiciary Committee. One bill would carry out the recommended

clarification of statutes affecting school security guards and the other would require a criminal history background check of all present and prospective school security officers.

STATE LEGISLATIVE LIAISON

S.C.I. Gains Five-Year Extension

The Commission was renewed for a fourth successive term by the Legislature and Governor Thomas H. Kean, who signed the enabling bill, S-825, on August 3, 1984. The Governor at the time reiterated his support for a permanent S.C.I. The bill he signed was sponsored by Senate President Carmen Orechio, D-Essex, and contained certain statutory revisions recommended by a bipartisan S.C.I. Review Committee after its 1982-83 appraisal of the Commission's performance.* Final passage of the legislation was achieved by a 35-0 Senate vote on June 18 and a 63-0 Assembly vote on June 25.

The SCI Review Committee proposals which were written into the SCI statute** included: 1) A requirement that no Commissioner shall serve in succession more than two three-year terms and any portion of an unexpired term, 2) a change in the deadline for submitting public hearing recommendations from within 60 days of such a hearing to 120 days, 3) inclusion of the United States Attorney for New Jersey among those to whom the Commission must give at least seven days notice of its intention to immunize a witness, and 4) confirming in the S.C.I. law itself the power of the Commission to conduct a hearing with one Commissioner present. The bill extended the S.C.I. to December 31, 1989.

Municipal Industrial Commission Reforms

In March, 1982, the Commission issued a report on its investigation of the Lakewood Industrial Commission. This report said the S.C.I.'s inquiry revealed no evidence of criminal or corrupt activities but did confirm "certain inappropriate actions or omissions in the conduct of the Commission." The report, which was submitted to the Governor and the Legislature, backed up its investigative findings with recommendations for reforming the Municipal Industrial Commission Law, N.J.S.A. 40:55B-1 et seq.

* See S.C.I. Review Committee Report in S.C.I. Fifteenth Annual Report, for 1983, which is available at the Commission's Trenton office.
** See S.C.I. statute in Appendix Section, P. 137.

Most of these recommendations—including particularly requirements that such commissions operate on a bipartisan basis and make all policy, financial and other decisions and transactions a matter of public record and open to public inspection—were approved by the Legislature and signed into law by Governor Kean in 1984. The vehicle for these reforms was S-949, a bill sponsored by Senate Majority Leader John F. Russo, D-Ocean. Upon its enactment on November 28, Russo issued a statement in which he expressed the hope that this "measure recommended by the S.C.I. and now approved by the Legislature and the Governor will help restore public confidence in the operation of these agencies." He added:

> Industrial commissions are no one's private domain. If there is one valuable lesson to be learned from the S.C.I. investigation and report, it is that every governmental agency is accountable to the public.

The Ocean County Observer in an editorial said the "long-overdue" reforms would be in the public interest:

> Some long-overdue changes have been made in the way industrial commissions operate in New Jersey, resulting from a State Commission of Investigation (S.C.I.) probe of the Lakewood Industrial Commission and Gov. Thomas Kean's approval of a bill designed to correct "inappropriate action" the S.C.I. says it uncovered.
>
> The changes called for in the new law, sponsored by N. J. Senate Majority Leader John F. Russo, will end the secrecy, sloppy or non-existent bookkeeping and hand-holding deals the S.C.I. found in Lakewood.
>
> Open government decisions, openly arrived at, are demanded by the public. Russo's bill, now a state law, goes a long way toward opening up the way the public business of industrial commissions is conducted.

52:9M-5. Upon request of the Attorney General, a county prosecutor or any other law enforcement official, the Commission shall cooperate with, advise and assist them in the performance of their official . . . duties.*

52:9M-6. The Commission shall cooperate with departments and officers of the United States Government in the investigation of violations of the Federal laws within this state.*

52:9M-7. The Commission shall examine into matters relating to law enforcement extending across the boundaries of the state into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern . . .*

52:9M-8. Whenever the Commission or any employee obtains any information or evidence of a reasonable possibility of criminal wrongdoing . . . the information or evidence of such crime or misconduct shall be called to the attention of the Attorney General as soon as practicable, unless the Commission shall . . . determine that special circumstances exist which require the delay in transmittal of the information or evidence . . .*

** Excerpts from S.C.I. Law*

LAW ENFORCEMENT LIAISON

- **U.S. Attorney**
- **Attorney General**
- **County Prosecutors**
- **Interstate Cooperation**

LAW ENFORCEMENT LIAISON

INTRODUCTION

The Commission last year was contacted almost daily by telephone or mail for various types of assistance from federal, state, county and local law enforcement agencies and from such agencies in numerous states. Additionally, the Commissioners adopted resolutions accommodating formal requests for information by federal, state and county law enforcement agencies, regulatory agencies and legislative committees. A number of referrals of evidence of criminal activities were also made by the Commission pursuant to Section 9M-8 of its enabling law.

LIAISON WITH THE U.S. ATTORNEY FOR NEW JERSEY

Continuing close contact was maintained throughout 1984 with the office of the United States Attorney for New Jersey, W. Hunt Dumont. Such liaison included the submission to his staff of investigative findings, hearing transcripts and other data, as well as the same seven-day advance notices of the Commission's intention to immunize a witness that it gives to the State Attorney General and appropriate county prosecutors. With the Commission's strong endorsement, since it underscored a long-standing practice, a requirement to include the U. S. Attorney on the witness immunity notice list was added to the S.C.I. enabling statute when the Legislature extended the Commission for another five-year term in 1984.

One of the referrals by the S.C.I. to the U.S. Attorney's office, dating back to the Commission's investigation and public hearing in 1979 on improper public insurance purchase and administration procedures, indirectly resulted during 1984 in a guilty plea in Federal District Court by Warren Fuhro, 51, of Hasbrouck Heights, to a charge he participated in a kickback scheme in the award of contracts when he was Hudson County purchasing agent between 1974 and 1980. During the S.C.I.'s public hearing, Fuhro was cited for his questionable handling of Hudson County insurance contracts. When Fuhro entered his guilty plea in May, U.S. Attorney Dumont said that the charges included receipt of kickbacks based on the size of commissions on policies purchased by Hudson County.

Fuhro subsequently obtained and lost a job as purchasing agent for Greenwich, Conn. At the time of his federal court plea, it was disclosed that an agreement had been reached by representatives of the U.S. Attorney's offices in New Jersey and Connecticut with Fuhro requiring him to cooperate in ongoing probes in both states. In July, Fuhro was sentenced to two years in jail on the kickback charges.

Another agreement to cooperate with the U.S. Attorney's office grew out of referrals—and followup action by Special Agent Richard Hutchinson and Accountant Christine Klagholz of the S.C.I. staff—from the Commission's investigation and public hearing in 1983 on misconduct by operators, employees and vendors at certain county and local sewerage authorities in New Jersey. In September, 1983, Arthur Cohen of Cranbury, a witness at the S.C.I.'s hearing, was indicted on six counts in connection with a scheme to defraud the Township of Ocean Sewerage Authority through a $25,000 kickback to assure that the authority would buy Cohen's chemical products. On June 20, 1984, Cohen pleaded guilty to mail fraud, was fined $1,000 and placed on probation for four years on condition that he "continue to pursue his cooperation and other obligations" with federal authorities.

Liaison With The Attorney General

During 1984 the Commission continued its liaison with the Office of Attorney General Irwin I. Kimmelman and various components of his Department of Law and Public Safety. This liaison was carried out through high-level meetings by the Commissioners and the Executive Director with the Attorney General. Additionally, Commission supervisory and legal personnel and the staff of the Attorney General's office, particularly the Division of Criminal Justice, met on scores of occasions during the course of the year with regard to day-to-day activities.

A number of prosecutorial actions were instituted during 1984 as the result of referrals to the Attorney General's office by the Commission of investigative data indicating criminal misconduct, as noted below.

Vernon Valley Prosecution

In April, a state grand jury handed up an indictment listing 110 counts of conspiracy, fraud, theft, embezzlement, forgery, tax evasion and other crimes against Vernon Valley Recreation

Association, nine associated companies and a group of executives and employees headed by Eugene Mulvihill, the corporate chairman. This 313-page indictment resulted in part from the S.C.I.'s investigation and public hearing in 1983 into irregularities in the operation of the Vernon Valley ski resort and amusement facility on state-leased land at Great Gorge in Sussex County. The Commission submitted its investigative data and private and public hearing transcripts to the Attorney General and a 13-month probe ensued, leading to the indictment. After pleas of innocence, a number of the defendants were admitted by Superior Court to the pretrial intervention program and placed on probation and community service assignments. As for Mulvihill, he pleaded guilty on November 8 to five criminal charges related to an insurance fraud scheme that was first revealed during the S.C.I. hearing. Mulvihill pleaded to one count of conspiracy, one count of obtaining money by false pretenses and four counts of theft. Mulvihill also agreed to guarantee payment of any fine up to $500,000 imposed on Vernon Valley, which also pleaded guilty, and to make restitution of $270,000 claimed by New Jersey from the ski operation. Coincident with Mulvihill's guilty pleas, a related civil suit by the State Department of Environmental Protection against one of Mulvihill's companies was settled by an agreement that the resort operation would be continued under a third party contract, with Mulvihill and his companies losing all direct control. In December, Mulvihill was sentenced to six suspended prison terms and fined $45,000. A $250,000 fine was imposed on the Vernon Valley company. In imposing the sanctions, Superior Court Judge Robert Shelton said he had "seriously considered" a jail term because he believed Mulvihill had acted in a "deliberate, calculating and premeditated way."

Rohrer Trial

Another headlined case during 1984 that resulted from an S.C.I. investigation was the trial of Mimi Rohrer of Haddon Township on a murder charge in connection with the death of an adopted 2½-year-old boy in May, 1975. Mrs. Rohrer, the wife of Haddon Township Mayor William Rohrer, went on trial in September but a mistrial was declared on December 17 after the jurors reported to Superior Court Judge David G. Eynon that they could not reach a decision. The Rohrer child's death was one of seven sudden deaths in Camden County that were reviewed in 1979 in an S.C.I. report. The report was critical of the investigative and medical examiner procedures that followed each death.

Labor Consultant Indicted

Frank A. LaVecchia of South Plainfield was a labor consultant who played a key if dubious role in the Commission's public report in 1982 on organized crime's impact on labor relations in mass housing construction. According to Attorney General Kimmelman, LaVecchia who operates his business out of Toms River was charged in April with five counts of failure to file tax returns on income of more than $400,000 between 1978 and 1982. LaVecchia's trial was scheduled to begin in September but was postponed because the defendant became ill.

Liaison With County Prosecutors

The Commission takes pride in its increasingly close relationship with all of New Jersey's 21 county prosecutors and their staffs that began with active investigative associations some years ago in Atlantic, Burlington, Camden, Essex, Hudson, Passaic and Union Counties. This linkage between prosecutors and the S.C.I. has been extended to every county and is being constantly reaffirmed as prosecutorial changes occur. One example of this liaison was the Commission's continuing effort during 1984 to provide appropriate county prosecutors with the findings of various S.C.I. inquiries and public hearings.

In yet another prosecutorial spin-off from a Commission inquiry, the Cape May County Prosecutor's office undertook a probe which led to indictments in February of conspiracy, fraud and bribery involving the Cape May County Municipal Utilities Authority and PQA Engineering Co. The Cape May agency was among the sewerage and utility authorities whose operations and dealings with vendors were criticized at an S.C.I. public hearing in 1983. The Attorney General's office, which also received relevant data from the S.C.I. subsequently entered the Cape May inquiry.

The effectiveness of cooperative law enforcement was particularly demonstrated during last year when S.C.I. Special Agents Raymond H. Schellhammer and Anthony Quaranto, during the course of their investigative duties, located two fugitives from criminal arrest warrants issued by the Essex County Prosecutor's office. Local and county authorities were immediately notified and both individuals were apprehended.

Interstate Cooperation

The Commission continued its membership in various interstate organizations of a formal and informal nature which relate to its work. Additionally, the Commission received numerous requests for assistance on investigations from various law enforcement agencies throughout the nation. The Commission, in fulfillment of its statutory duty and in recognition of the importance of cooperation among the states in areas such as organized crime, responded to all such requests. The Commission itself also obtained assistance from various other states on matters of mutual concern with particular relevance to organized crime and racketeering.

52:9M-9. The Commission shall be authorized to appoint and employ and at pleasure remove an Executive Director, Counsel, Investigators, Accountants, and such other persons as it may deem necessary, without regard to Civil Service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the Commission shall be and have all the powers of peace officers.*

** Excerpt from S.C.I. Law*

COMMISSION STAFF

- **Performance, Self-improvement**

STAFF PERFORMANCE

Morley promoted to Executive Director

The Commission in December promoted James J. Morley of Moorestown from Deputy Director to Executive Director. He succeeded James T. O'Halloran of Bayonne, who was appointed to the Superior Court bench. Judge O'Halloran's first act as a jurist was to swear Morley as his successor at the S.C.I. Morley had been the Commission's Deputy Director since October, 1982.

Morley was a Deputy Attorney General in the Division of Criminal Justice from December, 1978, to October, 1982, and was an assistant prosecutor of Burlington County from December, 1976, to November, 1978. He graduated with honors from Rutgers-Camden Law School in May, 1976, and from Fordham University as a political science major in 1970.

Morley is a member of the American, New Jersey and Burlington County Bar Associations and is a former member of the New Jersey Supreme Court Committee on Juvenile and Domestic Relations Courts.

Professional Activities

The Commission's staff in 1984 consisted of 45 individuals, including 6 lawyers, 5 investigative accountants and 17 special agents. As in past years, various officers and employees participated in law enforcement conferences, seminars and workshops. For ex-office, of the N.J. Narcotics Enforcement Officers Association and led a seminar panel discussion on revised arrest, search and seizure procedures. In June he moderated a panel discussion on drug en-ample, Counsel James A. Hart, III, a former assistant prosecutor in Union County, assisted in arranging a seminar in March in Salem County in conjunction with the Salem County Prosecutor's forcement problems in prisons. Hart is associate counsel and a director of the association. Counsel Gerard P. Lynch participated as Vice Chairman in meetings of the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network (Magloclen).

The Commission's accountants not only kept abreast of advances in their field but also shared their knowledge and experience with

other law enforcement agencies, particularly in the areas of white collar crime and organized crime. The S.C.I. chief accountant, Julius Cayson, lectured at the intelligence school sponsored by the Division of Criminal Justice. Cayson and Accountant Christine F. Klagholz, who also during 1984 completed her studies for a Master of Business Administration degree at Rider College, attended a special computer school conducted by the New York State Society of Certified Public Accountants. The S.C.I.'s fiscal officer, Helen K. Gardiner, attended the annual Gaming Conference sponsored by the New Jersey Society of CPAs at Atlantic City in October. Three accountants are CPA's and three hold MBA degrees. Two accountants are former veteran investigators for the U.S. Internal Revenue Service.

Special courses and seminars on white collar crime, government corruption, organized crime and other law enforcement problems were attended by the Commission's special agents. The wide ranging background of these agents has been particularly helpful in the successful completion of the Commission's unusually varied investigations. Collectively, this background includes previous careers or tours of duty with the U.S. Justice Department, the U.S. Senate's organized crime investigations, the Federal Bureau of Investigation, the State Police, various county prosecutor offices, the Pennsylvania Crime Commission, many municipal police departments, the NY-NJ Waterfront Commission, a county sheriff's department and the military police. A number of special agents are active as officers or members of law enforcement intelligence groups, including Frank Betzler, Robert Diszler, Cyril Jordan, William Rooney and Kurt Schmid. Special Agent Bruce C. Best, who is active in the New Jersey Polygraphists, Inc., lectured on interrogation of suspects at the seminar sponsored by the Salem County Prosecutor's office with the New Jersey Narcotics Enforcement Officers Association. Rooney conducts lectures about the S.C.I. for recruits at State Police and municipal police training schools. Special Agent Richard Hutchinson attended courses on computer fraud investigations. Special Agent Anthony Quaranta is associated with the Metropolitan Regional Council on Organized Crime. Special Agent Robert Buccino has assisted a Division of Criminal Justice inquiry into a narcotics conspiracy and a Morris County Prosecutor's office loanshark probe. Many staff members are also active in community service, as exemplified by Hutchinson's chairing of a $14,000 fund raising drive in the Hightstown area for the Lions Eye Care Center.

Commendations

In September S.C.I. Counsel Lynch received two letters from David E. Fritchey, special attorney to the Justice Department's Philadelphia Strike Force, thanking the Commission for providing data and other assistance in the sentencing of John Martorano and his nephew, George Martorano, following criminal convictions. Executive Director Morley also received a letter from the Strike Force's assistant attorney-in-charge, Louis R. Pichini, in which he recalled that Special Agent Betzler provided "important corroborative trial testimony." This letter observed:

> Joint law enforcement efforts are crucial to the successful prosecution of organized crime members and associates. The Martorano case is but one example of the importance of our cooperative efforts.

Special Agent Schmid also was cited for services to the Vermont Attorney General's office and, after the murder trial and conviction of Albert Daidone and Raymond Martorano in Philadelphia. Assistant District Attorney Barbara L. Christie wrote the S.C.I. expressing appreciation for his aid in the prosecution. Christie's letter stated that Schmid's "efforts have truly defined the concept of public service."

Investigative Teams

Executive Director Morley's investigative team for the public report on the inadequate regulation of boxing consisted of Attorney Lynch, Special Agents Wendy Bostwick, Dennis McGuigan, Robert Lagay, Diszler, Schmid and Quaranta and Investigative Accountant Arthur A. Cimino.

The investigative team for the public report on improprieties in the Newark school security program included Counsel Hart, team leader, Special Agents Raymond H. Schellhammer and Quaranta and Accountant William V. Miller.

Hart was the counsel for the public hearing inquiry into the Newark school system's Supplemental Fringe Benefit Fund and his probe team included Agents Schellhammer and Quaranta, Chief Auditor Cayson and Accountant Miller.*

* The report on this public hearing begins on P. 13.

52:9M-10. The Commission shall make an annual report to the Governor and Legislature which shall include its recommendations. The Commission shall make such further interim reports to the Governor and Legislature, or either thereof, as it shall deem advisable, or as shall be required by the Governor or by concurrent resolution of the Legislature.*

52:9M-11. By such means and to such extent as it shall deem appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of law enforcement . . . and other activities of the Commission.*

** Excerpts from S.C.I. Law*

LIAISON WITH THE PUBLIC

- **Introduction**
- **Public Hearings, Reports**
- **Citizen's Assistance**

LIAISON WITH THE PUBLIC

INTRODUCTION

Since its inception the Commission has sponsored a total of 77 public actions, including 26 public hearings, 32 public reports based on those hearings, and 19 public reports which were not preceded by public hearings. These public actions are mandated by various provisions of the S.C.I.'s enabling law as supplemented by revisions enacted since 1968. For example, annual and interim reports to the Governor and Legislature have been required from the outset. Such reports have helped to fulfill another requirement that the Commission keep the public informed as to the operations of organized crime, law enforcement problems and other activities "by such means and to such extent as it shall deem appropriate." The 1983 S.C.I. Review Committee stated that it "found the reports produced by the S.C.I. in connection with its investigations to be of a high quality."

PUBLIC HEARINGS, REPORTS

A brief listing of the S.C.I.'s 77 public actions illustrates the wide-ranging variety of allegations and complaints that, by formal authorization of the Commission, were subjected to its traditional process of probes, hearings and public reports. In the organized crime field, the Commission's continuing confrontation of high-ranking mob figures was highlighted by public hearings and reports on organized crime influence in Long Branch and Monmouth County (1970), criminal activities in Ocean County (1972), narcotics trafficking (1973), infiltration of legitimate businesses in Atlantic City (1977), incursions into the dental health care industry (1980-81) and into labor relations profiteering at housing projects (1981-82).

In addition, investigations in other law enforcement areas that were subjected to both public hearings and reports included: state cleaning services abuses and state building service contractual irregularities (1970), Hudson County Mosquito Commission corruption (1970), Jersey City waterfront land frauds (1971), workers compensation misconduct (1973), misuse of surplus federal pro-

perty (1973), pseudo-charity solicitations (1974), Lindenwold borough corruption (1974), medicaid-clinical labs (1975), Middlesex land deals (1976), prison furlough abuses (1976), medicaid nursing home schemes (1976-77), improper conduct by private schools for handicapped children (1978), boarding home abuses (1978), absentee ballot law transgressions (1978), mishandling of public insurance programs (1979), misconduct by certain county and local sewerage authorities (1982), abuse and misuse of casino gambling credit (1983), improprieties in the leasing of state lands by a ski resort in Vernon Valley (1983) and excessive spending and other irregularities in the operation of the Newark school system's Supplemental Fringe Benefits Fund (1984).

Further, although no public hearings ensued, critical public reports and corrective recommendations followed the Commission's investigations of the garbage industry (1970), an Atlantic County embezzlement (1971), Stockton College land deals (1972), the Attorney General's office (1973), Middlesex bank fraud (1973), conflicts of interest on the Delaware River Port Authority (1974), medicaid nursing home cost reimbursements (1975), medicaid "mills" (1976), casino control law problems (1977), medicaid hospital problems (1977), wrongful tax deductions from public employees' injury leave wages (1979), mishandled sudden deaths (1979), truck unloading complaints (1980), inappropriate HFA conduct (1981 and 1982), industrial commission law reforms (1982), and on the inadequate regulation of boxing in New Jersey and the school security guard abuses in Newark (both 1984).

Citizens Assistance

As in past years, hardly a week passed in 1984 that the Commission did not receive requests for investigative action, assistance or advice from citizens of New Jersey. Commission records include almost 50 such contacts by citizens, mostly for the purpose of filing complaints about law enforcement and other problems affecting them or their communities.

APPENDIX

- S. C. I. Statute

S.C.I. STATUTE

New Jersey Statutes Annotated 52:9M-1, Et Seq.
L. 1968, C. 266, as amended by L. 1969, C. 67,
L. 1970, C. 263, L. 1973, C. 238, L. 1979, C. 254, and L. 1984, c. 110.

52:9M-1. Creation; members; appointment; chairman; terms; salaries; vacancies. There is hereby created a temporary State Commission of Investigation. The Commission shall consist of four members, to be known as Commissioners.

Two members of the Commission shall be appointed by the Governor. One each shall be appointed by the President of the Senate and by the Speaker of the General Assembly. Each member shall serve for a term of 3 years and until the appointment and qualification of his successor. No person shall serve, in succession, more than two three-year terms and any portion of an unexpired term as a member of the Commission. The Governor shall designate one of the members to serve as Chairman of the Commission.

The members of the Commission appointed by the President of the Senate and the Speaker of the General Assembly and at least one of the members appointed by the Governor shall be attorneys admitted to the bar of this State. No member or employee of the Commission shall hold any other public office or public employment. Not more than two of the members shall belong to the same political party.

Each member of the Commission shall receive an annual salary of $18,000.00. Each member shall also be entitled to reimbursement for his expenses actually and necessarily incurred in the performance of his duties, including expenses of travel outside of the State.

Vacancies in the Commission shall be filled for the unexpired term in the same manner as original appointments. Vacancies in the Commission shall be filled by the appropriate appointing authority within 90 days. If the appropriate appointing authority does not fill a vacancy within that time period, the vacancy shall be filled by the Chief Justice of the Supreme Court within 60 days.

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission.

Any determination made by the Commission shall be by majority vote. "Majority vote" means the affirmative vote of at least three members of the Commission if there are no vacancies on the Commission or the affirmative vote of at least two members of the Commission if there is a vacancy.

Notwithstanding the provisions of section 1 of this act (C. 52:9M-1) and in order to effect the staggering of terms of members of the Commission notwithstanding the term for which they were originally appointed, the terms of the members appointed after December 1, 1978 shall be as follows: the first member appointed by the Governor, 36 months; the second member appointed by the Governor, 18 months; the member appointed by the President of the Senate, 30 months; the member appointed by the Speaker of the General Assembly, 24 months. Thereafter, the terms of the members shall be as provided in P.L. 1968, C. 266, S. 1 (C. 52:9M-1).

52:9M-2. Duties and powers. The Commission shall have the duty and power to conduct investigations in connection with:

a. The faithful execution and effective enforcement of the laws of the State, with particular reference but not limited to organized crime and racketeering;

b. The conduct of public officers and public employees, and of officers and employees of public corporations and authorities;

c. Any matter concerning the public peace, public safety and public justice.

52:9M-3. Additional duties. At the direction of the Governor or by concurrent resolution of the Legislature the Commission shall conduct investigations and otherwise assist in connection with:

a. The removal of public officers by the Governor;

b. The making of recommendations by the Governor to any other person or body, with respect to the removal of public officers;

c. The making of recommendations by the Governor to the Legislature with respect to changes in or additions to existing provisions of law required for the more effective enforcement of the law;

d. The Legislature's consideration of changes in or additions to existing provisions of law required for the more effective administration and enforcement of the law.

52:9M-4. Investigation of management or affairs of state department or agency. At the direction or request of the Legislature by concurrent resolution or of the Governor or of the head of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, the Commission shall investigate the management or affairs of any such department, board, bureau, commission, authority or other agency; provided, however, that if the Commission determines that the requests for investigations from the Legislature, the Governor or the head of any department, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, exceed the Commission's capacity to perform such investigations, they may, by resolution, ask the Governor or the Attorney General or the Legislature in the case of a Legislative request, to review those requests upon which it finds itself unable to proceed.

Within 5 days after the adoption of a resolution authorizing a public hearing and not less than 7 days prior to that public hearing, the Commission shall advise the President of the Senate and the Speaker of the General Assembly that such public hearing has been scheduled. The President and the Speaker shall, after reviewing the subject matter of the hearing, refer such notice to the appropriate standing committee of each House.

The Commission shall, within 120 days of holding a public hearing, advise the Governor and the Legislature of any recommendations for administrative or Legislative action which they have developed as a result of the public hearing.

Prior to making any recommendations concerning a bill or resolution pending in either House of the Legislature, the Commission shall advise the sponsor of such bill or resolution and the chairman of any standing Legislative Committee to which such bill or resolution has been referred of such recommendations.

52:9M-5. Cooperation with law enforcement officials. Upon request of the Attorney General, a county prosecutor or any other law enforcement official, the Commission shall cooperate with, advise and assist them in the performance of their official powers and duties.

52:9M-6. Cooperation with Federal Government. The Commission shall cooperate with departments and officers of the United States Government in the investigation of violations of the Federal Laws within this State.

52:9M-7. Examination into law enforcement affecting other states. The Commission shall examine into matters relating to law enforcement extending across the boundaries of the State into other states; and may consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern to this and other states.

52:9M-8. Reference of evidence to other officials. Whenever the Commission or any employee of the Commission obtains any information or evidence of a reasonable possibility of criminal wrongdoing, or it shall appear to the Commission that there is cause for the prosecution for a crime, or for the removal of a public officer for misconduct, the information or evidence of such crime or misconduct shall be called to the attention of the Attorney General as soon as practicable by the Commission, unless the Commission shall, by majority vote, determine that special circumstances exist which require the delay in transmittal of the information or evidence. However, if the Commission or any employee of the Commission obtains any information or evidence indicating a reasonable possibility of an unauthorized disclosure of information or a violation of any provision of this act, such information or evidence shall be immediately brought by the Commission to the attention of the Attorney General.

52:9M-9. Executive director; counsel; employees. The Commission shall be authorized to appoint and employ and at pleasure remove an Executive Director, Counsel, Investigators, Accountants, and such other persons as it may deem necessary, without regard to Civil Service; and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor. Investigators and accountants appointed by the Commission shall be and have all the powers of peace officers.

52:9M-10. Annual report; recommendations; other reports. The Commission shall make an annual report to the Governor and Legislature which shall include its recommendations. The Commission shall make such further interim reports to the Governor and Legislature, or either thereof, as it shall deem advisable, or as shall be required by the Governor or by concurrent resolution of the Legislature.

52:9M-11. Information to public. By such means and to such extent as it shall deem appropriate, the Commission shall keep the public informed as to the operations of organized crime, problems of criminal law enforcement in the State and other activities of the Commission.

52:9M-12. Additional powers; warrant for arrest; contempt of court. With respect to the performance of its functions, duties and powers and subject to the limitation contained in paragraph d. of this section, the Commission shall be authorized as follows:

a. To conduct any investigation authorized by this act at any place within the State; and to maintain offices, hold meetings and function at any place within the State as it may deem necessary;

b. To conduct private and public hearings, and to designate a member of the Commission to preside over any such hearing; no public hearing shall be held except after adoption of a resolution by majority vote, and no public hearing shall be held by the Commission until after the Attorney General and the appropriate county prosecutor or prosecutors shall have been given at least 7 days written notice of the Commission's intention to hold such a public hearing and afforded an opportunity to be heard in respect to any objections they or either of them may have to the Commission's holding such a hearing;

c. To administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence it may deem relevant or material to an investigation; and the Commission may designate any of its members or any member of its staff to exercise any such powers;

d. Unless otherwise instructed by a resolution adopted by a majority of the members of the Commission, every witness attending before the Commission shall be examined privately and the Commission shall not make public the particulars of such examination. The Commission shall not have the power to take testimony at a private hearing or at a public hearing unless at least two of its members are present at such hearing, except that the Commission shall have the power to conduct private hearings, on an investigation previously undertaken by a majority of the members of the Commission, with one Commissioner present, when so designated by resolution;

e. Witnesses summoned to appear before the Commission shall be entitled to receive the same fees and mileage as persons summoned to testify in the courts of the State.

If any person subpoenaed pursuant to this section shall neglect or refuse to obey the command of the subpoena, any judge of the Superior Court or of a county court or any Municipal Magistrate may, on proof by affidavit of service of the subpoena, payment or tender of the fees required and of refusal or neglect by the person to obey the command of the subpoena, issue a warrant for the arrest of said person to bring him before the judge or magistrate, who is authorized to proceed against such person as for a contempt of court.

No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of P. L. 1968, C. 266 as amended and supplemented, and a general statement of the subject of the investigation. A copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the Commission upon request therefor by the person summoned.

A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned and the Commission shall ask the witness such of the questions as it may deem appropriate to its inquiry.

A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided the same is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record.

The Commission shall notify any person whose name the Commission believes will be mentioned at a public hearing. Any person whose name is mentioned or will be mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the Commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either in private or in public or both at a reasonably convenient time to be set by the Commission, to appear personally before the Commission, and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record.

Nothing in this section shall be construed to prevent the Commission from granting to witnesses appearing before it, or to persons who claim to be adversely affected by testimony or other evidence adduced before it, such further rights and priviliges as it may determine.

52:9M-13. Powers and duties unaffected. Nothing contained in Sections 2 through 12 of this act [chapter] shall be construed to supersede, repeal or limit any power, duty or function of the Governor or any department or agency of the State, or any political subdivision thereof, as prescribed or defined by law.

52:9M-14. Request and receipt of assistance. The Commission may request and shall receive from every department, division, board, bureau, commission, authority or other agency created by the State, or to which the State is a party, or of any political subdivision thereof, cooperation and assistance in the performance of its duties.

52:9M-15. Disclosure forbidden; statements absolutely privileged. a. Any person conducting or participating in any examination or investigation who shall disclose or any person who, coming into possession of or knowledge of the substance of any examination or investigation, shall disclose, or any person who shall cause, encourage or induce a person, including any witness or informant, to disclose, other than as authorized or required by law, to any person other than the Commission or an officer having the power to appoint one or more of the Commissioners the name of any witness examined, or any information obtained or given upon such examina-

tion or investigation, except as directed by the Governor or Commission, or any person other than a member or employee of the Commission or any person entitled to assert a legal privilege who, coming into possession of or knowledge of the substance of any pending examination or investigation who fails to advise the Attorney General and the Commission of such possession or knowledge and to deliver to the Attorney General and the Commission any documents or materials containing such information, shall be guilty of a misdemeanor until September 1, 1979 when such person shall be guilty of a crime of the third degree. Any member or employee of the Commission who shall violate this section shall be dismissed from his office or discharged from his employment.

b. Any statement made by a member of the Commission or an employee thereof relevant to any proceedings before or investigative activities of the Commission shall be absolutely privileged and such privilege shall be a complete defense to any action for libel or slander.

c. Nothing contained in this section shall in any way prevent the Commission from furnishing information or making reports, as required by this act, or from furnishing information to the Legislature, or to a standing reference committee thereof, pursuant to a resolution duly adopted by a standing reference committee or pursuant to a duly authorized subpoena or subpoena duces tecum, provided, however, that nothing herein shall be deemed to preclude the Commission from seeking from a court of competent jurisdiction a protective order to avoid compliance with such subpoena or duces tecum.

52:9M-16. Impounding exhibits; action by Superior Court. Upon the application of the Commission, or a duly authorized member of its staff, the Superior Court or a judge thereof may impound any exhibit marked in evidence in any public or private hearing held in connection with an investigation conducted by the Commission, and may order such exhibit to be retained by, or delivered to and placed in the custody of, the Commission. When so impounded such exhibit shall not be taken from the custody of the Commission, except upon further order of the court made upon 5 days notice to the Commission or upon its application or with its consent.

52:9M-17. Immunity; order; notice; effect of immunity. a. If, in the course of any investigation or hearing conducted by the Commission pursuant to this act, a person refuses to answer a question

or questions or produces evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the Commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. No order to answer or produce evidence with immunity shall be made except by majority vote and after the Attorney General, the United States Attorney for New Jersey and the appropriate county prosecutor shall have been given at least 7 days written notice of the Commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity.

b. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence, or be prosecuted for willful refusal to give an answer or produce evidence in accordance with an order of the Commission pursuant to Section 13, or held in contempt for failing to give an answer or produce evidence in accordance with the order of the Commission pursuant to Section 11; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt or willful refusal to give an answer or produce evidence in accordance with an order of the Commission.

c. If the Commission proceeds against any witness for contempt of court for refusal to answer, subsequent to a grant of immunity, said witness may be incarcerated at the discretion of the Superior Court; provided, however, that (1) no incarceration for Civil Contempt shall exceed a period of 5 years of actual incarceration exclusive of releases for whatever reason; (2) the Commission may seek the release of a witness for good cause on appropriate motion to the Superior Court; and (3) nothing contained herein shall be deemed to limit any of the vested constitutional rights of any witness before the Commission.

Any person who shall willfully refuse to answer a question or questions or produce evidence after being ordered to do so by the State Commission of Investigation in accordance with the act to

which this act is a supplement P. L. 1968, C. 266 (C. 52:9M-1 et seq.) is guilty of a high misdemeanor until September 1, 1979, when such person shall be guilty of a crime of the second degree. Notwithstanding any other provision of law, no person imprisoned pursuant to this section shall be eligible for parole or reconsideration of sentence upon a showing that after imposition of the sentence he testified or furnished the required evidence at a time when the Commission's needs were substantially met. Action against such person shall ensue upon a complaint signed by the chairman upon resolution of the Commission. Such complaint shall be referred for prosecution to the Attorney General.

The trial of a defendant for an indictment made pursuant to this act shall be stayed pending the disposition of any review on appeal of the Commission's order to testify and the indictment shall be dismissed if the order to testify is set aside on appeal or if, within 30 days after the order to testify is sustained on appeal, the defendant notifies the Commission that he will comply with the order and does so promptly upon being afforded an opportunity to do so.

Any period of incarceration for contempt of an order of the Commission shall be credited against any period of imprisonment to which a defendant is sentenced pursuant to subsection a. of this section.

52:9M-18. Severability; effect of partial invalidity. If any section, clause or portion of this act [chapter] shall be unconstitutional or be ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, clause or provision shall on account thereof be deemed invalid or ineffective.

52:9M-19. Joint committee of legislature to review activities. Commencing in 1982 and every 4 years thereafter, at the first annual session of a 2-year Legislature, within 30 days after the organization of the Legislature, a joint committee shall be established to review the activities of the State Commission of Investigation for the purpose of: (a) determining whether or not P. L. 1968, C. 266 (C. 52:9M-1 et seq.) should be repealed, or modified, and (b) reporting thereon to the Legislature within 6 months unless the time for reporting is otherwise extended by statute. The joint committee shall be composed of seven members, two members to be appointed by the President of the Senate, no more than one of

whom is to be of the same political party, two members to be appointed by the Speaker of the General Assembly, no more than one of whom is to be of the same political party, and three members to be appointed by the Governor, no more than two of whom shall be of the same political party.

52:9M-20. This act shall take effect immediately and remain in effect until December 31, 1989.