

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,
Respondent,
-and-
LOCAL 11, I.B.T.,
Charging Party.

Docket No. CO-86-316-201

COUNTY OF PASSAIC,

Respondent,
-and-
LOCAL 711, I.F.L.U.,
Charging Party.

Docket No. CO-86-317-202

COUNTY OF PASSAIC,
Public Employer,
-and-
LOCAL 11, I.B.T.,
Employee Organization.

Docket No. RE-86-6

-and-
LOCAL 711, I.F.L.U.,
Employee Organization.
-and-
S.E.I.U. LOCAL 389.,

Intervenor-Employee Organization.

SYNOPSIS

The Public Employment Relations Commission finds that the County of Passaic violated the New Jersey Employer-Employee Relations Act when it refused to negotiate with Local 11, I.B.T. and Local 711, I.F.L.U. The Commission further holds that the SEIU should continue to represent bridge operators even though the bridge department has been abolished, but that Local 711 should now represent the former bridge department foremen since they are doing supervisory work.

P.E.R.C. NO. 87-123

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-316-201

LOCAL 11, I.B.T.,

Charging Party.

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-317-202

LOCAL 711, I.F.L.U.,

Charging Party.

COUNTY OF PASSAIC,

Public Employer,

-and-

LOCAL 11, I.B.T.,

Employee Organization.

-and-

Docket No. RE-86-6

LOCAL 711, I.F.L.U.,

Employee Organization.

-and-

S.E.I.U. LOCAL 389.,

Intervenor-Employee Organization.

Appearances:

For the Respondent-Public Employer,
Thomas F. Portelli, Esq., Assistant County Counsel

For the Charging Parties-Employee Organizations,
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce Leder, of counsel)

For the Intervenor-Employee Organization,
Max Wolf, Secretary/Treasurer

DECISION AND ORDER

On April 16, 1986, the County of Passaic ("County") reorganized its public works section by abolishing the road and bridge departments and creating a department of operations. It abolished the bridge department titles represented by SEIU Local 389 ("SEIU") and rehired most unit employees into vacant road department titles represented by Local 11, International Brotherhood of Teamsters ("Local 11") and Local 711, International Federation of Labor Unions ("Local 711"). There were 22 employees in the bridge department before the reorganization; 12 were foremen. There were 97 employees in Local 11's unit and 15 employees in Local 711's unit before the reorganization. It then refused to negotiate with Local 11 and 711 "unless and until they have been certified as the bargaining representative(s) as a result of [an] election by employees of the newly-formed Department of Operations."

On May 12, 1986, Local 11 and Local 711 filed unfair practice charges against the County. They allege the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),^{1/} by

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act and (5) Refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and

refusing to negotiate in good faith.

On June 16, 1986, the Director of Unfair Practices consolidated the cases and issued a Complaint and Notice of Hearing.

On June 19, 1986, the County filed a Petition for Certification of Public Employee Representative.^{2/} It seeks an election to determine which organization, if any, represents the employees in the new department of operations. SEIU Local 389 ("SEIU") intervened in this matter, pursuant to N.J.A.C. 19:11-2.7, based on its current contract covering former bridge department employees in the department of operations.

On June 27, 1986, the County filed its Answer. It admits refusing to negotiate but claims there should first be an representation election in the department of operations.

On July 29, 1986, the Director of Representation issued a Notice of Hearing on the petition and consolidated the petition and Complaint.

On August 14 and 20, 1986, Hearing Examiner Susan Wood Osborn conducted hearings. The parties examined witnesses, introduced exhibits and filed post-hearing briefs and replies.

On November 20, 1986, the Hearing Examiner issued her report and recommended decision. H.E. No. 87-35, 13 NJPER ____ (¶ ____ 1986) (copy attached). She found that the County violated

1/ Footnote continued from previous page.

conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ The petition was originally filed as a Clarification of Unit Petition, but the County later requested that it be treated as an Employer Petition for Certification. (RE-86-6).

the Act by refusing to negotiate with the majority representatives of employees in the department of operations. She also found that the change in name of the road department to the department of operations and the merger of 18 former bridge department employees into that department did not warrant a representation election among the affected employees. The Hearing Examiner thus recommended the former bridge department employees be accreted to the existing units of employees in the department of operations.

On January 5, 1987, after an extension of time, SEIU filed exceptions. It claims: (1) the bridge department operation was not seasonal; (2) the County's consideration of grievances in its reorganization decision violates the rights of employees to grieve; (3) employees were rehired into other titles without a change in duties to destroy the SEIU unit; (4) general foremen always gave all orders; (4) transferring employees is a management prerogative that was occasionally used; (5) there was always some shared work, but the skilled trades can only be performed by bridge department employees; (6) the County's need to train confirms that skills and trades exist; (7) the bridge foremen were not supervisors under the Act; (8) there is no representation dispute between the unions; (9) the Hearing Examiner exceeded her authority by making an unsolicited accretion recommendation; and (10) a certification cannot be changed without an election to protect the rights of employees to choose their representative.

We have reviewed the record. The Hearing Examiner's finding of fact (pp. 4-14) are generally accurate. We adopt and incorporate them with the following modifications:

We modify finding no. 7 to clarify that the department of operations replaced the road and bridge departments. The building and grounds department apparently has remained separate. (TA-97)

We add to finding no. 11 that while the Director of Human Resources (personnel director) cited instances where bridge department personnel were without significant work during the winter, the Director of Public Works testified that the main reason for reorganization was the unequal distribution of supervisors. (TA-61) See Finding no. 15. He denied saying there was not enough work and testified they were busy in bridge and culvert work except during emergency snow removals. (TA-74)

We add to finding no. 13 that the three SEIU bridge operators do the same functions as before reorganization.

We add to finding no. 15 that before reorganization, the department of public works was headed by the County engineer to whom a road supervisor and a superintendent of building and grounds reported. A bridge superintendent reported through the road supervisor. The road department then had one general foreman, one assistant general foreman, one road foreman, two assistant road foremen and a mechanics foreman and two assistant mechanic foremen. The bridge department had two general foremen, four foremen and three assistant foremen who reported to the bridge superintendent.

We modify finding no. 16 to clarify that "a couple of people" who worked out of the Pompton Lakes facility are now operators out of the Paterson garage. The Director of Public Works assumes there will be more transfers.

We add the following to finding no. 17: John Orgo, an assistant road foreman, testified that before the reorganization there was a distinction between road and bridge work, but he did some bridge work. Since reorganization the work is integrated. In three months, he worked three times in a mixed crew of former bridge and road department employees. Brian Davis, a truck driver who works at the mosquito department and the Pompton Lakes Garage, testified that before reorganization, crews were never mixed. Since reorganization, they are often mixed. Albert D'Agostino, a former bridge maintenance construction and storm drain foreman and now an equipment operator, testified that his post-reorganization duties are the same except that occasionally he is not in the foreman capacity. He still does the same repairs he did for eleven years. He claimed that the former bridge employees' duties have not changed. In one instance a crew was mixed, but the SEIU and Local 11 employees each did their own work. He testified there was more participation between the unions' men now but it was still only occasional. (TB-20). Frank Poartfleet, a former bridge construction and storm drain formen, testified that his duties have not changed. Before reorganization he never had Local 11 men in his crew; now he occasionally has one or two. That mixing has not changed his crew's

duties. The Local 11 members cut brush along the guard rails; paint but do not repair the rails. When his crew goes out, it consists of mostly bridge members. Frank Elia, a former bridge construction and storm drain repairer and now a laborer, testified that he does the same things now he did before reorganization.

We modify finding no. 19 to clarify that the parties developed the integrated seniority list to eliminate conflicts over snow removal arrangements. Since reorganization, the County has unilaterally decided to use the integrated list for any emergency.

We agree with the Hearing Examiner that the County violated the Act when it refused to negotiate with Local 11 and Local 711. No exceptions were filed to this recommendation. Whether the bridge department employees belong in their own unit or in a unit of all operations and building and grounds department employees, there was no question concerning representation warranting a good faith doubt as to the majority status of Local 11 and Local 711. Accordingly, the County had a continuing obligation to negotiate in good faith for successor agreements.

We next address the issue of the appropriate unit or units for the former bridge department employees.

The County seeks a broad-based unit of all blue collar employees in the public works department.^{3/}

^{3/} This would apparently include employees in the new department of operations and the building and grounds department. The County's petition includes titles in both departments. At the

Locals 11 and 711 want to continue representing the employees in the department of operations whom they have always represented: the former road department and building and grounds department employees. Neither union seeks to represent any of the former bridge department employees.

SEIU wants to continue to represent the former bridge department employees. It argues that these employees are still a separate and identifiable group doing the same work. SEIU also claims that the former bridge department employees are craft employees and should not be included in a unit with non-craft, road department employees. It concedes that any former foremen doing supervisory work should be placed in the Local 711 unit. It does not seek to represent any other department of operations employees.

We are charged with determining the negotiating unit "with due regard for the community of interest among the employees concerned." N.J.S.A. 34:13A-5.3. We begin by examining the history of organization in separate units. Englewood Bd. of Ed., P.E.R.C No. 82-25, 7 NJPER 516 (¶12229 1981).

In January 1978, Local 11 was certified to represent all non-supervisory blue collar employees of the Mosquito Commission and

3/ Footnote Continued From Previous Page

hearing, the director of public works testified that building and grounds employees were not in the department of operations. Accordingly, we treat this as a petition for one unit consisting of both operations and building and grounds.

the road and public buildings divisions of the public works department.

In October 1981, SEIU was certified to represent two units: all bridge construction and storm drain repairers and all bridge construction and storm drain foremen and assistant foremen. SEIU and the County then merged these units.

In October 1984, Local 711 was certified to represent all County supervisors and foremen, but apparently, not bridge department foremen.

On March 11, 1986, SEIU filed an unfair practice charge against the County alleging it had unlawfully announced its intent to reorganize the department, issued notices of layoff and disguised job titles to reduce wages and eliminate the negotiations unit. On June 20, Hearing Examiner Alan R. Howe conducted a hearing. On July 11, he recommended the Complaint be dismissed. He concluded the County had no obligation to negotiate over the reorganization and that the actions were not motivated by anti-union animus. He found that the former bridge department employees had the same duties and received the same wages. SEIU did not file exceptions. On October 15, 1986, the Chairman dismissed the Complaint. P.E.R.C. No. 87-40, 12 NJPER ____ (¶ 1986).

In April 1986, Local 11 and Local 711 sought to resume negotiations for successor agreements. The County refused, claiming it was not sure whom to negotiate with because SEIU might claim it represents the department of operations. SEIU never made such a

claim. Local 11 and Local 711 then filed these unfair practice charges. The County filed a petition seeking a representation election for employees in the "merged" department of operations.

In the absence of changed circumstances, we will not change a unit to include previously excluded titles. Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986); Tp. of Warren, D.R. No. 82-10, 7 NJPER 529 (¶12233 1981). In light of the reorganization, we must consider whether circumstances have changed sufficiently to require the extinction of an existing unit represented by one union and the accretion of its members into other units represented by other unions. The Hearing Examiner determined that the balance tips in favor of a broad-based unit, despite the history of separate units. After a careful review of the entire record, we disagree.

The Hearing Examiner found that there are no longer separate, identifiable groups of bridge and road department employees, and that employees' functions have been integrated. However, neither group's duties was ever strictly segregated. Former bridge department employees testified that there had always been some mix of duties and mixing of crews. They further testified that mixed crews were still the exception rather than the rule and that each unit still performed essentially its own work.

When the road department was organized, the unit did not include bridge department employees. The County engineer testified that the bridge department was more or less a trade division and the

road department was primarily a laborer-type operation. The job descriptions indicate that bridge department repairers were required to have two years of experience in heavy maintenance or construction work which shall include carpentry, masonry, painting, iron and/or welding work. The Hearing Examiner found that in later years, many of the duties of the bridge employees required no such special skills and could be done by laborers in either division. The record does not support that conclusion. There is no recent job description that confirms a change in duties or required skills. The County engineer testified that in an emergency, he could not be restricted in assigning someone to hammer a plank because it is an emergency and because it takes no special training or knowledge to hammer a plank. His testimony, however, did not address whether employees' regular duties had changed.^{4/} A number of employees did testify as to their duties. Three testified they were the same. One testified that the work was now integrated, but referred only to three instances in three months when he worked in mixed crews. He did not discuss whether the duties were mixed as well. Another employee testified that crews are now mixed often, but he

^{4/} According to the County engineer, prior to reorganization, road department employees would pave bridges and paint lines. Since reorganization, they still pave bridges, but "the people who are now running the operation are either former bridge people or former road people, so that a paving operation now does include members of the old bridge department." This confirms that the primary change has been in the lines of supervision, not in the duties of the blue collar employees. See discussion, infra at 13.

did not discuss the breakdown in duties. Thus, we find that the bridge department employees who were organized separately as a "trade division" have had their titles changed, but not their duties.

The Hearing Examiner also found that one of the County's main goals in consolidating operations was to end work assignment disputes. In addition, she found that if the units remained separate, there might be disputes over the unit placement of new employees. However, we do not find the mere filing of grievances, a protected statutory right, to be a significant factor in the removal of a longstanding bargaining unit. The County remains free to assign work and require that it be performed.^{5/}

The Hearing Examiner also found that the employees share common work facilities, hours and working conditions and that the County plans to integrate work even more during the winter months. But, employees in the two departments have always shared work facilities. Before reorganization road department employees worked out of both garages while bridge department employees worked out of Pompton Lakes. Since reorganization "a couple" of bridge department employees have been transferred to the Paterson garage. While some additional transfers may occur, employees from both departments have worked and will continue to work jointly at certain facilities. While there may now be greater integration of snow removal work, before reorganization both departments removed snow. The only change may be in particular snow removal assignments. We note that

^{5/} If the County asserts that a particular grievance significantly interferes with this requirement it is free to file a scope of negotiations petition.

the County, Local 11 and SEIU recently agreed to an integrated seniority list for snow removal. This apparently would have eliminated the disputes over which unit employee would get snow removal overtime.

The Hearing Examiner also found that all employees now share common supervision. This is probably the greatest area of change since reorganization. In fact, redistribution of supervision was the main reason for the reorganization. Some bridge department foremen now have non-supervisory titles but do essentially the same work; others are now supervisors with predominantly supervisory duties.

The record indicates that the former bridge department employees have certain skills beyond those of laborers. However, our Supreme Court has approved our policy of favoring broad-based units and rejecting claims for units organized along occupational or departmental lines. State and Professional Ass'n of N.J. Dept. of Ed., 64 N.J. 231 (1974). Thus, absent other factors, we would not certify a separate unit merely because the employees had traditional trade skills.

Here, however, the skilled bridge department employees were excluded from the original unit of blue collar employees. They then organized separately and have had a five year history of separate representation. The Hearing Examiner found that this history does not compel continuation in a separate unit because the bridge department is no longer a distinguishable group. While we agree that the history of separate organization must be weighed against the rationale for broad-based units, under the facts of this case we disagree with her conclusion.

We have found that the duties of the bridge department employees have not changed. What has changed are their titles and their line of supervision. Because separate representation will not interfere with the County's ability to effectuate its main rationale for reorganization -- the reorganization of supervision -- we find, under these facts, that a separate SEIU unit of employees who work on bridges and repair storm drain remains appropriate.^{6/}

The Hearing Examiner found that although the duties of bridge operators have not changed, the change in supervision is sufficient to warrant removal from their present unit and inclusion in Local 11's unit within the department of operations. In light of our decision regarding the bridge and storm drain repairers, we find that the bridge operators should remain in the SEIU unit.

We do contemplate a unit change for those former foremen who are now doing predominantly supervisory work. They belong in the Local 711 supervisory unit.

ORDER

The County of Passaic is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by the Act,

^{6/} The SEIU argues the former bridge department employees should remain separate because they are a true craft unit. In light of our decision, we need not decide that issue.

particularly by refusing to negotiate in good faith with Local 11 and Local 711.

2. Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to negotiate in good faith with Local 11 and Local 711.

B. Take the following affirmative action:

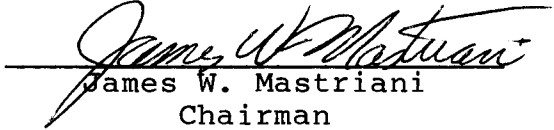
1. Negotiate in good faith with Local 11 and Local 711 for employees in their respective units.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

C. The County of Passaic's Petition for Certification
is dismissed.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Johnson, Reid and Smith
voted in favor of this decision. None opposed. Commissioner
Wenzler was not present.

DATED: Trenton, New Jersey
March 23, 1987
ISSUED: March 24, 1987

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercies of the rights guaranteed them by the Act, particularly by refusing to negotiate in good faith with Local 11 and Local 711.

WE WILL cease and desist from refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, particularly by refusing to negotiate in good faith with Local 11 and Local 711.

WE WILL negotiate in good faith with Local 11 and Local 711 for employees in their respective units.

CO-86-316-201
CO-86-317-202
RE-86-6

Docket No. _____

COUNTY OF PASSAIC

(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.

H.E. NO. 87-35

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

In the Matter of
COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-316-201

LOCAL 11, I.B.T.,

Charging Party.

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-317-202

LOCAL 711, I.F.L.U.,

Charging Party.

COUNTY OF PASSAIC,

Public Employer,

-and-

LOCAL 11, I.B.T.,

Employee Organization.

-and-

Docket No. RE-86-6

LOCAL 711, I.F.L.U.,

Employee Organization.

-and-

S.E.I.U. LOCAL 389.,

Intervenor-Employee Organization.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find the County violated

N.J.S.A. 34:13A-5.4(a)(1) and (5) by refusing to negotiate with Local 11 I.B.T. and Local 711, I.F.L.U., the majority representatives of employees in the department of operations. The Hearing Examiner concludes that the merger of former bridge employees into the department of operations is not sufficient to raise a question concerning representation with regard to the existing units represented by Local 11 and 711. The Hearing Examiner recommends that these former 18 bridge employees, represented by S.E.I.U., constitutes an accretion to the existing units of employees in the department of operations.

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

H.E. NO. 87-35

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

In the Matter of

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-316-201

LOCAL 11, I.B.T.,

Charging Party.

COUNTY OF PASSAIC,

Respondent,

-and-

Docket No. CO-86-317-202

LOCAL 711, I.F.L.U.,

Charging Party.

COUNTY OF PASSAIC,

Public Employer,

-and-

LOCAL 11, I.B.T.,

Employee Organization.

-and-

Docket No. RE-86-6

LOCAL 711, I.F.L.U.,

Employee Organization.

-and-

S.E.I.U. LOCAL 389.,

Intervenor-Employee Organization.

Appearances:

For the Respondent-Public Employer
Thomas F. Portelli, Esq.
Assistant County Counsel

For the Charging Parties-Employee Organizations
Schneider, Cohen, Solomon, Leder & Montalbano, Esqs.
(Bruce Leder, of Counsel)

For the Intervenor-Employee Organization
Max Wolf, Secretary/Treasurer

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On May 12, 1986, Local 11, International Brotherhood of Teamsters ("Local 11") and Local 711, International Federation of Labor Unions ("Local 711") filed unfair practice charges with the Public Employment Relations Commission ("Commission") alleging that the County of Passaic ("County") violated §§5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} The Charging Parties allege that the County has violated the Act by its continuing refusal to meet and negotiate in good faith with Locals 11 and 711 for their respective collective negotiations units.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act and (5) Refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

On June 16, 1986, the Director of Unfair Practices issued a Complaint and Notice of Hearing concerning these charges, together with an Order Consolidating the Cases.

On June 19, 1986, the County filed a Petition for Certification of Public Employee Representative with the Commission (Docket No. RE-86-6).^{2/} By its Petition, the County seeks an election to determine which organization, if any, represents the employees in the newly created department of operations. SEIU Local 389 intervened in this matter pursuant to N.J.A.C. 19:11-2.7 based upon its current contract covering certain employees in the department of operations. On June 27, 1986, the County filed an Answer to the instant Charges. (Appendix to Exhibit C-2)^{3/} In its Answer, the County does not deny that it has declined to engage in negotiations with Local 11 and Local 711 for successor agreements to the 1984-85 contracts, but states, "...the County should not continue to bargain with these units [i.e. those units represented by Local 11 and 711] unless and until they have been certified as the bargaining representative[s] as a result of [an] election by employees of the newly-formed department of operations."

^{2/} The County's Petition, was originally filed as a Clarification of Unit Petition (CU-86-72). The County subsequently requested that its Petition be treated as an Employer Petition for Certification. (RE-86-6).

^{3/} Exhibits will be designated as follows: C- , Commission exhibits; J- , Joint Exhibits; R- , Respondent exhibits; and I- , Intervenor exhibits.

It appearing that the issues involved in the Charges and the Representation Petition were integrally related, the Director issued a Notice of Hearing on the Petition and Order Consolidating the Petition with the Complaints, all on July 29, 1986. Hearings were held in these matters on August 14 and 20, at which all parties were afforded the opportunity to present evidence through the examination of witnesses and the introduction of exhibits. The parties filed briefs, and reply briefs, the last of which was received November 3, 1986. Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The County of Passaic is a public employer within the meaning of the Act and is subject to its provisions.

2. Local 11, I.B.T. is the certified collective negotiations representative of a collective negotiations unit described in its certification dated January 11, 1978, ^{4/} as:

All blue collar employees employed by the Passaic County Mosquito Commission, and road and public buildings divisions of the public works department, but excluding all white-collar employees, clerical and professional employees, craft employees, police, confidential employees, managerial executives, and supervisors within the meaning of the Act.

^{4/} Pursuant to the authority contained in N.J.A.C. 19:14-6.6, I take administrative notice of the Commission's certifications on file for certain employees of Passaic County.

3. Local 711, I.F.L.U. is the recognized representative of a collective negotiations unit described in a County Resolution dated October 3, 1984, (Exhibit J-11) as:

All supervisors, general foremen, foremen, and assistant foremen of the County of Passaic but excluding all other County employees, road supervisor, police, and craft employees, confidential employees, managerial executives.^{5/}

4. Locals 11 and 711 are parties to collective negotiations agreements between the Locals and the County, respectively covering the units of employees described above, for the period January 1, 1984, through December 31, 1985. (Exhibits J-1 and J-2 respectively). Local 11 and Local 711 each signed a Memorandum of Agreement with the County on March 24, 1986, extending their respective 1984-85 agreements to April 15, 1986 (Exhibits J-9, J-10).

5. SEIU Local 389 was certified on October 5, 1981, to represent two collective negotiations units described in the respective Certifications as:

All bridge construction and storm drain repairers employed by the Passaic County roads and bridges department of the section of public works excluding all general foremen, foremen, assistant foremen, bridge inspectors, clericals, police, managerial executives and confidential employees as defined by the Act.

^{5/} Although the language of the recognition statement appears to cover all supervisors, it is clear from the record that Local 711's unit was limited to blue-collar supervisors in the divisions of roads and public buildings of the department of public works.

Foremen Unit: All bridge construction and storm drain foremen and assistant foremen employed by the Passaic County roads & bridges department of the section of public works excluding all general foremen, all other foremen and assistant foremen employed by the County of Passaic, all bridge construction and storm drain repairers, all clerical, police, managerial executives and confidential employees as defined by the Act.

6. SEIU Local 389 and the County agreed to merge the aforesaid units together during negotiations for the first contract (1T-16).^{6/} SEIU and the County are parties to a current agreement covering the bridge employees, for 1985 and 1986 (Exhibit J-4).^{7/}

7. On April 16, 1986, the County Board of Freeholders passed resolutions (Exhibits J-5, J-6, and J-7) modifying the structure of the public works section of the County. Specifically, the County abolished the road department, public buildings department, and the bridge department, which previously had been separate entities, and created the department of operations, incorporating those departments under a single department.

8. The bridge construction and storm drain repairer title and the bridge construction and storm drain foremen and assistant

^{6/} All transcript notations appearing as 1T-1 etc., refer to the transcript of the hearing held on August 14, 1986; references to 2T-1 etc. refer to the transcript of the hearing held on August 20, 1986.

^{7/} No party in this matter has asserted any contractual bars to the timely filing of the County's petition.
N.J.A.C. 19:11-2.8.

foremen titles were abolished. ^{8/} Several of those employees retired or resigned at that point, and the remaining 18 unit employees were laid off on April 17, and rehired on April 18 into vacant road department titles, such as truck driver, laborer, foremen. (1T-40, 137).^{9/}

9. In April, 1986, Local 11 and Local 711 made a demand on the County to resume negotiations for successor agreements. The County acknowledges that it refused to negotiate with Locals 11 and 711 because, as Assistant County Counsel Portelli described it, "we were not sure if Local 11 and 711 was the unit [the County] should be negotiating with....It might be that SEIU would claim it now represents the department of operations." (1T-31-31)

10. Although Local 11 and 711 continued to claim to represent the employees they represented prior to the reorganization, no representative of Local 11 or Local 711 ever presented a claim to represent the employees in the former bridge department (1T-34).

^{8/} The SEIU filed an unfair practice charge against the County concerning the lay-off and restructuring of the Department. On October 15, 1986, the Chairman of this Commission dismissed the Complaint in that matter, finding that no violation of the Act was committed. County of Passaic, P.E.R.C. No. 87-40, 12 NJPER ____ (1986).

^{9/} It appears from the record that the restructuring, in terms of the changes in the County's table of organization, does not require approval from the State Department of Personnel (formerly, Department of Civil Service.) However, whether the former bridge employees are appointed to the road department titles provisionally pending a civil service test, or appointed with permanent status, is presently pending before the State Department of Personnel (Civil Service.) (1T-135)

Similarly, no representative of SEIU ever made any claim to represent the employees in the former road department. (1T-34,42).

11. The County restructured the department of public works for reasons of economy and efficiency. Since the nature of the operation in the bridge department resulted in very little work for the bridge employees to do in the winter months, the County decided that it could no longer afford the luxury of having the bridge employees sit idle all winter. The County determined that it had to either make the bridge department a seasonal operation or merge the bridge employees into the road department. (1T-130-133).

12. Another factor involved in considering the consolidation of the departments was that grievances were being filed whenever the County assigned traditional "bridge work" to "road employees", and vice versa.(1T-77, 79-80).

13. Immediately prior to the reorganization, there were 22 employees in the bridge department. The 18 who did not opt to retire or resign were laid off on April 17, and rehired into vacant road department titles on April 18 (1T-136-137). With changes in titles concurrent with the reorganization, that left 4 foremen represented by SEIU, and the remaining 14 employees in rank-and-file titles (Exhibit J-8).

In the Local 11 unit there were 48 blue-collar workers in the Road department, and 49 blue-collar workers in buildings and grounds, totaling 97 employees in the Local 11 unit. In the Local 711 foremen's unit, there were 8 supervisors in the road department,

and 7 supervisors in the building and grounds department, thus totaling 15 members of Local 711's unit. (Exhibit J-8).

14. When the County rehired the bridge department employees in vacant road department titles it also dropped designations in the titles referring to "roads" or "bridges". Thus, "road laborer" became just "laborer". (1T-38, 63-64). The bridge operators (3), however, retained their title, as did all employees in the building and grounds division.

15. Since the reorganization, the roads and former bridge employees work under unified supervision. Prior to the reorganization, there was a 2-to-1 ratio of foremen to workers in the bridge department, which consisted of 22 employees, 12 of which were foremen. The County felt that the road department had been deficient because that department had only 3 foremen supervising 50 men. The County, in merging the operations, intended to achieve a better distribution of supervision. (1T-61-62).^{10/}

Prior to the reorganization the road department, the bridge department, and the department of buildings and grounds, each had separate lines of supervision, including assistant foremen, foremen, assistant general foremen, general foremen, and the superintendent of each department (2T-38-43). The new department of operations is headed by the County engineer/director of the department of

^{10/} The buildings and grounds employees have no significant change in the lines of supervision in their department (2T-44).

operations. Reporting to the director is the supervisor of roads^{11/}, who is in charge of road and bridge operations, and the superintendent of buildings and grounds, who is in charge of building maintenance. In the road and bridge section, under the supervisor of roads, there is a general foreman, then assistant general foreman, and then 3 foremen, and 1 mechanics foreman. Under those positions, respectively, are 5 assistant foremen, and 2 assistant mechanics foremen. These supervisory employees are in charge of and supervise the maintenance, cleaning and repair work on roads and bridges. The former bridge employees, including the bridge operators, are now integrated in this department under their supervision. (2T-43-46).

16. All the road and bridge employees now work out of common facilities. There is a County garage in Paterson ^{12/} and one in Pompton Lakes. Prior to the reorganization the road department employees worked out of both garages, but the bridge department employees worked only out of the Pompton Lakes facility (1T-58). Since one of the purposes of the reorganization was to "more efficiently distribute the manpower", some bridge employees were transferred to the Paterson garage. More transfers are likely to occur (1T-59).

^{11/} The road supervisor is a management position, not included in any unit.

^{12/} Certain buildings and grounds employees also work in the County Administration Building.

17. The employees now have common duties and are working in integrated crews. Prior to reorganization the bridge department was assigned only to paint and repair guiderails, construct, repair and clean storm drain systems, paint and make minor repairs to bridges, barricade bridges, etc.(1T-59-60, 74). All major bridge repairs and construction have been and still are contracted out (1T-60). Road department employees were assigned to work on roads, including fixing potholes, trimming shoulders, snowplowing, and doing general road maintenance.

Farina, the Director of the department of operations, testified that since reorganization, bridge people now do road work, and road people now do bridge work. (1T-63, 85) For example, he testified that prior to the reorganization, bridges and guiderails were painted by the bridge department, but painting lines on the road surface of the bridge and paving the bridge surface was done by the road department. Since the reorganization, a paving operation now includes members of both departments (1T-86). People that formerly were restricted to fixing potholes can now fix a pothole on a bridge, even though it may require steel work. (1T-62). The County now has the flexibility to assign employees from either group to do road work (2T-75).

The record shows that road employees and former bridge employees work side-by-side and are together performing functions that were traditionally thought of as "bridge work" or "road work". For example, integrated crews have done road cleaning projects,

bridge painting and shoulder trimming (1T-141-150; 2T-12-15; 2T-21-25; 2T-33).

While the County tries to assign the best qualified people to each crew, depending on the work to be done, assignments also depend on who is available to do the job (1T-116-118). Since, in winter, the main priority is ice and snow removal, while in summer, priorities change to bridge and road repair, flooding and mosquito control,^{13/} it is anticipated that bridge employees will do more "road work" such as ice and snow removal, in the winter months, when it is too cold to perform similar "bridge work" (1T-118-119).

18. Employees have the same basic hours of work, terms and conditions of employment, such as vacation, holidays, pension plan, uniforms, overtime pay (Exhibits J-1, J-2, J-3, J-4; 1T-65).

19. As a result of grievances between Local 11 and SEIU concerning unit work, the parties all agreed to have an integrated seniority list for emergency work. That integrated list is now used on a rotating basis for the assignment of emergency work (1T-97), and would also be used to select vacation leave in the event of a conflict. The County Engineer is treating seniority in the new department of operations as total time served with the County, regardless of assignment (1T-112, 114-115).

^{13/} Up until 1980, the County had a separate Commission to do mosquito control. In 1980 that Commission was abolished, and mosquito control has been done by the Road Department since then.

20. The employees in both groups share similar levels of required skill. In the original organization of the department of public works, the bridges section was more like a trade division. Employees were required to be carpenters, masons and steel workers. The road department, on the other hand, was primarily a laborer-type operation, except for such skilled personnel as equipment operators and mechanics (1T 64-65). In later years, many of the duties of bridge people required no such special skills and could be done by laborers in either division (1T-80).^{14/} Road department employees will be trained to do such operations as mason work or metal work by the former bridge supervisors. (1T-123).

There are also craft-type workers in the existing Local 11 unit in the buildings and grounds department--such craft-type titles include plumbers, electricians, welders, pipefitters. (1T-95-96). There have been no changes in buildings and grounds since the reorganization. Buildings and grounds employees do light craft duties, including painting, plumbing, electrical and carpentry work (Exhibit R-3; 1T-155-160).

Supervisors

In the former bridge department, because there were more foremen than laborers, the foremen were also required to perform manual labor rather than just supervise (1T-68, 73). Since the reorganization,

^{14/} A comparison between earlier and later job descriptions for bridge and storm drain repairers confirms this (Exhibits I-1, I-2, R-1, R-2).

foremen are now doing primarily supervisory duties rather than manual work.

Farina testified that while foremen cannot hire and fire, they can effectively recommend the firing of an employee (IT-69). Assistant foreman on up are supervisors in charge of various operations (1T-67).

Assistant general foremen are in charge of a County facility. For instance, Leo Gioia, a former general foreman in the bridge department, is in charge of the Pompton Lakes facility. Under him are foremen and assistant foremen, and a group of employees from both roads and bridges divisions including laborers, equipment operators, and truck drivers (1T-89-90).

The foremen or assistant foremen will be given the work assignment from the general foremen, and he will then assess the job to determine what type of manpower the job needs, and what equipment is required (1T-147-148). A foremen or assistant foremen is in charge of the crew's work performance once the crew is on the job (1T-91).

Foremen have been instructed by Director of Operations that their responsibility is primarily to ride the roads and inspect the crews on the work site. (1T-92)

ANALYSIS

The County acknowledges that it suspended negotiations with Local 11 and Local 711 on or about April 16, 1986. The County's

defense to the unfair practice also forms the basis of its representation Petition. The County asserts that, because of the reorganization, it had a good faith doubt as to whether Local 11 and Local 711 continued to represent a majority of the employees in the certified units. Therefore, I will first decide the representation issues.

Positions of the Parties

The County takes the position, as set forth in its Petition, that because of the reorganization, the appropriate unit for collective negotiations is a broad-based unit of all blue collar employees in the new department of operations, and it seeks a determination from the Commission as to which employee organization, if any, represents those employees. (Exhibit C-2, Answer to Charge; T-55). With regard to the Local 711 unit, the County "continues to recognize Local 711 as the representative of foremen and supervisory personnel," (1T-47), but that the 4 foremen positions "that are technically members of Local 389 may appropriately belong in Local 711." The County requests that the Commission determine the appropriate unit for these foremen. (1T-48, 51-53).

Locals 11 and 711 take the position that they represent the employees in the department of operations whom they have always represented, i.e. those former employees of roads and buildings and grounds departments. Locals 11 and 711 have not made a claim to represent any of the former bridge employees. Local 11 and 711 also

assert that, should the Commission determine that the department of operations is now a broad based unit, Local 11 should be found to be the exclusive representative of those employees without an election, given the number of employees involved.

SEIU takes the position that the former bridge department employees constitute a separate and identifiable group, and that its unit remains appropriate since the employees are doing and will continue to do the same work. (1T-56)^{15/} SEIU also claims that the former bridge employees are craft employees and should not be included in a unit with non-craft employees (i.e., with the road department employees).

With regard to the foremen, SEIU takes the position that, at the time of its certification, certain "skilled mechanics", titled "foreman", acted to lead groups of laborers in executing assigned work, and that at that time, they had no supervisory powers. If any of the "foremen" are now actually supervisory, SEIU does not object to their being placed in the 711 unit.

^{15/} While the hearing examiner in County of Passaic, P.E.R.C. No. 87-40, 12 NJPER ____ (1986) found, in the context of the SEIU's earlier unfair practice charge, that the former bridge employees had not yet had any change in duties, the SEIU was advised in the instant proceeding that this matter involves representation issues, therefore, it is the duty of the hearer to fully develop the record and find the facts, including the duties of these employees (N.J.A.C. 19:11-6.3.), regardless of the conclusions reached in the previous case.

The Appropriate Unit

N.J.S.A. 34:13A-6 provides that:

...The Division shall decide in each instance which unit of employees is appropriate for collective negotiation, provided that, except where dictated by established practice, prior agreement, or special circumstances, no unit will be appropriate which includes (1) both supervisors and nonsupervisors, (2) both professional and nonprofessional employees...or, (3) both craft and non-craft employees unless a majority of such craft employees vote for inclusion in such unit...

The New Jersey Supreme Court, in State of New Jersey and Professional Assn. of N.J. Dept. of Education, 64 N.J. 231 (1974) decided that the Commission's responsibility, where more than one possible unit of employees is appropriate, is to determine in each instance which unit of employees is most appropriate for purposes of collective negotiations.

In determining the appropriate unit, N.J.S.A. 34:13A-5.3 requires an examination of the community of interest among the employees. But Commission decisions have held that, in addition to community of interest, the Commission will also look to the history of collective negotiations, and the relative size and scope of the unit. In Professional Assn., supra., the Supreme Court approved the Commission's policy of favoring the formation of broad-based units and rejecting claims for units organized along occupational or departmental lines. See also, County of Hunterdon, D.R. No. 86-19, 12 NJPER 309 (¶17118 1986); County of Morris, D.R. No. 82-55, 8 NJPER 382 (¶13174 1982); and Morris County Bridge Department, D. R. No. 81-23, 7 NJPER 83 (¶12030 1981);

In the instant matter, the County alleges that the most appropriate units consist of (a) all blue-collar employees in the new department of operations, and (b) all foremen in the new department of operations. Local 11, Local 711 and the SEIU all allege that the existing units of the road employees, road supervisors and bridge employees respectively, continue to be appropriate, and there is no basis here upon which the Commission should alter the existing unit structures.

Once employee units are formed, the Commission would not normally permit the employer to petition to change the unit structure, absent a significant change in circumstances or a claim by an organization(s) for an alternative unit structure. In Belleville Bd. of Ed., D.R. No. 86-23, 12 NJPER 482 (¶17184 1986), for example, the Director dismissed a petition by the employer which sought to challenge the appropriateness of a recently certified unit, on the basis that an alternative structure was more appropriate. Here, however, I find that the reorganization of the department of operations constitutes a significant change in circumstances which permits the employer to seek a determination concerning the appropriateness of the existing unit structure.

I find that the appropriate unit consists of all blue collar employees of the department of operations. First, there is no longer a separate, identifiable group of bridge employees and a group of road employees. Neither bridge employees nor road employees are strictly performing segregated functions. The

employees of the bridge department were laid off and rehired by the department of operations. The former bridge department employees, many of whom were recalled into titles previously held by road department unit members, now all have titles in common with road workers.

When the County hires additional employees they will be hired as employees of the department of operations. One of the County's main goals in consolidating the operations was to bring an end to disputes between the two organizations concerning the assignment of work to employees of the respective units. If the negotiations units were to remain separate, the County would be caught in the middle between these employee organizations as to which organization's bargaining unit to place new employees.

Second, the employees share common work facilities, hours and working conditions. They work side-by-side on the work site performing functions that had previously been considered road work and bridge work. The County plans to integrate the work even more extensively during the winter months when road operations continue and bridge work virtually ceases because of the weather. Additionally, the separate structure of the bridges department in terms of supervision has been abolished. The employees now share common supervision within the department of operations. They have an integrated seniority list and an integrated emergency call-out list.

Although the Commission considers history of organizing in separate units as an important factor in determining the appropriate unit, Englewood Bd. of Ed., P.E.R.C. No. 82-25, 7 NJPER 516(¶12229 1981), this must be weighed against the rationale for broad-based units. Here, I find that the 5-year history of separate representation in the bridge department does not compel a continuation of a separate unit structure for these employees, since the bridge department is no longer a separately distinguishable group.^{16/}

Contrary to the SEIU's assertion, I do not find that the existing bridge department unit structure should be preserved as a "craft unit." The record evidence shows that, while the bridge employees do possess certain skills, they do not possess craft skills of any greater level than the maintenance employees in buildings and grounds, who are doing carpentry, electrical and plumbing work. Therefore, I find that a community of interest exists between the former bridge employees and the employees in the Local 11 unit.

I further find that the 4 former SEIU members in foreman titles are now performing supervisory duties, and are supervisors

^{16/} While the 3 bridge operators have not had any change in duties, they have been merged into the department of operations in terms of lines of supervision. Given the Commission's preference for broad-based units, I recommend that the operators also be included in the department of operations unit.

within the meaning of the Act, N.J.S.A. 34:13A-5.3.^{17/} They assign personnel, direct and oversee their work, and may recommend firing subordinates. Moreover, they share a community of interest with other foreman in the department of operations with whom they are fully integrated. I find that they are appropriately part of the "foremen" unit, represented by Local 711.

Given all of the foregoing, I find that not only is there a strong community of interest between the bridge employees and the other members of the department of operations, but also the virtual non-existence of the bridge department as a separate entity compels a determination that there should be one unit of blue-collar employees in the County's department of operations.

The Employer's RE Petition

N.J.A.C. 19:11-1.2 provides that a petition for certification may be filed by a public employer whenever an employer is faced with one or more claims by one or more organizations seeking to represent its employees, and the employer has a good faith doubt as to the majority status (or, as in this case, the continuing majority status) of the employee organization.

In Ocean County Bd. of Health, D.R. No. 85-2, 10 NJPER 490 (¶15221 1984), the Director stated that the purpose of an RE petition is not to permit the employer to challenge the continued appropriateness of the existing unit, but rather, the purpose is,

^{17/} N.J.S.A. 34:13A-5.3 defines a "supervisor" as an employee having the power to hire, fire, discipline or effectively recommend the same.

...to initiate a procedure made available to employers who encounter genuine conflicting claims of representation by employee organizations, or who are confronted with evidence of majority employee dissatisfaction with the continuation of a currently designated negotiations agent." 10 NJPER at 490.

In the circumstances of this case, where the new department of operations consists of 109 blue-collar employees, 89% of whom are already represented by Local 11; and 19 foremen, 74% of whom are already represented by Local 711,^{18/} I find that the former bridge employees constitute an accretion to the existing unit(s). Accretion is the process of absorbing new employees into an existing unit, where their work and interests are aligned with the existing unit.^{19/}

In a matter similar to the instant circumstances, the Commission has previously found an accretion without an election appropriate in the matter of South Jersey Port Corporation, P.E.R.C. No. 74 (1974), wherein employees working at a newly acquired facility were accreted to the existing unit and a request for an election among the separate unit was denied. Contrast with Bordentown Reg. Bd. of Ed., P.E.R.C. No. 84-126,10 NJPER 276 (¶15136 1984), aff'd App. Div.

^{18/} SEIU agreed that if the bridge foremen were found to be supervisors, then they were appropriately part of the Local 711 unit. Therefore, the placement of the bridge foremen need be considered only in that context.

^{19/} Feerick, Baer & Arfa, N.L.R.B. Guide to Representation Elections -- Law, Practice and Procedure, New York, 1983, at p. 309.

Docket No. A-4503-83T6, 11 NJPER 337(¶16122 1985) wherein the Commission found an election was appropriate where three previously separate employers consolidated operations. There, however, the numbers of employees proved to be a significant factor in that no organization held a clear majority of the employees in the new unit.

Questions concerning the addition of employees to an existing unit have more frequently arisen in the context of petitions for unit clarification. In Clearview Reg. Bd of Ed, D.R. No. 78-2, 3 NJPER 248, (1977) the Director noted that one of the circumstances under which the Commission would clarify titles into an existing unit would be where the employer opens a new facility or starts a new operation and staffs it with existing employees or new employees performing similar work to that performed by the existing bargaining unit. See also, Atlantic County College, P.E.R.C. No. 85-64, 11 NJPER 30 (¶16015 1984). A change in circumstances, such as a reorganization resulting in significant changes in duties, supervision lines, etc., as here, should also result in the placement of the employees in the existing unit without an election. The Director of Representation has applied these principles in Borough of Park Ridge, D.R. No. 86-6, 12 NJPER 37 (¶17014 1985), where as a result of a reorganization, employees were moved from one bargaining unit to another based upon a greater degree of community of interest with the latter unit. In that matter, employees were added to the existing blue collar unit by a unit clarification without an election.

The National Labor Relations Board ^{20/} has had the occasion to consider whether a group of employees constitute an accretion to an existing unit. One of the contexts in which an accretion arises is as a result of an employer's reorganization. ^{21/} The Board will order an election if the reorganization results in an entirely new operation, rather than a relocation of existing personnel, and neither organization represents a clear majority of the employees in the new operation.^{22/} However, the NLRB will find an accretion where the incumbent organization represents an overwhelming majority of the employees in the new merged unit. In reaching a conclusion, the Board considers the facts in light of the Board's policy of maintaining stability in bargaining relations and providing employees with the right to select a bargaining representative of their choice.^{23/}

The employer, in requesting an election among all department of operations employees, relies on several decisions by the NLRB in which the Board found that a merger of operations which results in a "new operation" necessitates an election among all employees in the new operation. See, Massachusetts Electric Company, 103 LRRM 1405

^{20/} While this Commission is not bound by NLRB precedents, the Supreme Court in Lullo v. International Assn. of Firefighters, 55 N.J. 409 (1970) suggested that the Commission may use decisions of the National Labor Relations Board as guidance.

^{21/} NLRB Representation Elections, supra, p. 310.

^{22/} See Morris, Developing Labor Law, Washington, 1983, at pp. 366-370.

^{23/} NLRB Representation Elections, supra, at p. 310.

(1980); Hooker Electrochem Co., 38 LRRM 1482 (1965); Pacific Isle Mining Co., 40 LRRM 1253, Industrial Stamping & Mfg. Co., 35 LRRM 1648 (1955); L.B. Spear & Co., 32 LRRM 1535 (1953); and Greyhound Garage, Inc., 28 LRRM 1388 (1951). In those cases, however, the question of which organization held a majority of the unit was not as clear as here. In Massachusetts Electric Co., supra, the Board found that, if as a result of a merger of operations, no union represents an overwhelming majority of the employees in the merged unit, then there is a question concerning representation that warrants conducting an election among all employees in the new merged unit. In Boston Gas Co., 91 LRRM 1034 (1975), the Board found that a question concerning representation existed in the new appropriate unit of employees of two facilities who were merged together where neither group of affected employees is sufficiently predominant to remove the question concerning representation. See also, General Electric Co., 67 LRRM 1561 (1968); and General Electric Co., 74 LRRM 1710 (1970), where the Board granted the Petitioner's request for an election where 54 employees, represented by Petitioner, were transferred to a plant employing 9 employees represented by an incumbent; and Kroger Co., 60 LRRM 1352 (1965), where the Board granted the petitioner's request for an election, since intervenor represented less than 30% of the employees at the new plant.

However, in Boston Gas Co., 98 LRRM 1146 (1978), the Board found that employees transferred to a new facility from another location as a result of the employer's consolidation of operations

constitutes an accretion of the 80 employees to the existing unit of 183 employees. There, the Board found that an accretion was the proper method of resolving conflicting claims since the number of employees being added to the existing unit was not sufficient to raise a question concerning the continued majority status of the predominant incumbent union at the facility.

On the instant facts, Local 11 represents an overwhelming majority of the employees in the new department of operations, as does Local 711 represent a clear majority of the foremen in the new department. Further, I do not find that there is such a significant alteration in the nature of the work of the overall department as to constitute a "new operation". Therefore, I find that the former bridge employees should be absorbed into the department of operations collective negotiations unit.

While I am mindful of the rights of public employees to choose a representative, if any, for purposes of collective negotiations, here, this right must be balanced against the broad-based unit concept, and the need to keep employees doing the same work in the same unit with one another. Here it is not appropriate to order an election among the former bridge group, since an election among those employees would render the decision concerning the appropriateness of the unit meaningless. See Greyhound Garage, *supra*; Vinco Corp., 35 LRRM 1648 (1955); Pacific Isle Mining Co., 40 LRRM 1253 (1957).

Given the foregoing, I find that the former bridge employees constitute an accretion to the existing unit(s).

The Unfair Practice Charges

Employer-initiated representation petitions must be accompanied by objective evidence of the employer's good faith doubt, particularly if such petitions are to serve as a defense to a refusal to negotiate. See State of New Jersey, D.R. No. 81-20, 7 NJPER 41 (¶12019 1980), aff'd P.E.R.C. No. 81-94, 7 NJPER 105 (¶12044 1981) App. Div. Docket No. A-3274-80T1 & A-4164-80T1, 1/10/82); Borough of Red Bank, D.R. No. 86-7, 12 NJPER 1 (¶17000 1985). In the instant matter, I find that there is insufficient evidence that the County had a good faith doubt as to the majority representative of employees of the former road department, and I find that the 18 bridge employees being merged into the department of operations did not constitute a valid basis for the County's good faith doubt as to the continuing majority status of Locals 11 and 711. Teamsters Local 11, prior to the reorganization, represented a unit of approximately 97 employees. SEIU had not presented a claim to represent these employees. Simply put, the net result of the reorganization was to change the name of the road department to the department of operations, and to put 18 former bridge employees into that department (14 of which are blue collar; 4 are foremen). The County had no sufficient basis upon which to predicate a good-faith doubt as to the continuing majority status of Local 11.^{24/} SEIU had not claimed to represent these

^{24/} Conversely, it appears that the County would have had the basis for a good faith doubt concerning the continued majority status of the SEIU unit.

employees, nor did the employer have any other evidence that might call the majority status of Local 11 into question.

Therefore, I find that no genuine question concerning the representative status of Local 11 and Local 711 existed, and I conclude that the County committed a violation of N.J.S.A. 34:13A-5.3(a)(5) and derivatively, (a)(1), when it ceased negotiations with Local 11 and Local 711 respectively on or about April 16, 1986. Although the County did have a valid basis upon which to question the continued majority status of the SEIU as the exclusive representative of employees in the bridge department since their titles and separate supervision no longer existed, the same cannot be said for the group of employees in the former road department and buildings and grounds, given that the size of the group in dispute amounts to an insignificant percentage of the new merged unit. At best, the County could legitimately have refused to negotiate with either organization only concerning the former bridge employees.

Moreover, the reorganization of the department became effective April 17, 1986. Yet the County did not file its Petition for Certification to question the majority status of Local 11 and Local 711 units until June 19, 1986, some two months after the reorganization and just three days subsequent to the issuance of the instant Complaint and Notice of Hearing. Normally, there must first be a valid question concerning the representation of employees before the employer may permissibly cease collective negotiations concerning the disputed employees. See Passaic County Vocational Technical Schools,

P.E.R.C. No. 85-39, 10 NJPER 577 (15269 1984). In the instant matter, it was not until after a Complaint issued on the unfair practice charges and two full months after the reorganization that the County decided to file the instant Petition to question which organization it should be negotiating with. For the foregoing reasons, then, I conclude that the representation Petition cannot act as a defense to the County's refusal to negotiate with Locals 11 and 711.

CONCLUSIONS

The County violated subsection 5.4(a)(5) and derivatively, subsection 5.4(a)(1) of the Act when it refused to negotiate with Locals 11 and 711 respectively on and after April 16, 1986.

RECOMMENDATIONS

A. I recommend that the Commission find that the appropriate units for purposes of collective negotiations consists of:

Local 11 unit: All blue collar employees employed by the Passaic County in the department of operations, but excluding supervisors within the meaning of the Act, assistant foremen, foremen, assistant general foremen, general foremen, road supervisor, professional employees, managerial executives, and police.

Local 711 unit: All supervisors employed by the County of Passaic in the department of operations, including assistant foremen, foremen, assistant general foremen, general foremen, but excluding managerial executives, non-supervisory employees, professional employees, and police.

B. I recommend that the Commission find that the former bridge employees constitute an accretion to the existing unit as

described above, effective with the expiration of the SEIU contract on December 31, 1986.^{25/}

C. I recommend that the Commission dismiss the Employer's Petition for Certification.

D. I recommend that the Commission ORDER:

1. That the County cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed by the Act by refusing to negotiate in good faith with Local 11 and Local 711.

2. That the County take the following affirmative action:

a. Negotiate in good faith with Local 11, I.B.T. concerning terms and conditions of employment for all blue-collar employees in the appropriate unit as defined above.

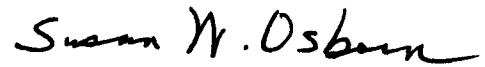
b. Negotiate in good faith with Local 711, I.F.L.U. concerning terms and conditions of employment for supervisory employees in the appropriate unit as defined above.

c. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A". Copies of such notice on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative, shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

^{25/} See Clearview Reg. Bd. of Ed., supra.

d. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

Respectfully submitted,

A handwritten signature in cursive script that reads "Susan W. Osborn".

Susan Wood Osborn
Hearing Examiner

DATED: November 20, 1986
Trenton, New Jersey

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing employees in the exercise of their rights guaranteed by the Act by refusing to negotiate in good faith with Local 11 and Local 711.

WE WILL negotiate in good faith with Local 11 concerning terms and conditions of employment for all blue collar employees in the Department of Operations.

WE WILL negotiate in good faith with Local 711 concerning terms and conditions of employment for all supervisory employees in the Department of Operations.

CO-86-316-201
Docket No. CO-86-317-202

County of Passaic
(Public Employer)

Dated _____

By _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.