

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW JERSEY HIGHWAY AUTHORITY
Public Employer

and

Docket No. RO-242

BROTHERHOOD OF PAINTERS AND ALLIED TRADES
LOCAL UNION NO. 1231

Petitioner


and

GARDEN STATE PARKWAY EMPLOYEES UNION,
LOCAL 196, AFTE, AFL-CIO
Intervenor

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning the representation of certain employees of the New Jersey Highway Authority, a hearing was held on April 7, 1971 before Hearing Officer Ronald L. Tobia at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, to argue orally and to file briefs. Thereafter, on July 22, 1971, the Hearing Officer issued his Report and Recommendations. Exceptions have not been filed to that Report. The undersigned has considered the record and the Hearing Officer's Report and Recommendations and finds:

1. The New Jersey Highway Authority is a Public Employer within the meaning of the Act and is subject to its provisions.
2. The Brotherhood of Painters and Allied Trades Local Union No. 1231 and Garden State Parkway Employees Union Local 196, AFTE, AFL-CIO are employee representatives within the meaning of the Act.
3. The Public Employer has refused to recognize either employee representative as the exclusive representative of certain employees; therefore, a question concerning the representation of public employees exists and the matter is properly before the Executive Director for determination.
4. In the absence of Exceptions to the Hearing Officer's Report and Recommendations, the undersigned adopts the Hearing Officer's Report and Recommendations pro forma.
5. Accordingly, the unit petitioned for is found to be inappropriate for purposes of collective negotiations. The petition is therefore dismissed.


Maurice J. Nelligan, Jr.
Executive Director

DATED: September 14, 1971
Trenton, New Jersey

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LOCAL 196, AFTE, AFL-CIO
Intervenor 2/

APPEARANCES:

Theodore W. Geiser, Esq. for the
Public Employer

Thomas L. Parsonnet, Esq., for the
Petitioner

Joseph T. Caprioni, for the
Intervenor

REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER

A petition for certification of public employee representative was duly filed with the Public Employment Relations Commission on January 12, 1971 by the Brotherhood of Painters and Allied Trades Local Union No. 1231 claiming to be appropriate for the purpose of exclusive representation a unit of sign shop fabricators and erectors employed by the New Jersey Highway Authority. Pursuant to an amended

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- 1/ The original case caption was amended at the hearing to reflect the correct name of the public employer.
- 2/ At the hearing counsel for petitioner objected to the intervention of Garden State Parkway Employees Union, Local 196, AFTE, AFL-CIO on three grounds: petitioner was not served with the intervention motion; intervenor lacks the requisite showing of interest; the showing of interest is not "fresh". Section 19:11-7 of the Commission's Rules and Regulations provides in part: "The Executive Director shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before a Hearing Officer." Based on the foregoing questions of adequacy and freshness of the showing of interest is not before the Hearing Officer. However, it is suggested that the Executive (footnote continued page 2)

Notice of Hearing, dated March 19, 1971 and an Order Rescheduling Hearing, dated March 31, 1971, a hearing was held before the undersigned Hearing Officer on April 7, 1971 in Newark, New Jersey. All parties were given an opportunity at this hearing to call, examine, and cross-examine witnesses, to present evidence, and to argue orally.

Upon a careful consideration of the entire record and the exhibits in this proceeding, the Hearing Officer makes the following findings of fact and recommendations:

BACKGROUND

The New Jersey Highway Authority, hereinafter the Authority, was stipulated to be a public employer within the meaning of the New Jersey Employer-Employee Relations Act, hereinafter the Act. The Authority is an autonomous public corporation established pursuant to N.J.S.A. 27:12B-1 et seq. The Brotherhood of Painters and Allied Trades Local Union No. 1231, hereinafter Local 1231, and Garden State Parkway Employees' Union Local 196, AFTE, AFL-CIO, hereinafter Local 196, were stipulated to be employee representatives within the meaning of the Act. The public employer having refused to recognize petitioner as exclusive representative of certain employees, a question concerning the representation of public employees exists and the matter is appropriately before the undersigned for Report and Recommendations.

Petitioner, Local 1231, is seeking to be the exclusive representative for the purposes of collective negotiations for a unit of all sign-shop fabricators and erectors of the Authority, including Sign Assemblers 1 and 2, Sign Erectors 1 and 2, Sign Assembler Foreman, Sign Erector Foreman, but excluding the field supervisor, part-time, temporary and casual employees and other employees. (Tr-108) ^{3/} The contention of the petitioner is that the Authority's sign shop employees have a community of interest peculiar to themselves, and possess a type of skill which is separate in itself and requires training for the purposes of performing their work; and the group is situated in one sign shop, segregated from the rest of the employees and governed by their own conditions of employment. It was stipulated at the hearing that the employees petitioned for are not covered by a collective

^{2/} (continued footnote)

Director's decision on the validity of the showing of interest is supported by the evidence submitted herein. Concerning the failure of Local 196 to serve petitioner with the notice of its desire to intervene in this matter, Section 19:11-13 of the Commission's Rules and Regulations states as follows: "No employee organization may participate to any extent in any representation proceeding unless it has notified the Executive Director of its desire to intervene within ten (10) days after the posting of the notice of petition..." Notices were posted on January 29, 1971 and the Executive Director was notified of the desire to intervene by Local 196 on that same day. Service of this notice is not required by Section 19:11-13. Therefore, it is respectfully submitted that the intervention of Local 196 be granted notwithstanding the failure to serve since Section 19:19-1 of the Rules favors liberal construction thereof to prevent injustice and unfairness.

^{3/}

At the hearing, petitioner amended its petition to correctly reflect the job classifications of the employees and proper exclusions.

negotiating agreement nor a certification issued to Local 196 for other employees of the Authority. (Tr-25) 4/

Intervenor Local 196 contends that the unit petitioned for is inappropriate and that since maintenance personnel have repaired and erected signs it seeks to represent them as part of the maintenance unit.

The Authority adopted a resolution at a regular meeting on March 25, 1971 stating that a group of fifteen (15) sign shop employees and erectors are inappropriate as a unit for collective negotiations. 5/ The Authority relies on the presumption of validity, absent arbitrariness, bad faith or fraud, that attaches to the regular and ordinary procedures of an authority of this State and contends that the employer makes the determination as to appropriateness of a negotiating unit. 6/

CRAFT ISSUE

This issue before the undersigned is whether the sign shop fabricators and erectors are craft employees, possessing a community of interest unto themselves, within the meaning of the Act which would specifically prohibit their inclusion with non-craft employees unless a majority of such craft voted for inclusion. Let us now examine the record to determine if craft status should be accorded to sign fabricators and erectors.

The testimony reveals that sign erectors and fabricators report for duty at the Authority's Telegraph Hill sign shop, which is used for sign fabrication primarily and which is one building in a complex of buildings comprising the Central Maintenance Division. However, sign Erectors spend substantially all of their time away from the sign shop erecting signs along the entire parkway. The sign fabricators and erectors are classified in the overall group of Category "B" personnel of the Authority. The record indicates that there are two (2) sign assemblers and a foreman who work in the sign shop fabricating signs and ten (10) sign erectors and two (2) foremen who erect these highway signs. In addition, two (2) sign erectors are assigned to maintain and repair traffic counters in the sign shop.

The functions of sign fabrication and sign erection are separate and distinct. The fabrication aspect involves the application of scotch-liting, a reflecting material, on aluminum sheets. The sign fabricators are responsible for layout of the faces of the sign itself and application of the scotch-lite. The erection aspect involves the actual putting up of the signs along the roadway, i.e., the digging of the holes, the placement of the posts, and the actual mounting of the aluminum signs. 7/

4/ Local 196 was certified and currently has a contract for Category "A" employees of the Authority, which include toll collectors and maintenance personnel. [See Exhibit P-1]

5/ Exhibit PE-1.

6/ N.J.S.A. 34:13A-6(a) provides: "...the division (Commission) shall decide in each instance which unit of employees is appropriate for collective negotiation..." Based on the specific statutory provision it is recommended that the Authority's contention be rejected and the resolution be considered only as a statement of position.

7/ It must be noted that Local 1231 stated on the record its position that no distinction between erection and fabrication insofar as requisite craft skills would be made so this issue is not before the Hearing Officer.

There is no formal apprenticeship training program for sign fabricators and erectors, rather new employees get on the job training. The record reveals that a Sign Erector 2, upon employment, immediately begins to erect signs as a member of a crew. The skills required for sign erection involve the use of power tools, namely electric hand drills and skill saws, on materials such as wood, concrete and aluminum. The large signs are erected by means of a truck with a boom extension and a hydraulic digger which is operated almost exclusively by one of the erectors. The testimony is in conflict as to how long it would take to learn to erect signs. However, the record is clear that the only difference between Erector 2 and Erector 1 is amount of time employed since a new employee begins to erect signs immediately. To learn the scotch-lite process takes a longer period of training time and an erector could not be used as a fabricator.

Mr. Melvin Kohn, Director of Maintenance, was produced by the Authority to outline its organizational structure. 8/ A Field Supervisor is responsible for both the fabrication and erection functions. The sign shop is now part of the Traffic Division which was recently transferred from the operations to the maintenance function pursuant to the recommendation of the Personnel Committee of the Authority. This Committee proposed to put the entire maintenance function, namely, roadway and guardrail maintenance, mowing, snow removal, electrical work, building maintenance and sign fabrication and erection, under one head. Mr. Kohn testified that signmen are an integral part of the maintenance function of the parkway. 9/

Concerning interchange of employees, signmen have never done any other type of work for the Authority, but maintenance men have erected the small, delineation mile-markers. In addition, erectors are responsible for their own traffic control at their work locations. On a voluntary basis, signmen have worked on snow removal with the maintenance department. In an emergency situation, maintenance personnel have erected fallen signs.

The record reveals that there are highly skilled maintenance people who are proficient with tools similar to those used by sign erectors; so also concerning the use of the more complicated boom-truck. The record further indicates that maintenance men could be brought into the sign shop and trained in a short time to be sign fabricators and erectors because the sign work is not that highly skilled. A review of the job descriptions of the signmen indicates that there are no particular educational requirements necessary for employment and also that the qualifications for maintenance employees are similar to sign employees. 10/

8/ Exhibit PE-2, an organizational chart adopted February 9, 1971, was used as a basis for his testimony.

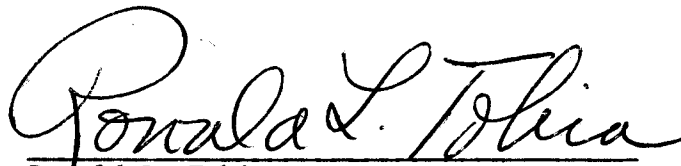
9/ The Committee's recommendation of assimilation of signs shop into maintenance adopted by the Authority.

10/ Exhibit C-2 contains the job descriptions of the classifications in question.

Concerning other terms and conditions of employment, it should be noted that the workday of signmen coincides with maintenance employees, who work from 7 a.m. to 4 p.m. The fringe benefits of signmen are identical to other Authority employees, to wit: 13 paid holidays, 15 sick days, paid hospitalization and dental plan, longevity and PERS pension plan.

Based on the foregoing facts, the undersigned finds that the Authority's sign erectors and fabricators are not a distinct and homogeneous group of skilled journeymen craftsmen who possess a kind and degree of skill which is normally acquired only by undergoing an apprenticeship or comparable training. 11/ The record is clear that, notwithstanding common supervision on common work location, the signmen do not constitute a functionally distinct group; on the contrary maintenance men could begin performing the sign function almost immediately upon assignment. The testimony is clear that concerning sign erection only "do-it-yourself" skills with power tools are required and no requisite apprenticeship or other training program has been established. Most of the sign erectors work all over the roadway as an erection crew; however, maintenance employees do erect smaller signs and these employees could be interchanged readily with signmen even though this has not been done in the past. It should also be noted that the very nature of the sign fabrication process itself does not involve painting but rather it is a production process involving layout and application of scotch-lite on aluminum. Furthermore the very nature of the erection process involves the mounting of these pre-fabricated signs. Consequently most signmen in the proposed unit never get involved with fabrication and also two erectors devote most of their duties to the repair of traffic counters. All of these factors do not permit the finding by the undersigned of a functionally distinct group possessing a kind or degree of skill to compose a traditional craft group. Therefore, the undersigned finds that sign fabricators and erectors are not craft employees and lack the requisite community of interest unto themselves to compose an appropriate unit.

In summary, it is respectfully recommended that since the petitioner seeks a unit deemed inappropriate by the undersigned, the petition filed herein be dismissed.


 Ronald L. Tobia
 Hearing Officer

DATED: July 22, 1971
 Trenton, New Jersey